

AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF KURE
BEACH CLUB AND KURE BEACH VILLAGE
A PLANNED UNIT DEVELOPMENT

THIS DECLARATION, made this ____ day of _____, 2024, by the Kure Beach Village Homeowners Association, Inc., a North Carolina non-profit corporation, successor in interest to Beach Club Properties, a joint venture composed of Suggs and Harrelson, Inc., PFS Financial Services, Inc., and Cameron Venture Corporation, PFS Financial Services, Inc., and Gulf Stream Developers, Inc., in the rights as hereinafter set forth and hereinafter referred to as the "Association" or the "Declarant":

WITNESSETH

WHEREAS, GULF STREAM DEVELOPERS, INC., together with its predecessors in title, Beach Club Properties and PFS Financial Services, Inc., developed certain real estate located in New Hanover County, North Carolina, known as Kure Beach Club and Kure Beach Village, as shown on maps recorded in Map Book 25, page 96, Map Book 29, page 40, Map Book 28, page 166, and Map Book 35, page 161, New Hanover County Registry; and,

WHEREAS, the developers set forth hereinabove caused certain Declarations of Covenants, Conditions and Restrictions to be recorded in Book 1304, page 201, Book 1428, page 15, and Book 1946, page 219, New Hanover County Registry; and,

WHEREAS, the Declaration of Covenants, Conditions and Restrictions recorded in Book 1304, page 201 was amended by Declaration filed in Book 1424, page 1822, New Hanover County Registry; and,

WHEREAS, the declarations recorded in Book 1304, page 201, provided that the restrictions might be amended by the developer at its discretion up to and including December 31, 1986, and thereafter by the owners of 66 2/3% (sixty-six and two thirds percent) of the lots in Kure Beach Club; Phase I; and,

WHEREAS, the declarations recorded in Book 1428, page 15, and Book 1946, page 219, provided that the restrictions might be amended by the developer at its discretion up to and including December 31, 1997, and thereafter by vote of 66 2/3% (sixty-six and two thirds percent) of the members of the association; and,

WHEREAS, other than as is set forth hereinabove as recorded in Book 1424, page 1822, New Hanover County Registry, there have been no other amendments to the Declarations of Covenants, Conditions and Restrictions referred to hereinabove; and,

WHEREAS, Kure Beach Village Homeowners Association, Inc., was incorporated as a North Carolina Non-Profit Corporation, with Articles of incorporation recorded in Book 1427, page 813, New Hanover County Registry, and is the homeowner's association for owners of all the property located in Kure Beach Village and Kure Beach Club, as described hereinabove; and,

WHEREAS, by the Declaration recorded in Book 1428, page 15, New Hanover, County Registry it was provided that Kure Beach Club would thereafter be known as Kure Beach Village; and,

WHEREAS, at a duly called and noticed meeting of the Board of Directors of the association held on December 31, 1998, at the offices of the corporation, it was resolved by the Board of Directors by unanimous vote that the Board of Directors recommend to the owners of the lots and members of the association that the previously recorded Declarations of Covenants, Conditions and Restrictions, as described hereinabove, be amended to read as hereinafter set forth; and,

WHEREAS, the Board of Directors of the association has determined that the amended Declaration of Covenants, Conditions and Restrictions, as herein set forth, were approved by the owners of 66 2/3% (sixty-six and two thirds percent) of the lots and 66 2/3% (sixty-six and two thirds percent) of the members of the association, and having directed that this Amended Declaration of Covenants, Conditions and Restrictions be recorded in the Office of the Register of Deeds of New Hanover County, to apply to all lots, sections and phases of Kure Beach Club and Kure Beach Village as shown on the maps referred to hereinabove; and,

WHEREAS, by the authority as set forth hereinabove, this Amended Declaration of Covenants, Conditions and Restrictions as set forth herein supersedes in their entirety all previous versions of Kure Beach Club and Kure Beach Village covenants, conditions, and restrictions as previously recorded; and,

NOW THEREFORE, Declarant hereby declares that all of the properties described hereinabove shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the real estate and which shall run with the real estate and be binding on all parties having or acquiring any right, title, or interest in the real estate or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "ASSOCIATION" shall mean and refer to the KURE BEACH VILLAGE HOMEOWNERS' ASSOCIATION, INC., a non-profit North Carolina corporation, its successors, and assigns.

Section 2. "Common Area" shall mean and refer to all real property owned or acquired by the Association for the common use and enjoyment of the Owners, together with any common area designated on each map recorded for Kure Beach Village. Common areas shall not include any property acquired by the Association as a result of foreclosure or deed in lieu of foreclosure of an Owner's property for nonpayment of assessments, taxes or any security interest against the property or acquired in any other way, unless the Association elects to retain such property and use it as common area.

Section 3. "Declarant" shall mean and refer to the Kure Beach Village Homeowners Association, Inc., a North Carolina corporation, its successors, and assigns.

Section 4. "Development" shall mean and refer to the whole of the planned residential development known as Kure Beach Village (formerly known as Kure Beach Club) which consists of all the initial property, which has been previously subdivided into lots shown on maps of Phase I, Phase I-B, and Phase II and Phase III of Kure Beach Village (formerly known as Kure Beach Club) referred to hereinabove, the common elements, plus the improvements to the common elements, as described hereinabove.

Section 5. "Lot" shall mean and refer to any of the numbered lots on each map of property within Kure Beach Village, as is recorded in the New Hanover County Registry, with the exception of the common areas.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Properties" shall mean and refer to that certain real property hereinabove described, and such phases or additions thereto that were brought within the jurisdiction of the Association.

ARTICLE II
PROPERTY RIGHTS

Section 1. OWNERS' EASEMENTS OR ENJOYMENT: Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- A. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area.
- B. The right of the Association to limit the number of guests of members.
- C. The right of the Association to suspend the voting rights and the right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid.
- D. The right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. Except for the grant or conveyance of a standard utility easement in order to obtain utility service to the common area, no such dedication or transfer shall be effective unless an instrument signed by 66 2/3% (sixty-six and two thirds percent) of the members agreeing to such dedication or transfer has been recorded, provided, however, that the Association has the authority to dedicate the streets to the public. With respect to a standard utility easement permitting utility service to the common area, the Board of Directors may authorize the officers to execute such a grant or conveyance of the standard utility easements to the utility company without a vote of the membership of the association.
- E. The right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

Section 2. DELEGATION OF USE: Any Owner may delegate, in accordance with the by-laws but subject to the provisions of this document, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

HOMEOWNERS ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section I. Every owner of a Lot which is subject to assessment shall be a member of the Kure Beach Village Homeowners Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot which is subject to assessment. Each owner has the duty to comply with and obey these Articles, the by-laws of the Association and the Rules and Regulations of the Association.

ARTICLE IV

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section I. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENT: Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant, and agree to pay the Association:

- A. Annual assessments or charges; and
- B. Special assessments for capital improvements, exterior maintenance, and insurance in connection with common area property, such assessments to be established and collected as hereinafter provided; and a pro rata share of ad valorem taxes levied against the common area.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the persons who were the Owner of such property at the time when the installment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them; provided, however, such assessment shall always be a lien upon the land until paid, and no sale shall extinguish such assessment.

Section 2. PURPOSE OF ASSESSMENTS: The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties, for the improvements and maintenance of the common area, and to obtain and pay for insurance where authorized or required by this document, the corporal charter, the by-laws, Action of the Board of Directors or members of the association.

Section 3. The Board of Directors shall recommend the amount of the annual assessment to be approved at the annual meeting of the membership. Written notice of the annual assessment shall be sent to every owner subject thereto. However, the yearly assessment shall not be less than \$375.00,

regardless of any recommendation from the Board of Directors. The minimum yearly assessment of \$375.00 can only be reduced by a vote of 66 2/3% (sixty-six and two thirds percent) of the vote of the entire membership in good standing. The due dates shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in annual installments or to divide the annual assessment and have it paid in periodic installments throughout the year. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid and for what period.

Section 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS: In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or part, the cost of any construction or reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of 66 2/3% (sixty-six and two thirds percent) of the vote of the entire membership in good standing who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. SPECIAL ASSESSMENTS FOR INSURANCE: As an additional annual assessment, the Association shall levy against the owners equally an amount sufficient to pay the annual cost of all public liability and common area insurance premiums for the Association and its members, officers, Directors, and employees. The Board of Directors (or its designee) shall, on behalf of the Association, as its common expense and at all times, keep the common property insured against loss or damage by fire or other hazards normally insured against at a minimum of 80% of replacement costs, and other risks including public liability insurance, in such terms and in such amounts as may be reasonably necessary from time to time to protect the common property on behalf of the Association. The Board of Directors may exclude oceanfront common area property, such as, the Gazebo, from insurance coverage due to excessive costs for such protection, but provisions must be made by the Board for "self-insurance" of such structures. As a part of the annual assessments the Association shall also obtain and pay for such insurance policies and bonds that the Directors of the Association deem necessary or advisable including, but not limited to, officers' and Directors' liability coverage, fidelity bonds, casualty or hazard insurance or any other insurance for the Directors and officers of the Association or otherwise.

Section 6. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER ARTICLE IV FOR MEMBERSHIP: Written notice of any meeting called for the purpose of taking an action authorized under Article IV for the membership shall be sent by mail or electronically to all members consistent with the North Carolina Planned Community Act and the North Carolina Nonprofit Corporation Act.

At the first such meeting called, the presence of members or of proxies entitled to cast twenty five percent (25%) of all the votes of members in good standing shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the proceeding meeting.

Section 7. UNIFORM RATE OF ASSESSMENT: Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, annual, or other basis as the Homeowners Association, acting through its Board of Directors, determines.

Section 8. EFFECT OF NON-PAYMENT OF ASSESSMENTS - REMEDIES OF THE ASSOCIATION: Any assessment not paid within thirty (30) days after the due date shall bear an administrative fee plus interest at the current legal rate per North Carolina law. An additional financial penalty may be determined and levied by the Board in its discretion if any assessment is in default for over one year. The Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property. If an attorney is retained by the Association to enforce its rights hereunder, then the Association shall be entitled to collect reasonable attorney's fees from the owner. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot.

Section 9. EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION: Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements to the Common Area, which default shall continue for a period of three (3) months, each Owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing government authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in the development. If such sum is not paid by the owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the owner.

Section 10. SUBORDINATION OF THE LIEN TO MORTGAGES: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage upon the property. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to the foreclosure of a deed of trust or mortgage, a deed in lieu of foreclosure, or any other proceeding in lieu of

foreclosure, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

USE RESTRICTIONS

Section 1. All lots within the development shall be used for single family residential purposes only, except for those lots owned by the Homeowners Association and used for the amenity package or otherwise held as common area. Home offices are permitted provided that the home office serves only as a remote work site. No sales or client appointments can be conducted on the premises of the home office.

Section 2. This section pertains to detached single family lots only. No house, building, fence, or other structure shall be commenced or erected upon any Lot nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same, including any requirements for landscaping, sod and irrigation, shall have been submitted to and approved in writing as to the external design, type of building material, the nature, kind and type of construction, shape, height and location by the Board of Directors or by an Architectural Review Committee composed of three (3) or more representatives appointed by the Board. The Board, or Architectural Review Committee with the approval of the Board, may from time to time develop, promulgate, utilize and amend rules and regulations and design guidelines to be utilized in the aforesaid process, which rules, regulations and design guidelines shall become a part of these Covenants, Conditions, and Restrictions as if they were fully set out herein and shall remain so as long as they are in effect, and a copy of which shall be furnished to any applicant contemplating construction on a lot upon request. In the event said Board, or its designated Architectural Review Committee, fails to approve or disapprove such application within thirty (30) days after the plans and specifications have been submitted to it, approval will not be required, and this article will be deemed to have been fully complied with. All residences shall have landscaping (approved by the Board or Architectural Review Committee, as the case may be) in place within ninety (90) days of the issuance of certificate of occupancy.

Without limiting the authority of the Board or Architectural Review Committee as set forth above, the following specific restrictions, at a minimum, shall apply to each lot notwithstanding the failure of the Board of Directors or the Architectural Review Committee to act within thirty (30) days after plans or specifications have been submitted to it:

- A. No lot less than 5,000 square feet shall be used to build a single-family home. No single-family residence smaller than 1,350 heated square feet, when measured by exterior surface, which

square footage shall be exclusive of porches, steps, walks, garages, carports, storage areas, etc., shall be constructed or located in said subdivision. No structure shall be erected, altered, placed or permitted to remain in said subdivision exceeding 35 feet (thirty five feet) in height above ground level, and one or more small accessory buildings (which may include a detached private garage but not garage apartments), provided, that such buildings are not used for any activity normally conducted as a business, and provided further that any such buildings shall be constructed of similar materials and design as the main structure upon such lot. No accessory buildings shall be constructed prior to the construction of the main building on any lot. In addition to the following Kure Beach Village restrictions, all foundations must conform to the Town of Kure Beach construction regulations. Currently three (3) types of foundations are permitted in Kure Beach Village: 1) Raised piling – consisting of pressure treated wood or reinforced concrete piers supporting the building; 2) Crawl space – Traditional foundation supporting the building on a perimeter footer and additional piers required by the building design; 3) Raised pad – Foundation supporting the building by a perimeter footer and additional piers as required by the building design and finished with a concrete pad poured to the level at the top of the footer, thus giving the exterior appearance of a crawl space.

- B. All siding material must be approved by the Architectural Review Committee or the Board of Directors. No modular homes or manufactured housing, as these terms are customarily used, nor any other structure which is primarily built “off-site” and transported to a lot for assembly may be erected on any lot, it being intended that construction on the lots be done "on site" so as to be subject to inspection to ensure compliance with the approved plans and specifications. All residences must have a minimum double wide driveway of material approved by the Architectural Review Committee or the Board of Directors.

Section 3. No house trailer, mobile home, tent, shack, or temporary structure of any nature shall be used at any time as a residence.

Section 4. No advertising signs or billboards shall be erected on any lot or displayed to the public on any lot, subject to these restrictions, except that one sign of not more than five (5) square feet in area may be used to advertise a dwelling or lot "For Sale or For Rent."

Section 5. This section pertains to detached single family lots only. No fence or hedge may be constructed on a lot unless plans have been submitted to the Architecture Review Committee and approved by the Board of Directors.

- A. Fences are limited to 4 feet in height except a six (6) foot height will be permitted on the rear property line of a lot if approved by the Board of Directors. No fence or any portion of a fence shall be closer to the front line of any lot than the rear corner of any dwelling erected on the lot unless approved by the Board of Directors. All fences shall be wood or other material approved by the Board and be painted or stained on the exterior side facing other lots.
- B. A hedge shall be defined as a boundary formed by a dense row of shrubs or low trees. Foundation plantings (plantings up against the house) are not hedges. A hedge may be used to provide privacy in the backyard or as a screen to hide trash cans or other utilities as approved by the Board of Directors. A hedge may be used on the side of a house extending to but not beyond the front corner unless approved by the Board of Directors. The permitted height of a hedge will be determined by the Board. Criteria determining approved heights will include, but not be limited to plant material proposed, intended purpose and aesthetic effect on neighboring properties.

Section 6. No animals, livestock, pigs or poultry of any kind shall be kept or maintained on any lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free and are at all times properly leashed. Pets walked within the community must be picked-up after.

Section 7. No fuel tanks may be exposed to view from the front of the house. Any such receptacles may be installed only within the main dwelling house, within any accessory building, within a screened area, or buried underground. Rain barrels are permitted. Other storage receptacles must be approved by the Board of Directors. Large antennae are prohibited.

Section 8. 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 would tend to substantially decrease the beauty of the neighborhood as a whole or the specific area, and to comply with rules and regulations promulgated by the Board.

Section 9. 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 are 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. No yard sales or garage sales shall be allowed on any lot, unless with the consent of the Homeowners Association. In

addition, no boat, motorboat, dune-buggies, campers, trailers, recreational vehicles, automobiles on cinder blocks, tractor-trailer trucks or cabs or similar type vehicles to any of the foregoing items shall be permitted to remain on any lot at any time, unless by consent of the Homeowners Association.

Section 10. Each lot owner shall provide receptacles for garbage. All cans, carts and bags must not be visible from the front of the house, except on garbage pick-up days.

Section 11. Construction activity on a lot shall be confined within the boundaries of said lot.

- A. Lot clearing or the storage of materials is prohibited more than 30 (thirty) days before the start of construction without a waiver from the Board of Directors.
- B. Each lot owner shall have the obligation to collect and dispose of all rubbish and trash resulting from the construction on his lot. Upon a lot owner's failure to collect and dispose of such trash within thirty (30) days after receipt of a written notice from the Homeowners Association, the Homeowners Association may collect and dispose of such rubbish and trash at the lot owner's expense. Any expense incurred by the Homeowners Association pursuant to this paragraph shall constitute an assessment of the Homeowners Association against said lot owners and the lot involved in the cleanup, and said assessment shall be enforceable pursuant to the provisions of Article IV hereinabove, expressly including the right of the Homeowners Association to create a lien upon the lot to enforce collection of said assessment.

The exterior of any structure under construction on any lot must be completed within six (6) months after the beginning of construction, and total construction must be completed within twelve (12) months after the beginning of construction, acts of God notwithstanding.

In addition, no large trees or natural foliage may be removed from a lot without the prior approval of the Town of Kure Beach.

Section 12. Water and sewer to all lots will be provided by the Town of Kure Beach. Shallow wells for the purpose of watering lawns and not for human use, may be permitted in accordance with applicable regulations. Any such well and pump house must be located no closer to the front lot line than the front of the residence constructed on said lot.

Section 13. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown and designated on the plat of the said property. All maintenance within said easements shall be the responsibility of the purchaser of a lot, his heirs, successors, and assigns. No permanent structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements. The easements area of each lot and all improvements in it shall be maintained

continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

Section 14. Invalidation of any one of these covenants by judgments or court order shall in no way effect any of the other covenants herein, which shall remain in full force and effect.

Section 15. If the parties thereto, or any of them or their heirs and assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for the Association or any person or persons owning any real property situated in said Kure Beach Village, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants, and either to prevent him or them from so doing or to recover damages or other dues for such violations.

Section 16. All covenants, restrictions and affirmative obligations set forth in these Restrictions 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 developer, for a period of twenty-five (25) 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 the owners of a majority of the lots (not including mortgagees or trustees under deeds of trust) substantially affected by such changes in covenants, has been recorded, agreeing to change said covenants in whole or in part.

ARTICLE VI

AMENDMENTS

These restrictions may be amended by a vote of 66 2/3% (sixty-six and two thirds percent) of the members in good standing of the association.

KURE BEACH VILLAGE HOMEOWNERS

ASSOCIATION, INC.

ATTEST:

, a Notary Public of the County and State aforesaid, certify that James Palmer, Secretary of Kure Beach Village Homeowners Association, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Secretary.

Witness my hand and official stamp or seal, this ____ of _____, 2024.