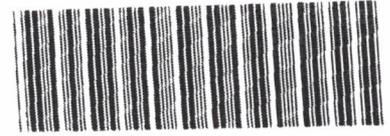


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FOR REGISTRATION REGISTER OF DEEDS
Jennifer Leggett Whitehurst
Beaufort County, NC
June 09, 2016 10:07:41 AM
Book 1902 Page 152-164
FEE: \$26.00
INSTRUMENT # 2016002547



INSTRUMENT # 2016002547

**DECLARATION OF RESTRICTIVE COVENANTS, EASEMENTS, AND
CONDITIONS FOR SOUTH BAY POINTE, A SUBDIVISION**

THIS DECLARATION made this the 28th day of May, 2016, by South Bay Point, LLC, a North Carolina limited liability company (hereinafter referred to as "Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property more particularly described in Deed Book 1866, Page 596, of the Beaufort County Registry and formerly known as all that 66.926 acre parcel including all rights-of-way as shown on that certain survey entitled "South Bay Pointe II" prepared by Hood L. Richardson, PE, recorded May 19, 2016, in Plat Cabinet I, Slide 50-1 of the Beaufort County Register of Deeds and further identified as a total of seventy six (76) lots, hereto attached as Exhibit A;

WHEREAS, it is in the best interest of Declarant and to the benefit, interest, and advantage of every party hereafter acquiring any portion of the described property that certain covenants, conditions, easements, assessments, liens, and restrictions governing and regulating the use and occupancy of such property be established; and

WHEREAS, Declarant intends to develop the property referred to above as "South Bay Pointe II" which shall be the name of the subdivision referred to herein and shall contain seventy six (76) individual family lots for sale, as well as common areas which shall be deeded and owned by the Association (as hereinafter defined); and

WHEREAS, Declarant intends by this instrument to create certain covenants, easements, conditions and restrictions upon said property which shall henceforth be binding upon it, its heirs, successors and assigns, and upon future owners of lots lying with the Development hereby designated as "South Bay Pointe II" and covered by the terms and conditions of this Declaration;

WHEREAS, Declarant has or will cause to be incorporated under the laws of the State of North Carolina a nonprofit corporation which shall be named "South Bay Pointe Homeowner's Association, Inc." (hereinafter, the "Association"), for the purpose of performing the activities and exercising the functions granted to the Association as set forth or contained in this Declaration, its Bylaws, and its Articles of Incorporation;

NOW THEREFORE, the Declarant hereby declares that the real property described herein is and shall be held, transferred, sold and conveyed subject to the Covenants herein set forth, and that all of the property referenced above shall be and is hereby subject to the following restrictions, covenants, conditions, easements, assessments, and liens relating to the use and occupancy thereof, which shall be construed as and constitute covenants running with the land which shall be binding on all parties acquiring any right, title or interest in any of such property and which shall inure to the benefit of each owner of any portion thereof.

The provisions of this Declaration are intended to create mutual and equitable servitudes upon each of the Lots in favor of each and all other Lots; to create reciprocal rights between the respective Owners of all of the Lots; to create privity of contract and privity of estate between the Owners of the Lots, their heirs, successors and assigns, and to operate as covenants running with the land for the benefit of each and all other Lots and parcels in the Subdivision and their respective Owners, present and future.

The following terms used in this Declaration are defined as follows:

- A) "Association" shall mean and refer to South Bay Pointe Homeowner's Association, Inc., as more fully defined herein below.
- B) "Buildout" shall mean and refer to the date upon which the first of the following events occur: (i) the date which there has been a Residential Unit constructed on each Lot contemplated to be in the community and each Lot in the Community has been conveyed to a Person for residential occupancy; or (ii) a date established by the Declarant, in its sole discretion as indicated by a written instrument filed of record in the Beaufort County Registry.
- C) "Common Area(s)" shall mean all real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.
- D) "Declarant" shall mean and refer to South Bay Point, LLC, its successors and assigns.
- E) "Declarant Control Period" shall mean the period of time until 100% of the real property within the Subdivision have been transferred to the Association and sold to Owners other than Builders.
- F) "Lot" shall mean and refer to a platted portion of the Property, other than the

Common Area, intended for single family residential use.

G) "Owner" or "Lot Owner" shall mean and refer to any person, firm, corporation, other legal entity, or combination thereof, other than the Declarant, who or which holds fee simple title to any Lot.

H) "Plat" shall mean and refer to the above referenced recorded plat and any other recorded plat showing any Lot or Lots within the Subdivision or any portion thereof, or any lands added to the Subdivision.

I) "Quorum" shall mean and refer to 5% of Owners present at a called meeting of the Association until such time the requirements are proscribed by the By-Laws of the Association.

J) "Residential Unit" shall mean and refer to a residential dwelling for one or more than one person, and if more than one person, persons related to each other by blood, marriage, or legal adoption, or in the alternative, a group of not more than four adult persons not so related who shall maintain a common household in such dwelling.

K) "Subdivision," "Properties," or "South Pointe Bay II" shall mean and refer to the real property described in Exhibit "A", and all additions to such property as may be brought within the jurisdiction of the Association.

RESTRICTIONS

1. Each Lot shall be used for permanent residential purposes only, and no manufacturing establishment, factory, public garage, sanitarium or hospital, motel, hotel, trailer park, apartment building, condominium, multi-family housing building, or any building of similar nature may be maintained on the same, and no unsanitary, offensive or unsightly conditions shall be allowed thereon. No house trailer, mobile home, travel trailer, manufactured home, enclosed garage or any type of temporary housing shall be placed or located upon any Lot as a permanent residence. No modular dwelling or other fully or partially pre-constructed dwelling may be placed on any Lot without the express prior written permission of the Declarant; provided, however, that camping is allowed for ten (10) days within a thirty (30) day period, provided that professional grade camping equipment is utilized and well maintained. No camper, tent, shed or temporary structure shall be permitted on the lot as a permanent residence; however, such structures can be used for recreational purposes and can only remain on the Lot for no more than ten (10) days a month unless stored in an enclosed garage. No storage building, enclosed garage or ancillary building of any kind may be constructed on any Lot until after primary residence is built.

2. Each principal residence constructed on any Lot shall consist of not less than 1,200 square feet of enclosed, finished, heated floor space. The landscaping and grassing of each Lot shall be completed within 1 year from the time any construction begins on any Lot. All exterior construction shall be completed within 1 year after it has

commenced. Further, maximum allowable impervious areas are established by the North Carolina Division of Water Quality, and those areas are incorporated as Exhibit "B" attached to this document as a "Built Upon Area Table". Alteration of the drainage in the subdivision may not take place without the concurrence of the North Carolina Division of Water Quality.

3. No Lot may be re-subdivided, except by Declarant. Only one Single Family Dwelling may be constructed per Lot. Notwithstanding these restrictions, Lot 61, as depicted on Exhibit A, may be re-subdivided, one time only, in order to create two buildable Lots, subject to any and all local, state, and federal law, ordinance and regulation and subject to approval by the appropriate local county department, which said approval IS NOT guaranteed by Declarant. No outbuildings of any kind may be constructed, except that for each Single Family Dwelling constructed, a detached garage may be constructed, and one small storage building may be constructed as long as that matches the Single Family Residence and does not exceed the Built Upon Area established for the individual Lot by the North Carolina Division of Water Quality.
4. All septic disposal systems shall be constructed and installed in accordance with the rules and regulations of authorities in Beaufort County, North Carolina, as from time to time amended, and no outside toilets shall be built upon any Lot except during active home construction.
5. No residence, building, or any other structure shall be built or maintained within ten (10) feet from any property line or the edge of any roadway easement, unless a variance is first obtained in writing from the Declarant. This restriction shall not apply with respect to the interior boundaries between Lots being improved as one unit. Further, each Lot will maintain a 50-foot wide vegetated buffer between all impervious areas and surface waters, which is defined as the Tar-Pamlico Buffer per the North Carolina Division of Water Quality. All roof drains shall terminate at least fifty (50) feet from the mean high water mark. No filling or piping of the vegetative ditches in the property is allowed except for a typical driveway crossing. The Lot Owner, by acceptance of a Deed, also accepts the permit requirements of the North Carolina Division of Water Quality Permit # SW 7150404.
6. The Lot Owner, by acceptance of a deed, also agrees to build any and all structures on said lot in accordance with all setbacks of record by whomsoever established as found in Plat Cabinet I, Slide 50-1 in the office of Beaufort County Register of Deeds.
7. No Lot or any part thereof shall be used for a junk yard or for any unsightly or obnoxious purposes. No items of personal property of any kind, except for operating licensed noncommercial motor vehicles, may be kept or stored on any Lot outside the structures on the Lot. Activities which may tend to cause disorderly, unsightly or unkempt conditions shall not be pursued or undertaken on any Lot, or in any driveway, garage, carport, or other place where such condition is visible from any road or from any other Lot. No derelict vehicles may be kept on any lot unless kept in

an enclosed garage. No more than one boat trailer may be kept on the Lot at any time, unless in an enclosed garage. If a boat trailer is outside of the garage, it must be tagged and titled by the North Carolina Department of Transportation, be in working order, and not be unsightly.

8. All trash, garbage, and waste shall be kept in sanitary, closed receptacles. All garbage cans and similar receptacles shall be kept in an enclosed or screened area, so that the same will not be visible from other Lots in the Subdivision or roads in the Subdivision. No burning of garbage shall be done or permitted on any Lot in the Subdivision.

9. No commercial breeding of any animal is permitted. No animals may be kept and maintained on any Lot, except that this restriction shall not prohibit the keeping of no more than five usual household pets such as dogs and cats, provided said usual household pets are at all times confined to the Owner's Lot or are allowed outside the Owner's lot only in the presence of the Owner. No animal may be maintained on any Lot if it makes such an amount of noise as to frequently or habitually disturb Owners of other Lots.

10. It shall be the responsibility of each Lot Owner to maintain a 12" or larger drain tile on any portion of his Lot where a driveway crosses or any other activity obstructs a drainage ditch. All soil disturbing activities, including without limitation, grading house sites, constructing driveways, and landscaping, regardless of their extent, must conform to prevailing laws and regulations regarding erosion control, both during construction and afterward, and must not impair the erosion control measures previously installed by the Declarant.

11. No commercial or business activities may be carried out on any Lot. This provision prohibits the use of any dwelling as a lodging business, but shall not otherwise prohibit the leasing or renting of any dwelling on any Lot for any length of time, and shall not prohibit in-home businesses or offices that do not invite the general public upon the premises. Lodging businesses may be allowed with Declarant approval, of which approval is in the sole discretion of the Declarant.

12. It shall be the responsibility of each Lot Owner to provide adequate parking space for motor vehicles on his or her Lot. Parking on the Subdivision roads or within the rights of way thereof is prohibited. All parking areas and driveways on all Lots must be surfaced completely, immediately upon installation, and thereafter maintained, with gravel, concrete, asphalt or other appropriate paving material. No unlicensed or inoperable vehicles may be maintained or kept on any Lot in the Subdivision.

13. Declarant reserves unto itself, its successors and assigns, and reserves and grants to the Association, to Tidelands EMC, Beaufort County Water Authority and to all other public or private utility companies, a perpetual, alienable, assignable and releasable easement and right of way to install and use electrical and telephone wires, cables, and conduits, sewer lines, water mains, other suitable conduits and

equipment for the transmission and discharge of electricity, telephone, gas, water, sewer, cable television and other public conveniences or utilities, including drainage and storm water discharge within all roadway easements in the Subdivision and within the ten (10) foot wide strip immediately inside the boundary of each Lot; provided, in the event of the improvement of two (2) or more Lots as a unit, such easement shall not exist with respect to interior Lot lines unless use of such easement for such purposes has already begun. By reservation of said easements, the Declarant does not obligate itself or the Association to provide any utility service to any Lot.

14. Declarant expressly reserves unto itself, its successors and assigns, the right to add additional lands to the Subdivision and/or remove lands from the Subdivision, and if the Declarant does add additional lands to the Subdivision and/or remove lands from the Subdivision, then the definitions contained hereinabove of "Subdivision" shall be deemed to include the lands so added and/or exclude the lands so removed and the definition contained hereinabove of "Lot" shall include all Lots created within said additional lands and/or exclude all Lots removed from said excluded lands. The right herein reserved to the Declarant, its successors and assigns, to add additional lands to the Subdivision and/or remove lands from the Subdivision may be exercised by it any number of times. Further, Declarant specifically reserves unto itself, its successors and assigns, the right to burden the Subdivision roads, easements and rights of way, by granting easements and rights of way over the same to serve and to be appurtenant to lands added to the Subdivision and lands lying outside the boundaries of the Subdivision. It is specifically the intent of the Declarant to reserve unto itself, its successors and assigns, the right to establish additional easements and rights of way over the Subdivision roads to serve any and all lands later added to the Subdivision and any and all Lots created therein, and to serve lands lying outside the boundaries of the Subdivision. This reservation shall continue until later of Buildout or the end of the Declarant Control Period.

15. Declarant reserves unto itself, its successors and assigns, and declares for the benefit of the Association, its successors and assigns, a perpetual easement for the erection, maintenance and repair of subdivision signs upon any Lot which adjoins any public road, and within each Subdivision easement, which easement shall include the right to erect, maintain and repair walls and lighting at the site of the sign and to landscape the area in the vicinity of the sign. This reservation shall continue until later of Buildout or the end of the Declarant Control Period.

16. No fuel tanks or similar storage receptacles may be maintained on any Lot unless the same are installed within a building, are buried under ground, or are otherwise installed so that they are not visible from any place outside the Lot. Commercial wood harvesting is prohibited. Excavation and selling of surface or subsurface material is prohibited.

17. The Declarant reserves unto itself, its assigns and successors a perpetual right of way across the subdivision roads to access the common area identified as Lot 76 (a) on Exhibit "A". The Declarant will provide a boat ramp for the Association to use on a first

come, first serve policy for any Association member and any Lot Owner of South Pointe Bay Subdivision. The Declarant, its successors and assigns will collect a maintenance fee for the maintenance of the community boat ramp and all other appurtenant structures. The Declarant shall have the responsibility as set out in a separate lease agreement with the Association. The Declarant shall have the sole authority to enact rules of the marina, and the Association, its members and guests, are bound by any rules established.

18. No permanent or temporary antennae of any land for television, radio, short-wave, or any other use may be erected, placed, maintained, or located upon any Lot without the express prior written permission of the Declarant, and any antennae approved by the Declarant must be installed, painted and maintained in such a way as may be from time to time provided by the Declarant. The provisions of this restriction specifically include dish and saucer type antennae larger than 18 inches in diameter. 18 inch dishes and under are specifically allowed.

19. No sign of any kind shall be displayed to the public view on any Lot, except a sign displaying the owner's name and/or the property address or Lot number, or a sign advertising the property for rent may be maintained. No "For Sale" signs shall be displayed on any Lot without the Declarant's written permission.

20. Open, grassy areas such as lawns and meadows shall be mowed at least two times per year by the Association. If a Lot Owner elects to not have the Association mow the grassy areas, then the maintenance of the Lot will be the responsibility of the Lot Owner and the Lot shall be kept in a clean, presentable, mowed condition.

21. No building constructed on any Lot shall have tar paper, asbestos, unfinished plywood or rough hewn irregular edged type siding. No building constructed on any Lot shall have visible concrete blocks, and any and all concrete blocks used in construction on any Lot shall be covered with stone, brick, stucco, wood or similar siding. No residence or garage constructed or placed on any Lot shall have metal siding. The residences or garage shall be covered with wood, stone, brick, hardiplank or other natural material.

22. No Owner or subsequent Owner of any Lot may grant an easement or right of way across the Lot for any reason or at any time to any person or entity other than the Declarant, its successors and assigns, unless the same shall first be approved in writing by the Declarant, its successors and assigns.

23. Each Lot Owner upon acceptance of their deed acknowledges that said Lot is subject to easements of record as found in Plat Cabinet I, Slide 50-1 of the Beaufort County Register of Deeds including Coastal Wetland Line, Shared Boardwalk, 50 foot Wide Access Easement for said boardwalk, 50 foot Tar-Pam Buffer, as well as any other easements of record whether on the recorded plat or filed separately in the Beaufort County Register of Deeds.

24. Each Lot and each Lot Owner shall and must automatically be a member of the Association. Each Lot and each Lot Owner shall be subject to all duly adopted articles, by-laws, rules and regulations, and resolutions of the Association, as amended from time to time. The bylaws of the Association are incorporated by reference herein.

25. Subdivision Roads

A) The roads in South Bay Pointe are private roads and the maintenance and upkeep of said roads shall be the responsibility of the Association. Only the Declarant shall have the authority to name or change the name of roads in the Subdivision. The Declarant shall have the right to convey real property to the Association, or provide easements as necessary, for use as common areas for the Association and all Lot Owners. The Association shall have as its primary function the obligation to maintain and repair the roadways in the Subdivision and to maintain, repair and take other necessary actions to maintain the entrance, ditches, drainage, storm water discharge structures, or other in the Subdivision as are assigned to the Association or as are conveyed by the Declarant to the Association. Each Lot shall be assessed at \$500.00 per year for the maintenance, repair and upkeep of the roadways and other items maintained by the Association. The Association shall have such other and further powers as may be adopted and set forth in its by-laws as may now be in existence or may be adopted in the future, provided the Association may not supersede its limitation as to the number of Lots for which it may assess the Declarant.

B) If any person damages the Subdivision roads or common properties for any reason, that person shall be responsible for paying to repair the same to the original condition. Any damage done by contractors, subcontractors, employees, or other working under the direction of a Lot Owner shall be the responsibility of the Lot Owner and the Lot Owner is obligated to repair any damage done.

C) The Declarant shall not have any responsibility to maintain the Subdivision roads except in the manner of any other Lot Owner.

D) Any Lots owned by the Declarant and/or a not for profit entity designated by Declarant owning said Lots, if any, are exempt from said assessment.

26. Assessments.

A) The Association shall annually, assess each Lot Owner for his share of the costs and expenses of the maintenance, repair and upkeep of the roads, other systems, facilities, amenities, and common areas, the maintenance responsibility for which is that of the Association. Payment of such assessments shall be due thirty (30) days after notice thereof is sent. If not paid within said thirty (30) day period, such assessments shall be deemed delinquent and shall commence bearing interest from such time at the rate of eighteen (18%) percent per annum.

- B) Any Lots owned by the Declarant and/or a not for profit entity designated by Declarant owing said Lots, if any, are exempt from said assessment.
 - C) Any assessment levied against any Lot which so becomes delinquent shall constitute a lien upon such Lot when filed of record in the office of Clerk of Superior Court for Beaufort County, North Carolina, in the manner provided therefore by Article 2 of Chapter 44A, Statutory Liens on Real Property, of the North Carolina General Statutes, or its successor statute. The claim of lien shall be filed in the name of the Association. The Association shall have the right to proceed in its own name in any court of competent jurisdiction. The claim of lien may be foreclosed in a like manner as a mortgage on real estate under the Power of Sale under Article 2A of Chapter 45 of the General Statutes.
 - D) If any delinquent assessment is placed in the hands of any attorney for collection, there shall be added to the amount due all costs of collection, including all reasonable attorneys' fees as allowed by law.
 - E) The lien shall include the amount of all interest which accrues and continues to accrue upon the assessment, and shall include the aforementioned costs of collection and attorney's fees.
 - F) All assessments, interest, costs and attorney's fees shall be and constitute the personal joint and several obligation of each Lot Owner. The Association or any other Lot Owner may bring an action against the Lot Owners in default to seek a money judgment for the amount of the assessments, interests, costs of collection and attorney's fees.
 - G) Any person may purchase the Lot at any sale ordered pursuant to an action to foreclose the lien.
27. Each Lot in the subdivision is conveyed subject to the provisions of the Major CAMA Development Permit 78-15 (as amended from time to time) issued to South Bay Point, LLC and incorporated herein by reference.
28. Each Lot in the subdivision is conveyed subject to the provisions of Section 401 Water Quality Certification and Authorization Certificate, DWQ Project Number 2015-011.
29. Each Lot in the subdivision is conveyed subject to the provisions of Stormwater Permit Number SW7150404 issued to South Bay Point, LLC, and incorporated herein by reference. The Stormwater Permit limits the maximum square feet of built-upon area for each Lot. In accordance with the Stormwater Permit, all buildable area of each Lot in the subdivision is defined by the "Built Upon Area Table", a copy of which is attached hereto in Exhibit "B".

30. In the event of a violation or breach of any of these restrictive covenants, the persons and entities entitled to enforce them or any one or more of them, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to restrain or enjoin the violation of the terms hereof.

31. Amendments.

- A) By Declarant. In addition to the specific amendment rights granted elsewhere in this Declaration, during the Declarant Control Period, the Declarant may unilaterally amend this Declaration for any purpose. Declarant may also unilaterally remove any requirement herein as to any particular Unit. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable government statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional governmental lender, purchaser, insurer, or guarantor of mortgage loans to make, purchase, insure, or guarantee mortgage loans on the Units; or to satisfy the requirements of any local, state, or federal governmental agency.
- B) After the later of either Buildout or the end of the Declarant Control Period, this Declaration may be amended by means of a duly recorded amendment signed by the Owners of two-thirds (2/3) of the Lots subject to this Declaration. This Declaration may also be amended by the Association by a two-thirds (2/3) majority vote of its members at a duly called members meeting at which a quorum is present, and in such event the appropriate officers of the Association shall record the proper amendment.

Signatures on following page

IN WITNESS WHEREOF the hand and seal of Grantor herein has hereunto been set this

1st day of June, 2016.

Witnesses:

[Signature]

(Witness)

Michelle Bluhm

(Witness or Notary)

Grantor(s): SOUTH BAY POINT, LLC

[Signature]

By: Larry Bragg

Its: Manager

STATE OF NORTH CAROLINA)

COUNTY OF Mecklenburg)

ACKNOWLEDGEMENT

I, a Notary Public of the County and State aforesaid, certify that the Grantor(s), personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp this 1st day of June, 2016.

Michelle Bluhm

Notary Public for Mecklenburg

My commission expires: 10/2/16

