

13  
26

BK: RB 5930  
PG: 1946-1959  
RECORDED  
11-10-2015  
11:40:15 AM  
BY: ANDREA CRESWELL  
ASSISTANT



2015034484  
NEW HANOVER COUNTY, NC  
TAMMY THEUSCH BEASLEY  
REGISTER OF DEEDS

NC FEE \$26.00

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

AMENDED AND RESTATED DECLARATION OF RESTRICTIONS FOR  
TIDALHOLM SUBDIVISION, PHASE 1

This Amended Declaration of Restrictions for Tidalholm Subdivision is made and entered into by Tidalholm Homeowners Association, Inc. a North Carolina corporation hereinafter referred to as "Tidalholm HOA".

WITNESSETH:

Whereas, Bill Clark construction Co., Inc. ("Developer") was the owner of all rights, title and interest in and to that certain tract of land lying and being in New Hanover County, North Carolina, and known as Tidalholm, as the same is shown on a map thereof recorded in Map Book 34, at pages 371 and 372 of the New Hanover County Registry and

Whereas, the Developer desired to insure the use of said property for residential purposes only; to maintain a desired tone of the community; and to thereby secure to each lot owner the full benefit and enjoyment of the property with no greater restriction upon the free and undisturbed use of the lot than is necessary to insure the same advantages to other lot owners; and

Whereas, for the purpose aforesaid, the Developer established certain restrictions for the preservation of the property and, in furtherance of said desire, recorded a declaration of Restrictions pertaining to the properties shown or identified in the map recorded in Map Book 34 at Page 371 and 372 of the New Hanover County Registry, at Book \_ 1881, Page 58, and

RETURN TO Foster Sayers



Whereas, at a duly noticed meeting on October 29, 2015, and thereafter by proxy on October 30, 2015, a majority of the lots in Tidalholm Subdivision, Phase 1 voted to amend such Declaration of Restrictions by enacting this Amended and Restated Declaration of Restrictions for Tidalholm Subdivision, Phase 1, in accordance with the amendment provision of the Declaration of Restrictions.

NOW THEREOFRE, Tidalholm HOA, on behalf of itself does hereby declare in consideration of the premises and intending to be legally bound; that all of the properties shown or identified in the map recorded in Map Book 34 at Pages 371 and 372 of the New Hanover County Registry shall be hereafter held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions all of which are for the purpose of enabling and protecting the value, desirability and attractiveness of the real property and shall be binding on all parties having or acquiring any right, title or interest in the described Properties or any part thereof, and shall insure to the benefit of each Owner thereof.

1. **Membership in the HOA:** All property owners of lots in the Tidalholm subdivision, Phase 1 and any adjoining areas hereafter adopted and subjected to this Declaration, if any, shall be members of Tidalholm HOA, which membership be appurtenant to and may not be separated from the ownership of such single family lot. Tidalholm HOA shall have and exercise all of the powers and authorities normally given to an association including the power to levy assessments. Such powers and authorities shall be enumerated and set forth in the bylaws of the Tidalholm Homeowners Association, to be established. Assessments levied by the HOA, together with interest, costs and reasonable attorney's fees shall be a charge on the land and shall be 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 person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any



proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments, which because due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

2. **Effect of Nonpayment of Assessments; Remedies of the Association:**  
Any assessment or portion thereof that is not paid when due will be delinquent. The Association may record notice of the claim of lien in the Office of the Clerk of Supreme Court of New Hanover County, file a suit to collect such delinquent assessments and charges against the Owner personally obligated to pay the same, foreclose the lien against the property in the same manner as provided in North Carolina for the foreclosure of deeds of trust, including foreclosure under a power of sale, utilize any combination of these actions, or utilize any other remedy provided under North Carolina law. For any of these actions, interest, late charges, costs and reasonable attorney's fees will be added to the amount of such assessment. The Association may bid for the Unit at any foreclosure of judicial sale and acquire, hold, lease, mortgage, and convey the Unit. The sale or transfer of any Unit will not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments provided for herein.
3. **Fines.** The Association may establish a schedule of fines for the violation of this Declaration, the Articles, Bylaws, and Rules and Regulations and Design Guidelines. If any owner does not pay the fine within fifteen (15) days the fine shall be a Special Assessment against the Owner's Unit and may be enforced by the Association in accordance with Article 5 Herein.
4. **Suspension of Rights:** For any violation of any provision of this Declaration, the Articles, Bylaws, and Rules and Regulations and Design Guidelines by an owner or his User, including, but not limited to, the nonpayment of any General Assessment or Special Assessment, the Association shall have the right to suspend the offending Owner's voting rights and/or the use by such Owner and his/her Users of the Common Area and amenities for any period during which a violation continues. Such penalties may not be for more than sixty days for violation of any of the Association's published Rules and Regulations.

5. Remedies the Association shall have the right to remedy any violation of this Declaration of Restrictions, the Articles, Bylaws, and Rules and Regulations and Design Guidelines including the right of entry to any Unit without being guilty of trespass, and asses the cost of remedying same against the offending Owner as a Special Assessment.
6. Enforcement the Association, any Owner, and aggrieved Owner in Tidalholm Subdivision, Phase 1 on behalf of the Association, or Any Owner on behalf of the all the Owners in Tidalholm Subdivision, Phase 1 who are Members of the Association shall have the right to enforce by any proceeding at law or in equity, all of the conditions, covenants and restrictions of this Declaration, the Articles, Bylaws, and Rules and Regulations and Design Guidelines and any and all laws hereinafter imposed pursuant to the terms of this Declaration. The prevailing party will be entitled to collect all costs thereof, including reasonable attorneys' fees.
7. All lots in Tidalholm Subdivision, Phase 1, shall be sued for residential purposes only.
8. No residence shall be constructed upon any lot location in this section containing less than 1,400 square feet of heated living area. The HOA specifically reserves the right to establish different minimum square footage limitations for any additional sections of Tidalholm.
9. The HOA shall create and establish an Architectural Control Committee (ACC for the purpose of reviewing and approving any and all proposed buildings and improvements including, but not limited to, the approval of exterior design, materials, colors and landscaping. in addition to approving the design of all proposed residences and improvements as called for above, the ACC shall monitor the plans and construction of any improvements to see that they are in compliance with all covenants, conditions, restrictions and other requirements of the ACC, including, but not limited to prohibited uses, building set bad lines, minimum square footage requirements, exterior design, colors and materials and other pertinent concerns. Without in any other way limiting the ACC rights to establish other guidelines or requirements for approval plans and specifications, the HOA specifically provides that all roof lines must be strong and varied in nature, no flat roofs will be allowed and the ACC



- shall establish a minimum roof slop for primary residences. The ACC is authorized to adopt such administrative procedures as will insure the effective administration of their review and approval duties and to enforce such Design Guidelines as may be enacted by the HOA. The HOA or the ACC is hereby granted all powers allowed by law for the enforcement of any decisions made by the Committee.
10. No building, fence, wall, swimming pool, antennas, or other structures shall be erected, place or modified on any lot until the proposed building plans, specifications, exterior finished and materials, exterior colors, site plans, and landscaping plans shall be approved in writing by the ACC. the ACC may reject any plans and specifications or landscape plans if it, in its sole discretion, deems said plans and specification are not in the best interest of the HOA as a whole and if it determines that said plans and specifications would not serve to promote property values and the selling of the Development. Failure of the ACC to issue written approval or denial for plans submitted in accordance with the Committee's administrative procedures within fifteen (15) days after submission should be construed as approval of said plans.
  11. All residences constructed upon any lot must be of wood, brick, masonite, vinyl or composition board but may be of concrete block provided they are completed with a brick veneer facing with an architectural design appropriate to the area. Final determination as to the appropriateness of any particular material or color scheme shall be left with the ACC.
  12. Since the establishment of the inflexible building set back lines for location of dwellings on lots tends to force construction of residences directly besides other residences and would have a detrimental effect on the overall appearance of the Development in general, no specific setback lines are established and authority is given to the ACC to approve the site, plan and location of any residence or structure upon any lot; provided, however, all minimum set back and sideline limitations established by governmental entitles having jurisdiction over the property shall be followed.
  13. No house, trailer, mobile home, tent, shack or temporary structure of any nature shall be located on any lot or used at any time as a residence or

storage facility, provided, however, upon approval of the ACC, temporary storage facilities may be used for the storing of equipment and materials solely during the construction of any residence or any renovation of a residence as a result of a move. The same shall be removed promptly upon completion of construction, or in the event of a move, limited to a 2-week period.

14. All mailboxes will be solid black and all mailbox posts shall be white while maintaining the original design. All newspaper boxes will be attached to mailbox post in the appropriate space and not on their own post. All shall be approved by the ACC prior to the erection thereof.
15. No sign or billboards shall be erected on any lot or displayed to the public on any lot except that one sign of not more than five square feet in any area may be used to advertise a residence for sale. In addition, any contractor performing work on a residence may place a sign, approved as a size, form and content, by the ACC, on the premises identifying his connection with the construction or renovation.
16. No component and manufactured homes may be erected on any lot.
17. No chain link fences shall be permitted. All other fences shall be approved by the ACC prior to the erection thereof.
18. All driveways shall be paved and culverts shall be installed if and where necessary.
19. No animals shall be kept or maintained within the development other than normal household pets. All such pets shall be under the owner's control at all times.
20. No fuel tanks or similar storage receptacles may be exposed to public view and any such receptacles must be properly screened. All installations are subject to the approval of the ACC.
21. No buildings or grounds shall be kept or allowed to become unclean, unsightly, or unkempt and no activity or condition shall be allowed which tends to substantially decrease the attractiveness of the development or any portion thereof.
22. No automobiles without current registration may be kept or stored on any lot. In addition, no trucks, with the exception of standard two-ton



pickup truck or small pick-up truck shall be parked on any lot or street within the subdivision overnight and under no circumstances may any vehicle with commercial identification (deemed to be lettering or signage) be allowed to remain in the subdivision overnight. Provided however trucks and other commercial vehicles and equipment owned or used by the developer in the development of this subdivision shall be specifically accepted from the terms of this paragraph.

23. No motorcycles, campers, trailers, boats or recreation vehicles shall be parked or stored except in the rear of the lots. Any allowed storage will require shielding or screening from public view, which will be satisfied to and approved by the ACC.
24. No noxious or offensive activity shall be carried on or allowed upon any lot nor shall anything be done thereon to cause embarrassment, discomfort, or annoyance to the surrounding land owners or in such a manner as to constitute a nuisance to said surrounding lands owners.
25. No lot shall be subdivided or its boundary lines changed in any manner except by the prior written consent of the HOA provided, however, the HOA hereby expressly reserves to itself, its successors and assigns, the right to replat or recombine any two or more lots in order to modify or create additional building lots. the HOA further reserves the rights to relocate easements, walkways, and other rights-of-ways so long as such relocation does not prohibit access to any lot previously sold by the HOA nor does said relocation extend through property previously conveyed by the HOA.
26. Each lot owner must provide suitable receptacles for disposal of garbage and other refuse and all such receptacles must be kept in a screened area, accessory building or other storage facility and shall not be visible from any street or right-of-way except on collection days
27. Construction activity on a lot within the HOA shall be confined to the boundaries of said lot. Each lot owner shall have the obligation to collect and dispose of rubbish and trash resulting from the construction on the lot at such time and upon such schedule as is required by the ACC or HOA. In the event the site is not properly cleaned within the time allowed, the HOA shall have the right to clean the lot and charge the owner for the cost of such cleaning which shall be the personal

obligation of the lot owner. This charge shall be due upon mailing of a bill to the owner, and, in the event it is not paid within ten (10) days after and mailing, the HOA shall be entitled to bring a civil action to recover any such charge.

28. The exterior of any structure under construction must be completed within eight (8) months after the institution of such construction unless written approval is obtained from the HOA or its designee.
29. The HOA does hereby reserve an easement for installation and maintenance of utilities and drainage facility over the rear ten (10) feet of all lots and additional easements for drainage and utilities shall be reserved as required by the HOA and any governing body having jurisdiction over the HOA as designated on a final plat of said development recorded in the office of the Register of Deeds of New Hanover County. The HOA shall be responsible for the maintenance of all drainage facility and easements. Additionally, the HOA does hereby create a twenty (20) foot natural buffer along both sides of River Breeze Drive, and does specially reserve an easement for such buffer across portions of any lot which lie within said buffer. The HOA shall not have responsibility for maintaining streets in connection with any lot sold. No structure, plant or other material shall be placed or permitted to remain on any lot which may damage or interfere with installation and maintenance of utilities or which may change the direction of flow drainage channels in the easements; now may nay structure or other material be placed or permitted to remain with the natural buffer on any lot.
30. HOA shall be responsible for maintaining those areas designated as "common areas" on the recorded plat hereinbefore mentioned, specifically including the maintenance of liability hazard insurance and the payment of advalorem taxes, until such time as HOA shall convey title to the common areas to the Tidholm HOA. When the developer conveys title to the common areas to the HOA, Developer shall have no further responsibilities for the maintenance of the common areas or payment of taxes thereon. From and after such date, the HOA shall be responsible for the maintenance of the common areas, including



maintenance of liability hazard insurance and the payment of property taxes.


31. HOA reserves the right to subject the real property in this subdivision to a contract with the appropriate utility company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial/or payment and/or continuing monthly payment to Progress Energy company by the owner of each lot.
32. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other covenants contained herein which shall remain in full force and effect.
33. If the parties hereto or any of them, their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any person or persons, owning any real property situation in Tidalholm Subdivision, Phase 1 to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any such covenants and either to prevent such persons from so doing or to recover damages for such violation.
34. These restrictions may be amended by a vote of the owners of a majority of all lots located within Tidalholm Subdivision, Phase 1.
35. All covenants, restrictions and obligations set forth herein shall run with the land and shall be binding on all parties or persons claiming hereunder for a period of ten years from the date hereof after which time all said documents shall be automatically extended for successive periods of 10 (ten) years unless an instrument signed by the owners of a majority of the lots (not including mortgages or trustees under deeds of trust) of Tidalholm Subdivision, Phase 1, has been recorded setting forth the modifications of said covenants.
36. Waiver: No provisions contained in this Declaration, the Articles, the Bylaws, the Rules and Regulations, or the Design Guidelines will be deemed to have been waived, abandoned, or abrogated by reason of failure to enforce them on the part of any Person of the Association as to the same or similar future violations, no matter how often the failure to enforce is repeated. The Association will not be liable to any Owner or

other aggrieved party for failure to enforce any provision of this Declaration, the Articles, Bylaws, Rules and Regulations, or Design Guidelines.

In witness whereof, the HOA has hereunto caused this instrument to be signed by its president, attested by its secretary, and its corporation seal affixed hereto the 2<sup>nd</sup> of November 2015.

TIDALHOLM HOMEOWNERS

ASSOCIATION

By:   
Dean Guik

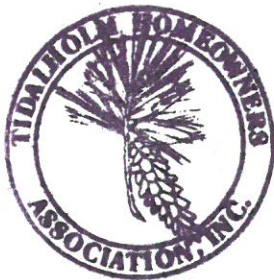
President

ATTEST:



Secretary

(SEAL)





STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Foster J. Sayers III, a Notary Public of the State and County aforesaid, certify that Pam Meadows came before me this day and acknowledged that she is Secretary of Tidalholm Homeowners Association, Inc., a North Carolina corporation with its principal office in New Hanover County, 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 herself as its Secretary.

WITNESS my hand and official seal this 9<sup>th</sup> day of November, 2015.

Pam Meadows

Foster J. Sayers III  
Notary Public

My Commission Expires: 8/26/2020



CERTIFICATION OF VALIDITY OF AMENDED AND RESTATED  
DECLARATION OF RESTRICTIONS FOR  
TIDALHOLM SUBDIVISION, PHASE 1

On October 31, 2015, the Covenant Revision Committee of the Tidalholm Homeowners Association, Inc. presented to the Board of Directors the foregoing Amended and Restated Declaration of Restrictions for Tidalholm Subdivision, Phase 1, executed by a majority of the owners of Assessable Properties, determined as set forth in Paragraph 34 of the Declaration of Restrictions for Tidalholm Subdivision, Phase 1, New Hanover County, North Carolina, recorded in Book 1881, page 58 of the New Hanover County Registry, as of October 31, 2015.

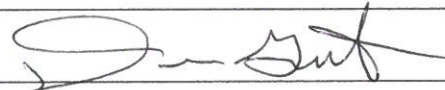
The Board has examined the affirmative votes and satisfied itself that the votes represent the owners of a majority of the Assessable Properties included within the Association and constitute a majority of the properties and should be approved.

By authority of its Board of Directors, Tidalholm Homeowners Association, Inc. hereby certifies that the foregoing instrument has been duly approved by the owners of 53% of the Assessable Properties of Tidalholm Subdivision, Phase 1 and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of Tidalholm Subdivision, Phase 1.

This the 3<sup>rd</sup> day of November, 2015

TIDALHOLM HOMEOWNERS  
ASSOCIATION, INC.


By: \_\_\_\_\_



President

Dean Guide

ATTEST

  
Secretary



STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, Foster J. Sayers III, a Notary Public of the State and County aforesaid, certify that Pam Meadows came before me this day and acknowledged that she is Secretary of Tidalholm Homeowners Association, Inc., a North Carolina corporation with its principal office in New Hanover County, 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 herself as its Secretary.

WITNESS my hand and official seal this 9<sup>th</sup> day of November, 2015.

Pam Meadows

Foster J. Sayers III  
Notary Public

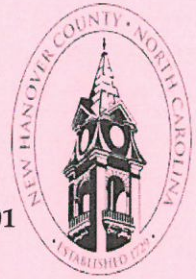
My Commission Expires: 8/26/2020



TAMMY THEUSCH  
BEASLEY  
Register of Deeds

# New Hanover County Register of Deeds

216 NORTH SECOND STREET • WILMINGTON, NORTH CAROLINA 28401  
Telephone 910-798-4530 • Fax 910-798-7751



\*\*\*\*\*

State of North Carolina, County of NEW HANOVER  
Filed For Registration: 11/10/2015 11:40:15 AM  
Book: RB 5930 Page: 1946-1959  
14 PGS \$26.00  
Real Property \$26.00  
Recorder: ANDREA CRESWELL  
Document No: 2015034484

\*\*\*\*\*

**DO NOT REMOVE!**

This certification sheet is a vital part of your recorded document. Please retain with original document and submit when re-recording.