

Prepared by and after recording return to:  
Spencer & Spencer, P.A. (RBT)  
226 East Main Street, Suite 200  
Rock Hill, South Carolina 29731

STATE OF NORTH CAROLINA )  
 )  
COUNTY OF PENDER )

**FIRST AMENDMENT TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR BOCA BAY RECREATION CENTER**

**THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BOCA BAY RECREATION CENTER** (this "Amendment") is made effective and delivered as of the 27<sup>th</sup> day of August, 2020 (the "Effective Date") by **SLA SURF CITY, LLC**, a South Carolina limited liability company with an address of 312 N. White Street, Fort Mill, SC 29715 (P.O. Box 1449; 29716) Attention: President ("Declarant"), **THE OAKS AT BOCA BAY HOA, INC.**, a North Carolina non-profit corporation with an address of 312 N. White Street, Fort Mill, SC 29715 (P.O. Box 1449; 29716) Attention: President ("Oaks HOA") and **THE PALMS AT BOCA BAY HOA, INC.**, a North Carolina non-profit corporation with an address of P.O. Box 250, Hampstead, NC 28443 Attention: President ("Palms HOA") (Declarant, Oaks HOA and Palms HOA may each be referred to herein as a "Party" and collectively as the "Parties").

**Recitals**

A. Declarant owns that certain parcel of land being described on **Exhibit A** attached hereto and incorporated by this reference located along South Boca Bay Lane in the Town of Surf City, Pender County, North Carolina, together with the improvements and fixtures thereon ("Property").

B. The Property is included in the definition of the "Properties" as defined in the Declaration and, as of the Effective Date, is the only property subject to that certain Declaration of Covenants, Conditions and Restrictions for Boca Bay Recreation Center recorded on May 20, 2010 in Book 3774, Page 0002 in the Office of the Register of Deeds for Pender County, North Carolina ("Declaration").

C. Prior to the Effective Date, Oaks HOA and Palms HOA were the only Members of the Association. From and after the Effective Date, Declarant shall also be a Member of the Association as described below in this Amendment.

D. Pursuant to Article VI, Section 3 of the Declaration, amendments to the Declaration require the recording of an agreement by the unanimous vote of Oaks HOA and Palms HOA.

E. The Parties satisfy all of the requirements in order to amend the Declaration as set forth above, and the Parties now desire to amend the Declaration as set forth herein.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

1. **Recitals Incorporated Herein; Defined Terms.** The above recitals are incorporated in and made a part of this Amendment as fully as if set forth verbatim herein. All capitalized terms used but not defined herein shall have the meanings given them in the Declaration.
2. **Recitals.** The second paragraph under the “WITNESSETH” section of the Declaration is hereby amended to add the phrase “and duplex” after the phrase “single family”.
3. **Article I, Definitions.** Article I of the Declaration is hereby amended as follows:
  - a. Article I, Section 3 of the Declaration is hereby amended to add the following: “Wherever the term Board of Directors or Board is used herein and referring to action or actions which may be taken by the Board, such term shall mean such authority is delegated to the Board and such actions are taken by the Board on behalf of the Association.”
  - b. Article I, Section 5 of the Declaration is hereby amended to add the following: “Common Area may also include any easements or other rights for use of property that is not located on the Properties.”
  - c. Article I, Section 7 of the Declaration is hereby amended to delete “LJM Ventures, LLC, a North Carolina limited liability company” and replace it with “SLA SURF CITY, LLC, a South Carolina limited liability company.”
  - d. Article I, Section 8 of the Declaration is hereby amended by deleting the existing language and replacing it as follows: “**Section 8.** “Declarant Control Period” shall mean and refer to the period of time during which the Declarant may appoint and/or remove members of the Board of Directors of the Association and exercise Declarant rights under the Declaration. The Declarant Control Period shall terminate upon the earlier to occur of the following:
    - i. December 31, 2038; or
    - ii. Written relinquishment or transfer of all Special Declarant Rights.”
  - e. Article I, Section 9 of the Declaration is hereby amended by adding the following language after “The Palms at Boca Bay HOA, Inc.”: “and during the Declarant Control Period,

Declarant shall be a Member, with each having such rights, obligations and powers as may be provided in the Declaration.”

- f. Article I of the Declaration is hereby amended by adding the following: “Section 12. “Lot” shall mean and refer to a lot located in either The Oaks at Boca Bay or The Palms at Boca Bay.”

4. **Article II, Property Rights.** Article II of the Declaration is hereby amended as follows:

- a. Article II, Section 1(b) of the Declaration is hereby amended by deleting in its entirety the sentence which begins with the following “However, no such dedication or transfer shall . . . .”
- b. Article II, Section 2 is hereby amended by deleting the first sentence and replacing it with the following: “Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family or his tenants who reside on the Property.”

5. **Article III, Membership and Voting Rights.** Article III of the Declaration is hereby amended as follows:

- a. Article III, Section 1 is hereby deleted in its entirety and replaced with the following: “Section 1. The Oaks HOA and Palms HOA shall be the Members of the Association, and during the Declarant Control Period, Declarant shall be a Member of the Association, with each having such rights, obligations and powers as may be provided in the Declaration.”
- b. Article III, Section 2, Class A, is hereby amended by adding the following sentence: “Except as to voting on Board of Directors, each Member shall either cast all votes in favor or against any matter being voted upon based upon whether the majority votes by the members of each Member was in favor of or against such matter. Each Member shall designate one person who shall be entitled to cast all of the votes of such Member at a meeting. The number of votes for Oaks HOA shall include any lots owned by Declarant even though Declarant shall also have the right to cast separate votes based on the number of lots owned by Declarant as provided to the Class B Member.”
- c. Article III, Section 2, Class B, is hereby amended by deleting the second sentence and replacing it with the following: “The Class B Membership shall cease and Declarant’s membership in the Association shall terminate upon the happening of either of the following two events, whichever occurs first:”.
- d. Article III, Section 2, Class B. is hereby amended by deleting paragraph (a) under Class B.
- e. Article III, Section 2, Class B. is hereby amended by deleting paragraph (b) and replacing it with the following: “(b) on December 31, 2038; or”

6. **Article IV, Covenant for Maintenance Assessments.** Article IV of the Declaration is hereby amended as follows:

- a. Article IV, Section 1 of the Declaration is hereby amended by adding the following language: “In addition, each Member hereby authorizes the Association, and any management company which is hired by the Association, to collect Assessments directly from each Owner. Notwithstanding the foregoing, unless the Association elects to have itself or a third party management company make such collections, each Member shall be responsible for collection and enforcing payment and collection from each of the Owners in the subdivision of which they are the homeowner’s association and nothing contained herein shall eliminate each Member’s obligation to pay Assessments for such Owners.”
- b. Article IV, Section 2 of the Declaration is hereby amended by adding the following: “Assessments may also be used for the repair, maintenance, operation, use, construction and rebuilding of any Common Areas and improvements located thereon as well as all operating expenses, insurance, taxes and utilities.”
- c. Article IV, Section 3 of the Declaration is hereby amended as follows:
  - i. By deleting the first sentence thereof and replacing it with the following: “The first Annual Assessment shall be determined by the Declarant and commence on a date as determined by Declarant.”
  - ii. By adding the following sentences: “Notwithstanding anything else contained herein, during the Declarant Control Period, Declarant shall have the sole right to set and approve the Annual Assessment with no approval of the Members being required provided however, in no event shall the Declarant increase any Annual Assessment more than 10% of the prior year’s Annual Assessment without approval of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.
- d. Article IV, Section 4 of the Declaration is hereby amended by deleting the following language: “provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose” and such language is replaced with the following: “provided that any such Special Assessment is deemed reasonably necessary by the Declarant during the Declarant Control Period and after the Declarant Control Period any such Special Assessment shall have the assent of a majority of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.”
- e. Article IV, Section 6 of the Declaration is hereby amended as follows:
  - i. By deleting the first sentence thereof and replacing it with the following: “The Assessments provided for herein shall commence on a date as determined by the Declarant.”
  - ii. By adding the following sentence: “Notwithstanding anything else contained herein, during the Declarant Control Period, Declarant shall have the sole right to set and approve the Annual Assessments and Special Assessments in such amounts as Declarant may determine in its sole discretion.”
- f. Article IV, Section 7 of the Declaration is hereby amended to add the following: “In addition to the foregoing, any Owner who fails to pay their respective Member their share of dues owed to the Association shall have no right to use any of the Common Areas or the Property

until such time as all owed Assessments are paid and shall have no right to use any of the Common Areas or the Property until such Owner pays all applicable Assessments to the Association.” ”

- g. Article IV, Section 8 of the Declaration is hereby amended by deleting the first sentence thereof and replacing it with the following: “At the time of a sale to an Owner, after the Effective Date of this Amendment, within either The Oaks at Boca Bay or The Palms at Boca Bay and each resale thereafter, Oaks HOA or Palms HOA, as applicable, shall collect a sum equal to two (2) months of the existing Annual Assessment from the purchaser of such Lot and transfer such amounts to the Association as working capital. Any purchaser of a Lot (and its guests and tenants) who refuses or fails to pay such working capital contribution shall have no right to use the Common Areas or the Properties unless Declarant determines otherwise in its sole discretion.”
- h. Article IV of the Declaration is hereby amended by adding a new section 9 as follows: “Section 9. Notwithstanding anything contained herein, although the Declarant is a Member, the Declarant shall not pay any Assessments provided under this Declaration. Wherever language in the Declaration refers to a Member paying any assessment, such language shall not include the Declarant. In addition, notwithstanding anything provided under the Declaration, no Assessments shall be imposed against: (i) the Oaks HOA for any Lot owned by Declarant during the period of time Declarant owns such Lot; or (ii) any Lot owned by Declarant during the period of time Declarant owns such Lot. During the period of time Declarant owns one or more Lots and subject to further limitations described in Section 11 of the Amendment, the Assessments shall be in proportion to the number of votes Palms HOA has in the Association and the number of votes Oaks HOA has in the Association minus the number of Lots owned by Declarant within The Oaks at Boca Bay at such time as Assessments are imposed.”

7. **Article V, Easements.** Article V of the Declaration is hereby amended as follows:

- a. Article V, Section 1 of the Declaration is hereby amended by: (1) deleting the following from the first sentence: “Easements for the installation of” and replacing it with “Easements for the installation and”; and (2 ) adding the following after the word “driveways”: “roads and road related infrastructure”.
- b. Article V, Section 3 of the Declaration is hereby amended to add the following: “Notwithstanding the foregoing, any Owner who fails to pay their respective Member their share of Assessments or working capital contribution shall have no right to use any of the Common Area or the Property until such time as all owed Assessments, working capital contribution or other sums owed hereunder are paid.”

8. **Article VI, General Provisions.** Article VI of the Declaration is hereby amended as follows:

- a. Article VI, Section 3 of the Declaration is hereby deleted in its entirety and replaced with the following: “During the Declarant Control Period, Declarant reserves the sole right, without the consent of any other Member, to do the following: (a) amend this Declaration for the purpose of curing any ambiguity or any inconsistency between the provisions contained

herein; (b) amend this Declaration as to any provision contained herein for which the Declarant reserved amendment rights; and (c) amend this Declaration in any way which does not adversely affect the substantive rights of any existing Member. The foregoing amendments may be made without the approval of any Member, mortgagee, or the Association. Except as expressly provided in this Declaration, the covenants, conditions and restrictions contained in this Declaration may be amended at any time and from time to time by a written agreement signed by the Members to which at least a majority of the votes in the Association are allocated; provided, any such amendment during the Declarant Control Period shall require Declarant's prior written consent. Any agreement to amend this Declaration shall be in recordable form and shall be recorded in the Office of the Register of Deeds for Pender County, North Carolina.

- b. Article VI, Section 6 of the Declaration is hereby amended to add the following after the word "Common Area": ", including but not limited to the clubhouse,".
- c. Article VI, Section 7 of the Declaration is hereby amended to delete the following language: "With the approval of Pender County."
- d. Article VI, Section 14 of the Declaration is hereby amended to delete "at least sixty-seven (67) percent of the Members" and replace it with "at least a majority of the votes in the Association".

9. **Assessment Abatement.** Declarant agrees not to impose any Assessments against the Owners related to costs and expenses incurred by Declarant or the Association for work performed on the Boca Bay Recreation Center ("Recreation Center Costs") prior to September 1, 2019. Declarant agrees to be responsible for the Boca Bay Recreation Center Costs prior to September 1, 2019.

10. **Association.** The Association was previously incorporated but no Bylaws have been adopted nor have any other actions been taken by the Association. The Declarant or the Board of Directors appointed by the Declarant are hereby authorized to amend the articles of incorporation to add the Declarant as a Member, to change the registered agent and to complete the organization of the Association, including but not limited to adopting the initial Bylaws of the Association and appointing the initial officers and directors of the Association ("Association Setup"). No approval or vote of the other Members other than Declarant shall be required in order for Declarant or the Board of Directors appointed by the Declarant to approve and complete the Association Setup.

11. **Assessments for Boca Bay Recreation Center.** Declarant and the Association agree that the Oaks HOA and the Palms HOA have each agreed to allow certain existing Owners, which Owners have been determined as of the Effective Date (each being a "Non-Recreation Owner"), to opt out of the use of the Common Area and Properties and opt out of paying Assessments for the Association during such period of time as that Non-Recreation Owner is an Owner, provided however, any Non-Recreation Owner shall not be allowed to use the Common Area or the Properties. If any Non-Recreation Owner uses the Common Area or Properties, such Non-Recreation Owner shall thereafter be subject to Assessments for the Association and shall no longer have the option of opting out of paying Assessments for the Association. The exemption provided under this paragraph shall only apply to certain designated Non-Recreation Owners that have been determined as of the Effective Date and disclosed to Declarant. All Owners acquiring title to any Lot after the Effective Date shall be required to pay Assessments towards the Association and shall not be allowed to opt out of such Assessments regardless of whether such Lot

was previously owned by a Non-Recreation Owner. The Oaks HOA and the Palms HOA shall not be required to pay dues to the Association for a Non-Recreation Owner unless and until such Non-Recreation Owner becomes subject to Assessments as provided under this section.

12. **Stormwater Provisions.** Article VI, Sections 4 and 5 of the Declaration impose certain stormwater related conditions, provisions and restrictions including but not limited to those provisions and restrictions under permit number SW8050552 (collectively, "Stormwater Provisions"). Declarant reserves the right to delete, alter and amend any Stormwater Provisions under the Declaration including but not limited to any terms and conditions of **Exhibit B** to the Declaration.

13. **Appointment of Declarant; Prior Declarant Obligations.** SLA Surf City, LLC was assigned all rights and interests, if any, as Declarant under the Declaration. The Parties hereby ratify, confirm, approve and appoint SLA Surf City, LLC as the Declarant as such term is defined under the Declaration and as amended by this Amendment. Declarant shall not be required to perform nor have any liability for any matters, any work, obligations or duties of Declarant, or lack of performance thereof, that occurred or should have occurred or arose prior to the Effective Date.

14. **Estoppel as to Property.** The Parties hereby confirm the following with respect to the Property:

- a. The Property is in compliance with and is not in violation of the Declaration;
- b. There are no assessments, special assessments, and other amounts, dues or fees to which the Property is subject under the Declaration currently due and payable and there are no outstanding amounts owed pursuant to the Declaration other than Assessments that the Association began collecting after the date Declarant took title to the Property;
- c. There are no special assessments pending under the Declaration; and
- d. No person or entity is in default under the Declaration.

(As used herein, Property means and includes "Properties" as defined in the Declaration.)

15. **Binding Effect.** The covenants, easements, restrictions, rights, obligations, terms and conditions set forth in the Declaration, as amended by this Amendment shall run with title to the Property, and any part thereof, for the benefit of the Parties, and shall be binding upon, inure to the benefit of, and be enforceable by and against, the Parties and their respective heirs, executors, successors, and assigns. Except as expressly modified herein, the Declaration shall remain in full force and effect.

16. **Representation and Warranties.** Each Party represents, warrants, and covenants to the other that the execution of this Amendment and any other documents required or necessary to be executed pursuant to the provisions hereof are valid and binding obligations, enforceable against such Party in accordance with their terms.

17. **Entire Agreement; Amendment or Termination.** This Amendment, together with the Declaration, contains the entire agreement relating to the subject matter hereof. This Amendment may not be amended except in accordance with the amendment provisions set forth in this Amendment.

18. **Sealed Instrument**. The Parties agree that by signing below, they intend to place their hands and seals upon this Amendment, and that this Amendment shall be considered in every respect to be a sealed instrument.

19. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

20. **Planned Community Act**. Except as required by applicable law, the Parties agree that the Declaration is hereby amended to delete any reference to the North Carolina Planned Community Act ("Act"), and the Declaration is hereby further amended to make clear the Property and the Declaration are not subject to the Act unless otherwise required by applicable law.

[SIGNATURE PAGES ATTACHED HERETO]

IN WITNESS WHEREOF, the Parties have caused their respective duly authorized officer, partner or representative to execute, seal and deliver this Amendment as of the Effective Date.

**SLA SURF CITY, LLC a South Carolina limited liability company**

Name: RAS  
Title: Vice President

State of South Carolina  
County of York

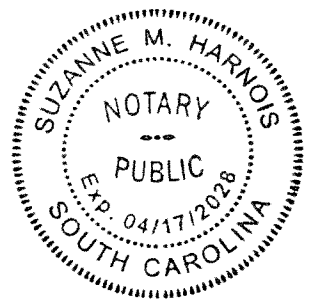
(Official/Notarial Seal)

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

~~Suzanne M. Harnois~~ R. Alexander Sullivan  
Suh

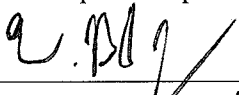
Date: 8/25/20 Suzanne M. Harnois  
Notary Public

My Commission Expires: 4/17/2028



This is to certify that upon proper notice given, a meeting of the Board of Directors of The Oaks at Boca Bay HOA, Inc. was held on 6/30/2020. The purpose of the meeting was to approve of this Amendment. At such meeting, at which a quorum was present, in person or by proxy, The Oaks at Boca Bay HOA, Inc. approved of this Amendment in accordance with and as required by the Bylaws of The Oaks at Boca Bay HOA, Inc.

**THE OAKS AT BOCA BAY HOA, INC.,** a North Carolina non-profit corporation

By: 

Name: W. Freeman Barber, Jr.

Title: Director

State of South Carolina  
County of Charleston

(Official/Notarial Seal)

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

W. Freeman Barber, Jr.

Date: June 30 2020

Notary Public 

My Commission Expires: 8/11/27



This is to certify that upon proper notice given, a meeting of the members of The Palms at Boca Bay HOA, Inc. was held on 18 April 2020. The purpose of the meeting was to approve of this Amendment. At such meeting, at which a quorum was present, in person or by proxy, The Palms at Boca Bay HOA, Inc. approved of this Amendment in accordance with and as required by the Bylaws of The Palms at Boca Bay HOA, Inc.

**THE PALMS AT BOCA BAY HOA, INC.**, a North Carolina non-profit corporation

By: *Kathleen G Sumner*

Name: Kathleen G. Sumner

Title: Secretary, The Palms at Boca Bay HOA, Inc.

State of North Carolina

County of Pender

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

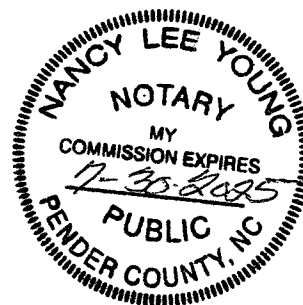
Kathleen G. Sumner

Date: 27 August 2020

*Nancy L Young*  
Nancy L. Young, Notary Public

My Commission Expires: 7-30-2025

(Official/Notarial Seal)



**EXHIBIT A**  
**Property**

Lot 1, The Oaks at Boca Bay, Topsail Township, Pender County, North Carolina, The Town of Surf City.

Commencing at an existing iron rod in the southern margin of an ingress, egress, regress, drainage and utility easement, and being the southwestern corner of Lot 1, The Oaks at Boca Bay, formerly know as The Residences at Boca Bay as recorded in Map Book 45, Page 148 of the Pender County Registry, and being THE TRUE POINT OF BEGINNING: thence from the above described true point of beginning and crossing said easement North 37 degrees 54 minutes 26 seconds West 185.50 feet to an existing iron rod in the normal high water line of Topsail Sound, thence along said normal high water line the following courses and distances: North 19 degrees 04 minutes 26 seconds East 16.65 feet and North 37 degrees 56 minutes 13 seconds East 88.38 feet to an existing iron rod in the normal high water line of Topsail Sound, thence leaving said normal high water line South 47 degrees 36 minutes 28 seconds East 138.21 feet to an existing iron rod in the northern margin of an ingress, egress, regress, drainage and utility easement, thence along said northern margin, North 38 degrees 36 minutes 17 seconds East 75.16 feet to an existing iron rod, thence along the eastern margin of said easement South 47 degrees 36 minutes 28 seconds East 19.20 feet to an existing iron rod in the center of a 25' access and utility easement as recorded in Map Book 38, Page 84 of the Pender County Registry, thence along the center of said easement South 26 degrees 39 minutes 21 seconds West 77.92 feet to a point, thence continuing along the center of said easement South 33 degrees 57 minutes 17 seconds West 72.49 feet to a point in the eastern margin of an ingress, egress, regress, drainage and utility easement, thence along the eastern margin of said easement South 37 degrees 54 minutes 26 seconds East 3.31 feet to a point in the southern margin of said easement, thence along said southern margin South 34 degrees 14 minutes 59 seconds West 63.03 feet to a existing iron rod in the southern margin of said ingress, egress, regress, drainage and utility easement and being the point and place of beginning. Containing 0.533 acres as surveyed by Charles Francis Riggs, P.L.S. L-2981 October 11, 2007. The courses contained within are correct in angular relationship and are referenced to NAD 83 (1986) of the Pender County Registry.

**AMENDMENTS TO THE DECLARATION  
OF COVENANTS & RESTRICTIONS**

**THE PALMS AT BOCA BAY HOA, INC.**

1) Article XII

Is hereby Amended as follows:

The original Article XII is stricken in its entirety and in its place and stead the following shall apply:

**ARTICLE XII  
ARCHITECTURAL REVIEW COMMITTEE**

An Architectural Review Committee (ARC) will be appointed by the Board of Directors of the Association and shall serve as a standing committee. The ARC shall be comprised of a minimum of 3 members of the Association. A current member of the Board of Directors shall not be able to serve concurrently as a member of the ARC. No more than one HOA member from each townhome may serve on the ARC at any given time. Other requirements for ARC membership are included in Article III, Section 3.03 of the PBB Design Guidelines.

The purpose of the ARC will be to serve the Board in a review capacity only for proposed projects submitted by homeowners within the Palms at Boca Bay that will potentially modify or alter the appearance or functionality of the exterior of any townhome or land around any townhome. The ARC will have the authority to recommend approval or disapproval of proposed projects to the Board. Recommendations made by the ARC will be determined based on ensuring compliance with the PBB Design Guidelines and the PBB Rules and Regulations that are in effect at the time the project application is submitted to the ARC. Copies of these important governing documents will be made available to any member of the Palms at Boca Bay Homeowners Association upon request.

2) The Covenants & Restrictions are further amended as follows:

1. Any rental of a home in The Palms at Boca Bay HOA, Inc Community shall be at a minimum six (6) month rental to any one individual or single family. Multiple families in one home not permitted. No short-term rentals (less than 6 months).
2. Each and every lease created for the rental of property in The Palms at Boca Bay HOA, Inc. shall contain language that all tenants and their guests are required to comply with all community covenants, bylaws, rules and regulations of The Palms at Boca Bay HOA, Inc. Homeowner will be responsible for Tenant compliance.
3. Copy of the final, executed, approved lease shall be provided to the The Palms at Boca Bay HOA, Inc., Board of Directors prior to tenant moving in.
4. The Palms at Boca Bay HOA, Inc., by its Board of Directors, may upon a majority vote, impose fines for the violation of these requirements up to \$100 per day, payable by homeowner.
5. The Board is required to provide notice in writing for any violation and a hearing if a fine is to be considered.

I, Donald Davis, President of The Palms at Boca Bay HOA, Inc., hereby depose and state under oath that the 1<sup>st</sup> Amendment was voted on and passed by vote of 13 Approved and 2 Not Approved, recorded in our corporate books December 9, 2022. The 2<sup>nd</sup> Amendment was voted on and passed by a vote of 12 Approved and 1 Not Approved and recorded in our corporate books. Both Amendments have been voted on and approved, they are now being incorporated as official Amendments to The Declaration of Covenants & Restrictions of The Palms at Boca Bay, HOA, Inc. Reference Book 2528 Page 316 and Book 4705 Page 1466 Pender County Registry.

Donald Davis - President  
 Donald Davis, President  
 The Palms at Boca Bay HOA, Inc.

STATE OF NORTH CAROLINA  
 COUNTY OF PENDER

I, Kenneth Ordning, a Notary Public of the County and State aforesaid, certify that **Donald Davis**, personally came before me this day and acknowledged that he is **President of The Palms at Boca Bay HOA, Inc.**, and that he as **President**, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and notarial seal, this the 14 day of Augrst 2023.

My Commission Expires: \_\_\_\_\_  
 Kenneth Gary Ordning  
 NOTARY PUBLIC  
 Pender County  
 North Carolina  
 My Commission Expires 3/19/20 28

\_\_\_\_\_  
 NOTARY  
 \_\_\_\_\_  
 PRINT NAME



Doc No: 20062377  
Recorded: 04/20/2020 09:02:53 AM  
Fee Amt: \$54.00 Page 1 of 22

Pender County North Carolina  
Sharon Lear Willoughby, Register of Deeds  
BK **4709** PG **1466 - 1487 (22)**

**SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE PALMS AT BOCA BAY HOA, INC.**

Adopted by the:  
The Palms at Boca Bay HOA, Inc.

KATHLEEN SUMNER



**SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
THE PALMS AT BOCA BAY HOA, INC.**

**A planned residential community located in Pender County, North Carolina, as shown on the following plats:**

**Final Plat for The Palms at Boca Bay, recorded November 18, 2004 in Map Book 38 at Page 84 of the Pender County Registry, a copy of which is attached as Exhibit A-1.**

**Lot Recombination for The Palms at Boca Bay Lots 1-8, recorded on October 12, 2007 in Map Book 45 at Page 146 of the Pender County Registry, as copy of which is attached as Exhibit A-2.**

**Survey for the Palms at Boca Bay HOA, Inc., recorded on February 25, 2009 in Map Book 48 at Page 140 of the Pender County Registry, a copy of which attached as Exhibit A-3.**

THIS SECOND AMENDED AND RESTATED DECLARATION [Second Restatement] made and entered into effective as of the 18<sup>th</sup> day of April, 2020, by THE PALMS AT BOCA BAY HOA, INC., a North Carolina nonprofit corporation on behalf of LOT OWNERS and any other Persons owning or having an interest in the real property known as "The Palms at Boca Bay HOA, Inc.," a planned community located in Pender County, North Carolina, as more particularly shown on the various maps thereof recorded in the office of the Register of Deeds of Pender County, North Carolina.

**R E C I T A L S**

The Palms at Boca Bay HOA, Inc. is a planned residential community [The Palms at Boca Bay] created by the Declaration of Covenants, Conditions and Restrictions for The Palms at Boca Bay HOA, Inc. and recorded 24 November 2004, and recorded in Book 2528, at Page 316 in the office of the Register of Deeds of Pender County [**Original Declaration**]; the Amendment to Declaration of Covenants, Conditions and Restrictions for The Palms at Boca Bay HOA, Inc. recorded 24 February 2009 in Book 3582 at Page 16 of the Pender County Registry [**Amended Declaration**]; the Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Palms at Boca Bay HOA, Inc. recorded 26 September 2012 in Book 4138 at Page 80 of the Pender County Registry [**First Restatement**]. The First Restatement deleted and rescinded in its entirety the Original Declaration as amended by the Amended Declaration. The Palms at Boca Bay HOA, Inc. remains subject to, and entitled to the benefits of, the North Carolina Planned Community Act [Act].

## ARTICLE I

### AMENDMENTS TO ADOPT SECOND RESTATEMENT

**Section 1. Amendment to Adopt Second Restatement.** The First Restatement is hereby amended to delete and rescind it in its entirety and adopt in its place this Second Restatement. Furthermore, with regard to the Original Declaration and the Amended Declaration, even though they have previously been terminated, the Owners of Lots within The Palms at Boca Bay HOA, Inc. deem it desirable and in the best interest of all such Owners and prospective purchasers of Lots within The Palms at Boca Bay HOA, Inc. to adopt this Second Restatement and confirm, ratify, and expressly terminate the Original Declaration, the Amended Declaration, and the First Restatement.

## ARTICLE II

### DEFINITIONS

**Section 1. "Act"** shall refer to the North Carolina Planned Community Act (47F).

**Section 2. "Association"** shall mean and refer to The Palms at Boca Bay HOA, Inc., a North Carolina non-profit corporation, its successors and assigns.

**Section 3. "Common Elements"** shall mean any easements established for the benefit of the Properties or the Owners. Easements shall include North Boca Bay Lane and Pender Avenue (including sidewalks) and such easements and rights in favor of the Association and its Members as granted or established on plats, deeds, declarations, and other documents recorded in the Pender County Registry.

**Section 4. "Member"** shall mean and refer to every owner, as defined in Section 6 herein, that holds membership in the Association (see Article VI Section 1 of this document for membership requirements).

**Section 5. "Lot"** shall mean and refer to Lots 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A, 5B, 6A, 6B, 7A, 7B, Lot 8 [8A and 8B, if subdivided in the future] as shown on the recorded plats.

**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 Townhome or 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 the land shown on the recorded plats listed above together with the Common Elements as defined above.

**Section 8. "Townhome(s)"** shall mean and refer to the attached single family dwelling(s) built on any Lot(s) subject to this Second Restatement.

### ARTICLE III

#### PROPERTY SUBJECT TO SECOND RESTATEMENT

The real property, which is and shall be held, transferred, sold, conveyed and occupied subject to this Second Restatement is described in the recorded plats referenced above.

### ARTICLE IV

#### PROPERTY RIGHTS

**Section 1. Conveyance of Lot.** Fourteen of the fifteen Owners have been conveyed fee simple title to a Lot upon which a completed Townhome unit is situated, together with one-half of the party wall separating two Townhomes. One Owner has been conveyed Lot 8, which at the time of the recording this Second Restatement is vacant. Without the approval of the Association, the Owner of Lot 8 may divide Lot 8 into Lot 8A and Lot 8B and construct a Townhome on each. The new Townhomes shall be joined by a common party wall and generally conform in style and layout to the existing Townhomes in The Palms at Boca Bay.

**Section 2. Owners' Easements of Enjoyment.** Every Owner shall have a right of enjoyment in and to the Common Elements, which shall be appurtenant to and shall pass with the title to every Lot and Townhome. Every Owner of every Lot and Townhome has an equal allocated interest, as defined by the Act, as well as a common expense liability, as defined by the Act, relating to the Common Elements.

### ARTICLE V

#### OWNERS' RIGHTS OF USE OF COMMON ELEMENTS

**Section 1. Owner's Easements for Ingress and Egress.** Every Townhome and Lot has a perpetual, non-exclusive right to use the Common Elements.

**Section 2. Delegation of Use.** Any Owner may delegate, the right of enjoyment to the Common Elements to Owner's family, guests and invitees staying in or using the Owner's Townhome or Lot.

## ARTICLE VI

### MEMBERSHIP, VOTING RIGHTS AND CONTROL

**Section 1.** Every Owner of a Townhome or Lot, which is subject to assessment, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Townhome or Lot, which is subject to assessment.

**Section 2.** All rights, duties and privileges of Membership shall be as provided in the Bylaws of the Association.

**Section 3.** The Association shall be governed by a Board of Directors in accordance with the Bylaws of the Association.

**Section 4.** Every Owner of a Townhome or Lot is entitled to one vote. If Lot 8, is divided into two lots, each lot shall be subject to assessment and entitled to one vote.

**Section 5.** The Association shall have the right to suspend the voting rights, the right to use the recreational facilities by an Owner and suspend services provided by the Association, in accordance with the Act and this Declaration for any period during which any assessment remains unpaid and for any unresolved infraction.

## ARTICLE VII

### COVENANT FOR MAINTENANCE ASSESSMENTS (ANNUAL AND SPECIAL)

**Section 1. Creation of the Lien and Personal Obligation of Assessment.** Each Owner of any Lot by acceptance of a deed, whether or not shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges to be levied and paid in monthly installments, and (2) special assessments, such assessments to be established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorney's fees, shall be a charge against the Lot and shall be a continuing lien upon the property against which each such assessment is made. Each, such assessment or charge, together with interest, costs or 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.

**Section 2. Purpose of Annual Assessments.** The Annual Assessments are charges levied by the Association and shall be used exclusively to promote the recreation, health, safety and welfare of the residents of The Palms at Boca Bay, as set forth in the Annual Budget as approved by the Membership at the Annual Meeting. Although the Reserve Funds are funded through the Annual Assessment, the use of the Reserve Funds is governed in the By-Laws.

**Section 3. Special Assessments.** In addition to the annual assessments authorized by this document, it is understood by the Association that all capital improvements require a special assessment. The Association may levy, in an assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, provided that any such assessment shall have the assent of Owners owning not less than two-thirds (2/3) of the Lots.

**Section 4. Date of Commencement of Annual Assessments.** The annual assessments shall become effective against a Lot and its Owner as provided in Section 1 hereof, on the date of the acquisition of the Lot by the Owner. The first monthly installment of the annual assessment for each Lot conveyed shall be adjusted according to the number of days remaining in the month.

**Section 5. Annual Budget.** Within thirty (30) days after approval by the Board of any proposed budget for the community, the Board shall provide to all the Lot Owners a summary of the budget and a notice of the meeting to consider the budget, including a statement that the budget shall be ratified unless it is rejected by a vote of Owners owning a majority of the Lots. The Board of Directors shall set a date for a meeting of the Lot Owners to consider the budget, such meeting to be held not less than ten (10) and no more than sixty (60) days after mailing of the summary and notice. The budget is ratified unless at that meeting Owners owning a majority of the Lots rejects the budget. In the event the proposed budget is rejected, the budget in effect shall continue until a new budget is adopted.

**Section 6. Annual Assessments Notification.** Written notice of the annual assessment shall be sent to every Owner subject thereto via email, electronically, or regular USPS mail. The Association shall, upon demand and for a reasonable charge, furnish evidence signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Evidence from the Association as to the status of the assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 7. Effect of Nonpayment of Assessment; Remedies of the Association.** Non-payment of any assessment shall be subject to the Act and

the current PBB Collection Policy. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Elements or abandonment of his or her Lot.

**Section 8. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust on a Lot. Sale or transfer of any 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 became 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, but the liens provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided.

## ARTICLE VIII

### BOCA BAY RECREATION CENTER ASSESSMENTS

The Palms at Boca Bay HOA [Association] is a member of the Boca Bay Recreation Center, Inc. (Recreation Center) and has obligated itself to pay Annual and Special Assessments [Recreational Center Assessments] based on the number of Owners in The Palms at Boca Bay that have indicated they want to use and support the Recreation Center. A list of Participating (and non-Participating) Owners is maintained by the Association. A buyer who purchases a Lot from a non-Participating Owner, shall automatically be a Participating Owner and obligated to pay Recreational Center Assessments from the date his/her deed is recorded.

Upon the death of a Non-Participating Owner, the Non-Participating Owner's successor in title shall be a Participating Owner. It is intended that eventually all Owners in the Palms at Boca Bay Community shall become Participating Owners.

The amount of the Recreation Center Assessments shall be set by the Recreation Center Association in accordance with its governing documents. The Association has undertaken the obligation to collect the Recreation Center Assessments from Participating Owners and remit them to the Recreation Center.

Assessments (Annual and Special) levied on Participating Owners shall consist of two components:

- 1) An amount designated for The Palms at Boca Bay Community pursuant to this Second Restatement;
- 2) An amount designated for the Recreation Center pursuant to this Second Restatement.

Delinquency in an assessment—attributable to either component—is delinquency in the total assessment and after a hearing as set forth in this Second Restatement, the By-Laws, or the Act, the Association may suspend all right of a Member to use the facilities and property of the Recreation Center (except as is necessary for Member to access his or her Lot) until the total assessment is paid in full. No Participating Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Recreation Center.

Collection and enforcement of Recreation Center Assessments shall be pursuant to this Second Restatement.

The Association shall track Recreation Center Assessments collected in a separate account on its books and records. Any delinquency in Recreation Center Assessments shall be added to the Recreation Center Assessments due and collected from Participating Owners.

## **ARTICLE IX**

### **EXTERIOR MAINTENANCE BY ASSOCIATION**

The Association shall have the primary responsibility for the maintenance of the plants, beds, shrubs, trees, and lawns around Townhomes and on Lots, including the installation and replacement of such plants, flowers, ground cover, and/or grass as the Association shall deem desirable.

In order to enable the Association to accomplish its obligations under this Second Restatement, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article. In the event that the need for maintenance, repair or replacement is caused through the willful or negligent act of the Owner, Owner's family, guests or invitees, the cost of such maintenance, replacement or repairs incurred by the Association shall be added to and become a part of the assessment to which such Owner(s)' Townhome is subject.

## ARTICLE X

### OWNERS MAINTENANCE

Each Owner shall maintain, repair and replace at his or her expense, all exterior portions of his or her Townhome, which shall need repair, including mailboxes, permeable driveway pavers, and house numbers. Further, each Owner shall repair, maintain and replace, at his or her own expense when necessary, the heating and air conditioning systems servicing his or her dwelling. The Owner of a Lot, at his or her expense, may install a sprinkler system to serve the Lot as long as the system does not unreasonably interfere with the Association's grounds maintenance.

An Owner may landscape their Lot in accordance with ARC guidelines.

Each Owner shall be responsible for maintaining, at his or her expense, improvements located on the Lot designed to serve only that Lot, including, but not limited to, exterior steps and landings, and "backflow preventers." The Owners of the Lots served shall jointly maintain improvements, which serve one or more Lots, including but not limited to, drainage ditches and evaporation basins.

## ARTICLE XI

### PARTY WALLS

**Section 1. General Rules of Law to Apply.** Each wall, which is built as a part of the original construction of a Townhome and placed on the dividing line between two Townhomes, shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omission shall apply thereto.

**Section 2. Sharing of Repair and Maintenance.** The costs of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

**Section 3. Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, either Owner(s) may restore it, and the other Owner(s) shall contribute to the cost of restoration, without prejudice, to the right of any such Owner(s) to call for a larger contribution from the other(s) under any rule of law regarding liability for negligent or willful acts or omissions.

**Section 4. Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

## ARTICLE XII

### ARCHITECTURAL REVIEW COMMITTEE

**Review by Committee.** No building, fence, wall, or other structure (except docks, boardwalks, and structures requiring a CAMA permit) nor any planting or landscaping change (including removal of any tree) shall be commenced, erected or maintained upon a 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 shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Review Committee (ARC) composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been complied with fully. The Association shall have the right to bring an action to enjoin any activity taken in violation of this Article. The construction or placement of any dock, boardwalk, or other structure requiring a permit from the North Carolina Office of Coastal Management (Coastal Area Management Act (CAMA) Permit) or its successor, shall not need the review or approval of the Architectural Review Committee, the Board, or the Association.

## ARTICLE XIII

### RESTRICTIONS

All Lots and Townhomes shall be used for residential purposes only and for no other purpose. Only one family may occupy a Townhome as a principal residence at any one time. Co-ownership of Townhome or Lots shall not be prohibited. Any building erected, altered, placed or permitted to remain on any Lot shall be subject to the provisions of Article XII of this Second Restatement relating to architectural control, as set forth in the current edition of The Palms at Boca Bay Rules and Regulations and Design Guidelines.

Rules and Regulations have been established for The Palms at Boca Bay. The Rules and Regulations govern items and issues that ensure a pleasant and well-maintained appearance for the community while also promoting the health, welfare, and safety of PBB residents and guests. The Rules and Regulations may be amended periodically when determined to be

necessary by a majority of the members present and voting. Copies of the current Rules and Regulations shall be furnished to each owner of the Association upon request.

#### **ARTICLE XIV**

#### **STORM WATER RUNOFF & PERMITS**

**Storm Water Runoff and Storm Water Permit.** The State of North Carolina has adopted Storm Water Runoff Regulations applicable to the Properties. In accordance with such regulations, the total amount of impervious surface, or as defined by the Storm Water regulations of the State of North Carolina, is limited on every Lot. The limitations are set out in the State Storm Water Management Permit Number SW8 050127 (the “**Storm Water Permit**”), as issued by the Division of Water Quality, a copy of which is attached to this Restated Declaration as **Exhibit B**. The Association and the State of North Carolina shall have specific authority to enforce the provisions of the North Carolina Storm water regulations and Permit. Further, in accordance with the Storm Water Runoff Regulations the developer of The Palms at Boca Bay developed a storm water plan (a copy of which is kept by the Board) for The Palms at Boca Bay, which consists of four pages of drawings by Charles F. Riggs & Associates dated 10 November 2004 (Project Number: 03-03-47). Each Lot Owner shall be required to develop and maintain his Lot in such a manner that is consistent with this storm water plan.

#### **ARTICLE XV**

#### **EASEMENTS**

Easements exist as shown on recorded plats of the properties. Within any such easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the utilities or easements.

Every Townhome constructed which contributes to the support of an abutting Townhome shall be burdened with an easement of support for the benefit of such abutting Townhome. Further, all attachments to the exterior walls of a house which are a part thereof but which protrude beyond the delineated boundaries of the Townhome, and which were constructed in conformity with the plans and specifications, shall be deemed to be included within said delineated boundaries of said house, and there is hereby reserved an easement to permit the construction of and continued existence of any protruding attachment.

## ARTICLE XVI

### INSURANCE

It shall be the duty of the Board on behalf of the Association to maintain in effect such insurance as is necessary to meet the needs of the Association, and provisions of the Act. Additionally, the Board of Directors may obtain and maintain Directors and Officers Liability Insurance Coverage.

## ARTICLE XVII

### ACCOUNTS AND RECORDS

At a minimum, the Association shall maintain financial and other records and accounts as to meet the standards of Section 47F-3-118 of the Act, and the Operating and Reserve Accounts and Procedure as adopted by the Association. More specifics on the financial accounts of the Association shall be as provided in the Bylaws of the Association.

## ARTICLE XVIII

### GENERAL PROVISIONS

**Section 1. Enforcement.** The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Second Restatement. Failure by the Association or by any Owner to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

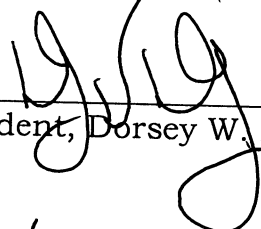
**Section 3. Amendment.** The covenants and restrictions of this Second Restatement shall run with and bind the land for a term of twenty-five (25) years from the date of this Second Restatement is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Second Restatement may be amended by an affirmative vote of the Owners of not less than 67 percent of the Lots. Any amendment must be properly recorded in the office of the Register of Deeds of Pender County, North Carolina.

**ARTICLE XIX**

**ADOPTION**

The undersigned, duly authorized officers of the Association, hereby certify that this Second Restatement was duly adopted by an affirmative vote of at least sixty-seven percent (67%) of the owners of Townhomes and Lot 8 at a duly called meeting of the Association held on 18<sup>th</sup> April 2020.

**THE PALMS AT BOCA BAY HOA, INC.**

BY:   
President, Dorsey W. Daniel, Jr.

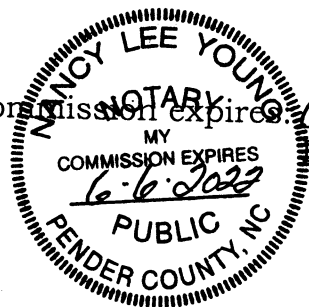
4-18-20  
Date

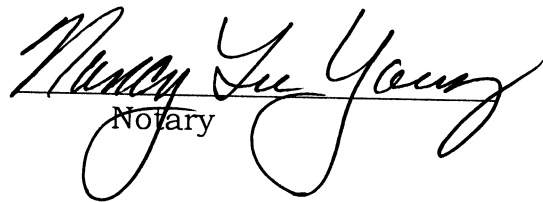
ATTEST:  
BY:   
Secretary, Kathleen G. Sumner

4-18-20  
Date

STATE OF NORTH CAROLINA  
COUNTY OF PENDER

I, Nancy Lee Young, a Notary Public of the County and State aforesaid, certify that Dorsey W. Daniel, Jr. and Kathleen G. Sumner personally came before me this day and acknowledged that he is the President of The Palms at Boca Bay HOA, Inc., and that by authority duly given and as the act of the corporation, they signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and official seal this 18<sup>th</sup> day of April 2020.

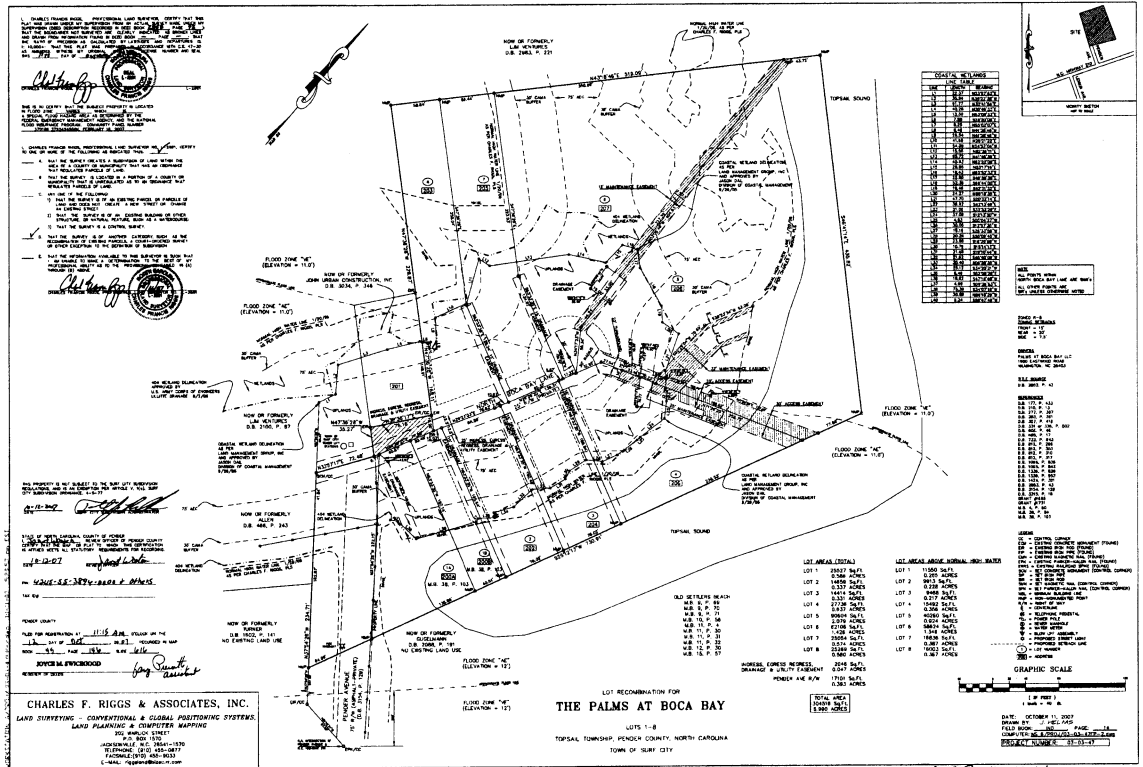
My commission expires 6-6-2022  
Date  


  
Notary



**Exhibit A-2.**

Lot Recombination for The Palms at Boca Bay Lots 1-8, recorded on October 12, 2007 in Map Book 45 at Page 146 of the Pender County Registry.





***Exhibit B.***

*State Storm Water Management Permit Number SW8 050127.*



North Carolina Department of Environment and Natural Resources

Pat McCrory  
Governor

John E. Skvarla, III  
Secretary

December 17, 2014

Ms. Connie Dean, President  
The Palms at Boca Bay HOA, Inc.  
9 Waverly Place  
Albany, NY 12203

**Subject: Stormwater Permit No. SW8 050127  
Name Change / Ownership Change  
The Palms at Boca Bay  
Pender County**

Dear Ms. Dean:

Effective August 1, 2013 the State Stormwater program has been transferred from the Division of Water Quality (DWQ) to the Division of Energy, Mineral and Land Resources (DEMLR). All previous references to DWQ will remain in older stormwater permits issued prior to August 1, 2013 until they are modified. Please note that any updated pages or addendums to this permit will now reference DEMLR as the Division responsible for issuance of the permit

On November 21, 2014, the Wilmington Regional Office received a request to transfer the ownership of the state stormwater management permit for the subject project. Staff of DEMLR have inspected the project, determined that the documentation is in order, and that the project is in compliance with the terms and conditions of the state stormwater permit. As indicated on the Name/Ownership Change form, you have acknowledged receipt of a copy of the permit, which includes the application and supplement forms. By acknowledging receipt of the permit, and by signing the Name/Ownership Transfer form, you have accepted the responsibility for complying with the terms and conditions outlined in this permit. The Division is hereby notifying you that the subject permit has been transferred on December 17, 2014 and to remind you that this permit shall be effective until rescinded. For your records, please find enclosed a copy of the Name/Ownership Change form submitted on November 21, 2014. Please keep this cover letter with the attached permit, originally issued by the Division of Water Quality on March 10, 2006.

Please be aware that the project's built-upon area and stormwater controls must be built and maintained in compliance with the permit documents and the approved plans. Maintenance of the approved system shall be performed in accordance with the signed Operation and Maintenance agreement. Any modifications to this project must be submitted to DEMLR and approved prior to construction. The issuance of this approval does not preclude you from complying with all other applicable statutes, rules, regulations or ordinances, which may have jurisdiction over the proposed activity, and obtaining a permit or approval prior to construction.

If the property for this project has been/will be sold or legally transferred to another entity OR, the project or permit holder has changed its name and/or mailing address, it is your responsibility as the permittee to submit a completed and signed Name/Ownership change form to DEMLR at least 30 calendar days prior to making the changes. These forms are available on our website at: [http://portal.ncdenr.org/web/lr/state-stormwater-forms\\_docs](http://portal.ncdenr.org/web/lr/state-stormwater-forms_docs).

If you have any questions concerning the requirements of the permit or need additional copies of the permit or approved plans, please do not hesitate to call Steve Pusey in the Wilmington Regional Office at (910) 796-7215.

Sincerely,

For Tracy Davis, P.E., Director  
Division of Energy, Mineral and Land Resources

GDS/ sgp: S:\WQS\Stormwater\Permits & Projects\2005\050127 LD\2014 12 permit 050127  
cc: Wilmington Regional Office Stormwater File

Division of Energy, Mineral, and Land Resources  
Land Quality Section – Wilmington Regional Office  
127 Cardinal Drive Extension, Wilmington, North Carolina 28405 • (910) 796-7215 / Fax: (910) 350-2004

STATE OF NORTH CAROLINA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
DIVISION OF ENERGY, MINERAL AND LAND RESOURCES

STATE STORMWATER MANAGEMENT PERMIT

LOW DENSITY DEVELOPMENT

In accordance with the provisions of Article 21 of Chapter 143, General Statutes of North Carolina as amended, and other applicable Laws, Rules and Regulations

PERMISSION IS HEREBY GRANTED TO

*The Palms at Boca Bay HOA, Inc.*

*The Palms at Boca Bay*

*Pender Avenue, Surf City - Pender County*

FOR THE

construction, operation and maintenance of a 25% low density subdivision in compliance with the provisions of 15A NCAC 2H .1000 (hereafter referred to as the "stormwater rules") and the approved stormwater management plans and specifications, and other supporting data as attached and on file with and approved by the Division Energy, Mineral and Land Resources, and considered a part of this permit.

The Permit shall be effective from the date of issuance until rescinded and shall be subject to the following specific conditions and limitations:

I. DESIGN STANDARDS

1. Each of the 8 duplex lots is limited to the maximum square feet of built-upon area shown in the table below, as indicated in the approved plans.

Lot #	Max. BUA (ft <sup>2</sup> )	Lot #	Max. BUA (ft <sup>2</sup> )
1	4,027	5	3,332
2	3,327	6	3,279
3	3,303	7	3,457
4	3,287	8	3,271

2. The built-upon area percentage for the project area (identified on sheet 3 of the approved drawing set) must be maintained at 25% per the requirements of Section .1005 of the stormwater rules.
3. Approved plans and specifications for projects covered by this permit are incorporated by reference and are enforceable parts of the permit.
4. Projects covered by this permit will maintain a minimum 30-foot wide vegetative buffer between all impervious areas and surface waters.
5. The only runoff conveyance systems allowed will be vegetated conveyances such as swales with minimum side slopes of 3:1 (H:V) as defined in the stormwater rules and approved by the Division.
6. All roof drains must terminate at least 30' from the mean high water mark.

## SCHEDULE OF COMPLIANCE

- Swales and other vegetated conveyances shall be constructed in their entirety, vegetated, and be operational for their intended use prior to the construction of any built-upon surface.
2. During construction, erosion shall be kept to a minimum and any eroded areas of the swales or other vegetated conveyances will be repaired immediately.
  3. The permittee shall at all times provide the operation and maintenance necessary to operate the permitted stormwater management systems at optimum efficiency to include:
    - a. Inspections.
    - b. Sediment removal.
    - c. Mowing, and revegetating of the side slopes.
    - d. Immediate repair of eroded areas.
    - e. Maintenance of side slopes in accordance with approved plans and specifications.
  4. The permittee shall submit to the Director and shall have received approval for revised plans, specifications, and calculations prior to construction, for any modification to the approved plans, including, but not limited to, those listed below:
    - a. Any revision to any of the items shown on the approved plans, including the stormwater management system, design concept, built-upon area, details, etc.
    - b. Project name change.
    - c. Transfer of ownership.
    - d. Redesign or addition to the approved amount of built-upon area or to the drainage area.
    - e. Further subdivision, acquisition, or selling of the project area.
    - f. Filling in, altering or piping any vegetative conveyance shown on the approved plan.
  5. The Director may determine that other revisions to the project should require a modification to the permit.
  6. The permittee shall submit all information requested by the Director or his representative within the time frame specified in the written information request.
  7. No piping shall be allowed except that minimum amount necessary to direct runoff beneath an impervious surface such as a road and that minimum amount needed under driveways to provide access to lots.
  8. Unless specified elsewhere, permanent seeding requirements for the swales must follow the guidelines established in the North Carolina Erosion and Sediment Control Planning and Design Manual.
  9. The permittee is responsible for verifying that the proposed built-upon area does not exceed the allowable built-upon area. Once the lot transfer is complete, the built-upon area may not be revised without approval from the Division of Energy, Mineral and Land Resources, and responsibility for meeting the built-upon area limit is transferred to the individual property owner, provided that the permittee complies with the requirements of Section II.11 of this permit.
  10. Within 30 days of completion of the project, the permittee must certify in writing that the project's stormwater controls, and impervious surfaces have been constructed within substantial intent of the approved plans and specifications. Any deviation from the approved plans must be noted on the Certification.

1. The Director may notify the permittee when the permitted site does not meet one or more of the minimum requirements of the permit. Within the time frame specified in the notice, the permittee shall submit a written time schedule to the Director for modifying the site to meet minimum requirements. The permittee shall provide copies of revised plans and certification in writing to the Director that the changes have been made.
  
12. Deed restrictions are incorporated into this permit by reference and must be recorded with the Office of the Register of Deeds prior to the sale of any lot. Recorded deed restrictions must include, as a minimum, the following statements related to stormwater management:
  - a. The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 050127, as issued by the Division of Energy, Mineral and Land Resources under NCAC 2H.1000.
  - b. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Stormwater Management Permit.
  - c. These covenants are to run with the land and be binding on all persons and parties claiming under them.
  - d. The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Energy, Mineral and Land Resources.
  - e. Alteration of the drainage as shown on the approved plans may not take place without the concurrence of the Division of Energy, Mineral and Land Resources.
  - f. The maximum built-upon area per lot shown in the table below. This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, and coquina, but does not include raised, open wood decking, or the water surface of swimming pools.
 

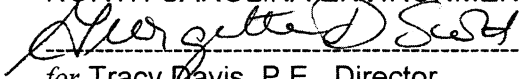
Lot #	Max. BUA (ft <sup>2</sup> )	Lot #	Max. BUA (ft <sup>2</sup> )
1	4,027	5	3,332
2	3,327	6	3,279
3	3,303	7	3,457
4	3,287	8	3,271
  - g. Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings, is strictly prohibited by any persons.
  - h. Lots within CAMA's Area of Environmental Concern may be subject to a reduction in their allowable built-upon area due to CAMA regulations.
  - i. Each lot will maintain a 30' wide vegetated buffer between all impervious areas and surface waters.
  - j. All roof drains shall terminate at least 30' from the mean high water mark.
  
13. The permittee shall submit a copy of the recorded deed restrictions within 30 days of the date of recording.
14. If the permittee sets up an Architectural Review Committee (ARC) to review plans for compliance with the restrictions, the plans reviewed must include all proposed built-upon area (BUA). Any approvals given by the ARC do not relieve the lot owner of the responsibility to maintain compliance with the permitted BUA limit.
15. Stormwater conveyances will be located in either dedicated right-of-way (public or private), recorded common areas or recorded drainage easements. The final plats for the project will be recorded showing all such required easements, in accordance with the approved plans.

**GENERAL CONDITIONS**

1. Failure to abide by the conditions and limitations contained in this permit may subject the Permittee to an enforcement action by the Division of Energy, Mineral and Land Resources, in accordance with North Carolina General Statutes 143-215.6A to 143-215.6C.
2. The permit issued shall continue in force and effect until revoked or terminated.
3. The permit may be modified, revoked and reissued or terminated for cause. The filing of a request for a permit modification, revocation and reissuance, or termination does not stay any permit condition.
4. The issuance of this permit does not prohibit the Director from reopening and modifying the permit, revoking and reissuing the permit, or terminating the permit as allowed by the laws, rules, and regulations contained in Title 15A of the North Carolina Administrative Code, Subchapter 2H.1000; and North Carolina General Statute 143-215.1 et. al.
5. The permit is not transferable to any person or entity except after notice to and approval by the Director. The Director may require modification or revocation and reissuance of the permit to change the name and incorporate such other requirements as may be necessary. A formal permit request must be submitted to the Division of Energy, Mineral and Land Resources accompanied by the appropriate fee, documentation from both parties involved, and other supporting materials as may be appropriate. The approval of this request will be considered on its merits, and may or may not be approved.
6. The permittee is responsible for compliance with all permit conditions until such time as the Division approves the permit transfer request. Transfers to third parties by the permittee where the required documentation has not been submitted to the Division does not relieve the permittee of responsibility for transferring the permit.
7. The issuance of this permit does not preclude the Permittee from complying with any and all statutes, rules, regulations, or ordinances which may be imposed by other government agencies (local, state and federal) which have jurisdiction. If any of those permits result in revisions to the plans, a permit modification must be submitted.
8. The permittee grants permission to DENR Staff to enter the property during business hours for the purposes of inspecting the stormwater management system and it's components.
9. The permittee shall notify the Division of Energy, Mineral and Land Resources of any name, ownership or mailing address changes within 30 days.

Permit revised and transferred this the 17th day of December, 2014.

NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION



-----  
for Tracy Davis, P.E., Director  
Division of Energy, Mineral and Land Resources  
By Authority of the Environmental Management Commission

**Permit Number SW8 050127**

# **THE PALMS AT BOCA BAY RULES AND REGULATIONS**

Updated 30 January 2023

All homeowners in the Palms at Boca Bay are expected to review, understand, and abide by these Rules and Regulations. The PBB Rules and Regulations may not cover every potential rule or regulatory situation that may arise within the community. Projects and activities requiring a Certificate of Approval (COA) from the Board of the Palms at Boca Bay Homeowner's Association are noted. (See Section 4.07 in the PBB Design Guidelines for information on proposed projects where like-for-like replacements are proposed for items that were part of the original construction of the townhome or that have been previously approved by the Board.)

Questions homeowners may have regarding the Rules and Regulations should be directed to any member of the Architectural Review Committee (ARC).

## **1. Air Conditioners and Heat Pumps**

Replacement of units must be with those of similar or higher quality. Sound levels of outdoor replacement units should be the same or lower than original. Replacement units should fit within the existing confines of the current support structure. Window air conditioning units are not allowed.

## **2. Barbecue Grills (COA Required for Permanent Barbecue Grills)**

Portable electric grills are not restricted. Gas and charcoal grills may be stored under the home but should be moved to at least 10 feet of any home when in use for fire safety.

Permanent barbecue grills (charcoal grills on a permanent post) require a COA. Permanent grills must be located greater than 10 feet from any part of the townhome structure.

## **3. Doors and Windows**

Replacement doors and windows must be the same style, color, and material as the original.

Door hardware must be of a brushed nickel finish and of the same style or similar style as the original door hardware.

Front storm doors must be the same color as the entry door, full view, straight forward, clear, unfrosted, uncolored glass and without ornamentation. The frame must be the same color as the entry door or the immediately surrounding trim.

Screen Doors are allowed on deck doors only. The frame must be the same color as the deck door and the surrounding trim. Screen doors must be consistent in appearance.

Glazing treatments of windows should not change the outward appearance of windows on the front of the house.

**4. Exterior Lighting**

New lighting fixtures or replacement lighting fixtures must match the existing lamp styles. Lighting may not be directed or shine off the lot on which it is installed.

All light bulbs or other LED lights installed in any fixture located on the exterior and any building or any lot shall not exceed original fixture brightness and “soft white” color. Lighting must be within the color range of 2700-3000 K for LEDs.

**5. Exterior Painting (COA Required)**

No change to the original colors is allowed for siding and trim colors. The original paint is Sherwin Williams Oyster Bay (color 6206) for siding. Trim must be Sherwin Williams Super White (Gloss). Both siding and trim must be Sherwin Williams Duration line of paints.

Wooden or Trek (composite) steps and decks may be natural, painted with neutral, “driftwood,” or other wood-colored stains. Bright or inappropriate colors are prohibited.

Decks can be left natural, TREK/composite, stained or painted.

**6. Gutters & Downspouts (COA Required)**

Replacement gutters and downspouts must match the white color and design of the originals. Additions, modifications, or extensions are prohibited unless specifically approved by the Board. When replacing gutters and downspouts, it will be important to include in the COA application how the installation will prevent drainage from impacting neighboring properties.

**7. Hurricane Shutters and Preparation (COA Required)**

Hurricane shutters may be installed. Exterior permanent shutters on the windows of the house may be white Bahamas style, white roll up/down hurricane shutters, white louvered shutters, or clear Lexan.

Temporary shutters, boards, or barriers applied to windows for protection against a storm or hurricane are allowed. Temporary

shutters, boards, or barriers applied to windows for protection against a storm or hurricane must be removed within 30 days after a storm passes. Homeowners (Units 200A and 200B) with original developer provided hurricane shutters can keep shutters affixed throughout the hurricane season.

Hurricane and Tropical Storm Preparedness – **All items not permanently attached to the buildings must be secured inside the building 24 hours before any potential hurricane or tropical storm is projected to begin impacting the area. (This includes chairs, tables, plants, etc. Kayaks, canoes and any other recreational items must be anchored or securely tied down).** All propane tanks must be turned off and secured. When evacuating the home, water shall be turned off at the shut-off valve located in the storage unit beneath each townhome.

#### **8. Landscaping & Gardens (COA Required)**

Changes may be made to the landscape plans initially made by the builder if approved by the Board. Additional plantings or changes in landscaping may be allowed in the front yard between the foundation and front sidewalk. These may include plantings around the mailbox or in existing beds. Owners are allowed to trim tree limbs if they are in contact with the home or windows, are encroaching onto decks or under the carport, and/or for painting of the home.

Well-maintained plants in planters and pots are allowed. Side and back yard plantings consistent with the indigenous vegetation of the coastal environs are not subject to approval. Small flowering annual and/or perennial plantings are also allowed. The landscaper will not maintain these plantings.

Retaining walls, as deemed appropriate by the Board, are allowed.

Repair or improvement of driveways must be like-for-like or otherwise be approved by the Board. (See Section 4.07 in the PBB Design Guidelines.)

The following are not allowed (except in cases where it was a part of the original construction or otherwise has been approved by the Board):

- Rocks, bricks or landscaping blocks to outline driveways, walkways, landscaping beds, or property lines.
- Crushed stone or gravel to outline mulch landscape beds.
- Compost piles.
- Fencing of any type.

**9. Mailboxes and House Numbers**

The replacement and maintenance of mailboxes and house numbers are the responsibility of homeowners as noted in the PBB By-Laws. Mailbox and/or house number replacement must be the same as the original mailbox and house number. The mailbox post must be maintained in its original color and style. House numbers shall be black and a minimum of 6 inches in height to meet local requirements.

**10. Window coverings**

All drapes, curtains or other similar materials hung in windows or in any manner that is visible from the street shall be of a white or neutral background or material.

**11. Watercraft**

PBB owners of motorized watercraft that are utilized in proximity to the neighborhood must abide by the rules and regulations established by the North Carolina Wildlife Resources Commission. Watercraft must be operated in a manner that does not present a hazard to other homeowners. Watercraft noise cannot inconvenience other homeowners. All motorized watercraft and watercraft trailers may only be parked or stored under the footprint of the townhome. Non-motorized watercraft such as paddleboards, kayaks, and canoes must either be kept or stored under the footprint of the townhome or on a pier or dock.

**12. Clotheslines**

Clotheslines or other exterior drying apparatus are not allowed. Towels and bathing suits may be hung temporarily from back decks only.

**13. Appliances and Furniture**

Appliances and furniture meant for indoor use may not be placed on any deck.

**14. Pets**

- Pets are not allowed to run free and must be properly leashed and/or personally escorted anytime they are not within the home.
- No pet enclosures or dog runs are allowed.
- Dogs may **NOT** be tied outside without supervision.
- No animals other than household pets shall be kept or maintained on any lot or in any dwelling. Wild animals, poultry, or livestock of any kind or animals raised for commercial purposes are strictly prohibited.

**- OWNERS MUST CLEAN UP AFTER THEIR PETS AT THE TIME OF THE EVENT.**

-If any pet shall be determined by the HOA Board to be a nuisance, the Board shall have full authority to have such pet permanently expelled from the properties.

**15. Flags and Flagpoles**

Flags exceeding 6' x 4' are not allowed. Flags must be ornamental, seasonal, military, national, or state/governmental. Periodically flying a flag for favorite sports teams is allowed. No banners are permitted with the exception for national holiday banners. Freestanding flagpoles are not allowed.

**16. Vehicles**

No inoperable vehicles or vehicle without current registration and insurance will be permitted on the premises. The Board shall have the right to have all such vehicles towed away at the owner's expense.

Parking is not allowed on sidewalks, lawns, or under a neighbor's home without prior permission. Impeding access to driveways and mailboxes is not allowed. Owners must notify the HOA if temporary parking is needed for construction vehicles. No overnight construction vehicle parking is allowed.

No campers, motor or mobile homes, or similar type vehicle shall be permitted to remain on any property or in parking spaces. If temporary parking (visitor, new purchase etc.) is required, the owner should contact a member of the Board by email providing details and requesting approval.

**17. Noxious or Offensive Activity**

No noxious or offensive activity shall be conducted upon any lot, nor shall anything be done thereon, which may be or may become an annoyance or nuisance to the neighborhood.

**18. Recreation/Play Equipment**

No permanent recreation or play equipment is allowed. All recreation or play equipment must be stored daily.

**19. Satellite Dishes (COA Required)**

Satellite dishes are not allowed in front of buildings unless the provider submits a letter stating that this is the only location for acceptable quality of signal. Satellite dishes that are larger than one meter in diameter are prohibited.

**20. Storage Sheds (COA Required)**

Storage sheds are not allowed. However, the space under the steps and the area attached to the carport shower may be allowed for storage when consistent in design with prior approved storage projects but must be approved by the Board.

**21. Tents, Canopies, Awnings**

No tents, canopies, or awnings are allowed.

**22. Garbage and Recycling Receptacles and Storage**

All garbage and recycling waste stored outside of the home must be properly kept in containers approved and provided by the Town of Surf City and kept under the footprint of the townhome when not beside the street for pick-up. A maximum of two garbage cans and one recycle can are allowed per townhome.

**23. Fireworks**

Fireworks are not permitted within the confines of the Palms at Boca Bay.

**24. Security Cameras**

Security cameras are allowed inside and outside of any townhome.

**25. Roofing (COA Required)**

The roofing color shall be Elk, Weatherwood, or similar color. Metal roofing may be allowed, provided that both homeowners of the combined housing unit submit a COA application and install the roofs simultaneously. The color of the metal roofing must be compatible to the Elk, Weatherwood, or similar color that is required for shingle roofs.

**26. Attic Fans (COA Required)**

A Certificate of Approval is required for attic fans where any portion of the fan is visible or extends through the exterior wall or roof. Attic fans or other mechanical devices necessitating penetration of the roof must be as small as functionally possible and must match the roof, siding, or trim color. They must be located on the backside of the roof and not extend above the ridgeline.

**27. Naming of Homes**

Homeowners are allowed to aesthetically decorate the upper landing of the front entrance steps by placing a "home name" or other decorative plaque on the wall facing the street. Home names

or decorative plaques may not be greater in size than 3 feet by 3 feet.

**28. Hazardous Activities**

Nothing shall be done or kept in any Townhome or in the Common Elements which will negatively impact the public health, safety, or welfare of the Palms at Boca Bay Community.

**Other Projects Requiring a Certificate of Approval**

In addition to the items noted above, there are other activities or projects that may be proposed within the Palms at Boca Bay that may require special attention due to their possible complexity and potential impact to neighboring properties. Examples of such projects include:

- **Excavations, Changes of Grade and Drainage**
- **Piers and Docks**
- **Modification of Decks**

Additional information regarding these types of projects or activities is located in Section 6 of the PBB Design Guidelines.

Questions by homeowners regarding these or other proposed activities should be directed to a member of the PBB Architectural Review Committee.

Prepared by and after recording return to:  
Spencer & Spencer, P.A. (RBT)  
226 East Main Street, Suite 200  
Rock Hill, South Carolina 29731

STATE OF NORTH CAROLINA )  
 )  
COUNTY OF PENDER )

**FIRST AMENDMENT TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR BOCA BAY RECREATION CENTER**

**THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BOCA BAY RECREATION CENTER** (this "Amendment") is made effective and delivered as of the 27<sup>th</sup> day of August, 2020 (the "Effective Date") by **SLA SURF CITY, LLC**, a South Carolina limited liability company with an address of 312 N. White Street, Fort Mill, SC 29715 (P.O. Box 1449; 29716) Attention: President ("Declarant"), **THE OAKS AT BOCA BAY HOA, INC.**, a North Carolina non-profit corporation with an address of 312 N. White Street, Fort Mill, SC 29715 (P.O. Box 1449; 29716) Attention: President ("Oaks HOA") and **THE PALMS AT BOCA BAY HOA, INC.**, a North Carolina non-profit corporation with an address of P.O. Box 250, Hampstead, NC 28443 Attention: President ("Palms HOA") (Declarant, Oaks HOA and Palms HOA may each be referred to herein as a "Party" and collectively as the "Parties").

**Recitals**

A. Declarant owns that certain parcel of land being described on **Exhibit A** attached hereto and incorporated by this reference located along South Boca Bay Lane in the Town of Surf City, Pender County, North Carolina, together with the improvements and fixtures thereon ("Property").

B. The Property is included in the definition of the "Properties" as defined in the Declaration and, as of the Effective Date, is the only property subject to that certain Declaration of Covenants, Conditions and Restrictions for Boca Bay Recreation Center recorded on May 20, 2010 in Book 3774, Page 0002 in the Office of the Register of Deeds for Pender County, North Carolina ("Declaration").

C. Prior to the Effective Date, Oaks HOA and Palms HOA were the only Members of the Association. From and after the Effective Date, Declarant shall also be a Member of the Association as described below in this Amendment.

D. Pursuant to Article VI, Section 3 of the Declaration, amendments to the Declaration require the recording of an agreement by the unanimous vote of Oaks HOA and Palms HOA.

E. The Parties satisfy all of the requirements in order to amend the Declaration as set forth above, and the Parties now desire to amend the Declaration as set forth herein.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

1. **Recitals Incorporated Herein; Defined Terms.** The above recitals are incorporated in and made a part of this Amendment as fully as if set forth verbatim herein. All capitalized terms used but not defined herein shall have the meanings given them in the Declaration.
2. **Recitals.** The second paragraph under the “WITNESSETH” section of the Declaration is hereby amended to add the phrase “and duplex” after the phrase “single family”.
3. **Article I, Definitions.** Article I of the Declaration is hereby amended as follows:
  - a. Article I, Section 3 of the Declaration is hereby amended to add the following: “Wherever the term Board of Directors or Board is used herein and referring to action or actions which may be taken by the Board, such term shall mean such authority is delegated to the Board and such actions are taken by the Board on behalf of the Association.”
  - b. Article I, Section 5 of the Declaration is hereby amended to add the following: “Common Area may also include any easements or other rights for use of property that is not located on the Properties.”
  - c. Article I, Section 7 of the Declaration is hereby amended to delete “LJM Ventures, LLC, a North Carolina limited liability company” and replace it with “SLA SURF CITY, LLC, a South Carolina limited liability company.”
  - d. Article I, Section 8 of the Declaration is hereby amended by deleting the existing language and replacing it as follows: “**Section 8.** “Declarant Control Period” shall mean and refer to the period of time during which the Declarant may appoint and/or remove members of the Board of Directors of the Association and exercise Declarant rights under the Declaration. The Declarant Control Period shall terminate upon the earlier to occur of the following:
    - i. December 31, 2038; or
    - ii. Written relinquishment or transfer of all Special Declarant Rights.”
  - e. Article I, Section 9 of the Declaration is hereby amended by adding the following language after “The Palms at Boca Bay HOA, Inc.”: “and during the Declarant Control Period,

Declarant shall be a Member, with each having such rights, obligations and powers as may be provided in the Declaration.”

- f. Article I of the Declaration is hereby amended by adding the following: “Section 12. “Lot” shall mean and refer to a lot located in either The Oaks at Boca Bay or The Palms at Boca Bay.”

4. **Article II, Property Rights.** Article II of the Declaration is hereby amended as follows:

- a. Article II, Section 1(b) of the Declaration is hereby amended by deleting in its entirety the sentence which begins with the following “However, no such dedication or transfer shall . . . .”
- b. Article II, Section 2 is hereby amended by deleting the first sentence and replacing it with the following: “Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family or his tenants who reside on the Property.”

5. **Article III, Membership and Voting Rights.** Article III of the Declaration is hereby amended as follows:

- a. Article III, Section 1 is hereby deleted in its entirety and replaced with the following: “Section 1. The Oaks HOA and Palms HOA shall be the Members of the Association, and during the Declarant Control Period, Declarant shall be a Member of the Association, with each having such rights, obligations and powers as may be provided in the Declaration.”
- b. Article III, Section 2, Class A, is hereby amended by adding the following sentence: “Except as to voting on Board of Directors, each Member shall either cast all votes in favor or against any matter being voted upon based upon whether the majority votes by the members of each Member was in favor of or against such matter. Each Member shall designate one person who shall be entitled to cast all of the votes of such Member at a meeting. The number of votes for Oaks HOA shall include any lots owned by Declarant even though Declarant shall also have the right to cast separate votes based on the number of lots owned by Declarant as provided to the Class B Member.”
- c. Article III, Section 2, Class B, is hereby amended by deleting the second sentence and replacing it with the following: “The Class B Membership shall cease and Declarant’s membership in the Association shall terminate upon the happening of either of the following two events, whichever occurs first:”.
- d. Article III, Section 2, Class B. is hereby amended by deleting paragraph (a) under Class B.
- e. Article III, Section 2, Class B. is hereby amended by deleting paragraph (b) and replacing it with the following: “(b) on December 31, 2038; or”

6. **Article IV, Covenant for Maintenance Assessments.** Article IV of the Declaration is hereby amended as follows:

- a. Article IV, Section 1 of the Declaration is hereby amended by adding the following language: “In addition, each Member hereby authorizes the Association, and any management company which is hired by the Association, to collect Assessments directly from each Owner. Notwithstanding the foregoing, unless the Association elects to have itself or a third party management company make such collections, each Member shall be responsible for collection and enforcing payment and collection from each of the Owners in the subdivision of which they are the homeowner’s association and nothing contained herein shall eliminate each Member’s obligation to pay Assessments for such Owners.”
- b. Article IV, Section 2 of the Declaration is hereby amended by adding the following: “Assessments may also be used for the repair, maintenance, operation, use, construction and rebuilding of any Common Areas and improvements located thereon as well as all operating expenses, insurance, taxes and utilities.”
- c. Article IV, Section 3 of the Declaration is hereby amended as follows:
  - i. By deleting the first sentence thereof and replacing it with the following: “The first Annual Assessment shall be determined by the Declarant and commence on a date as determined by Declarant.”
  - ii. By adding the following sentences: “Notwithstanding anything else contained herein, during the Declarant Control Period, Declarant shall have the sole right to set and approve the Annual Assessment with no approval of the Members being required provided however, in no event shall the Declarant increase any Annual Assessment more than 10% of the prior year’s Annual Assessment without approval of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.
- d. Article IV, Section 4 of the Declaration is hereby amended by deleting the following language: “provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose” and such language is replaced with the following: “provided that any such Special Assessment is deemed reasonably necessary by the Declarant during the Declarant Control Period and after the Declarant Control Period any such Special Assessment shall have the assent of a majority of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.”
- e. Article IV, Section 6 of the Declaration is hereby amended as follows:
  - i. By deleting the first sentence thereof and replacing it with the following: “The Assessments provided for herein shall commence on a date as determined by the Declarant.”
  - ii. By adding the following sentence: “Notwithstanding anything else contained herein, during the Declarant Control Period, Declarant shall have the sole right to set and approve the Annual Assessments and Special Assessments in such amounts as Declarant may determine in its sole discretion.”
- f. Article IV, Section 7 of the Declaration is hereby amended to add the following: “In addition to the foregoing, any Owner who fails to pay their respective Member their share of dues owed to the Association shall have no right to use any of the Common Areas or the Property

until such time as all owed Assessments are paid and shall have no right to use any of the Common Areas or the Property until such Owner pays all applicable Assessments to the Association.” ”

- g. Article IV, Section 8 of the Declaration is hereby amended by deleting the first sentence thereof and replacing it with the following: “At the time of a sale to an Owner, after the Effective Date of this Amendment, within either The Oaks at Boca Bay or The Palms at Boca Bay and each resale thereafter, Oaks HOA or Palms HOA, as applicable, shall collect a sum equal to two (2) months of the existing Annual Assessment from the purchaser of such Lot and transfer such amounts to the Association as working capital. Any purchaser of a Lot (and its guests and tenants) who refuses or fails to pay such working capital contribution shall have no right to use the Common Areas or the Properties unless Declarant determines otherwise in its sole discretion.”
- h. Article IV of the Declaration is hereby amended by adding a new section 9 as follows: “Section 9. Notwithstanding anything contained herein, although the Declarant is a Member, the Declarant shall not pay any Assessments provided under this Declaration. Wherever language in the Declaration refers to a Member paying any assessment, such language shall not include the Declarant. In addition, notwithstanding anything provided under the Declaration, no Assessments shall be imposed against: (i) the Oaks HOA for any Lot owned by Declarant during the period of time Declarant owns such Lot; or (ii) any Lot owned by Declarant during the period of time Declarant owns such Lot. During the period of time Declarant owns one or more Lots and subject to further limitations described in Section 11 of the Amendment, the Assessments shall be in proportion to the number of votes Palms HOA has in the Association and the number of votes Oaks HOA has in the Association minus the number of Lots owned by Declarant within The Oaks at Boca Bay at such time as Assessments are imposed.”

7. **Article V, Easements.** Article V of the Declaration is hereby amended as follows:

- a. Article V, Section 1 of the Declaration is hereby amended by: (1) deleting the following from the first sentence: “Easements for the installation of” and replacing it with “Easements for the installation and”; and (2 ) adding the following after the word “driveways”: “roads and road related infrastructure”.
- b. Article V, Section 3 of the Declaration is hereby amended to add the following: “Notwithstanding the foregoing, any Owner who fails to pay their respective Member their share of Assessments or working capital contribution shall have no right to use any of the Common Area or the Property until such time as all owed Assessments, working capital contribution or other sums owed hereunder are paid.”

8. **Article VI, General Provisions.** Article VI of the Declaration is hereby amended as follows:

- a. Article VI, Section 3 of the Declaration is hereby deleted in its entirety and replaced with the following: “During the Declarant Control Period, Declarant reserves the sole right, without the consent of any other Member, to do the following: (a) amend this Declaration for the purpose of curing any ambiguity or any inconsistency between the provisions contained

herein; (b) amend this Declaration as to any provision contained herein for which the Declarant reserved amendment rights; and (c) amend this Declaration in any way which does not adversely affect the substantive rights of any existing Member. The foregoing amendments may be made without the approval of any Member, mortgagee, or the Association. Except as expressly provided in this Declaration, the covenants, conditions and restrictions contained in this Declaration may be amended at any time and from time to time by a written agreement signed by the Members to which at least a majority of the votes in the Association are allocated; provided, any such amendment during the Declarant Control Period shall require Declarant's prior written consent. Any agreement to amend this Declaration shall be in recordable form and shall be recorded in the Office of the Register of Deeds for Pender County, North Carolina.

- b. Article VI, Section 6 of the Declaration is hereby amended to add the following after the word "Common Area": ", including but not limited to the clubhouse,".
- c. Article VI, Section 7 of the Declaration is hereby amended to delete the following language: "With the approval of Pender County."
- d. Article VI, Section 14 of the Declaration is hereby amended to delete "at least sixty-seven (67) percent of the Members" and replace it with "at least a majority of the votes in the Association".

9. **Assessment Abatement.** Declarant agrees not to impose any Assessments against the Owners related to costs and expenses incurred by Declarant or the Association for work performed on the Boca Bay Recreation Center ("Recreation Center Costs") prior to September 1, 2019. Declarant agrees to be responsible for the Boca Bay Recreation Center Costs prior to September 1, 2019.

10. **Association.** The Association was previously incorporated but no Bylaws have been adopted nor have any other actions been taken by the Association. The Declarant or the Board of Directors appointed by the Declarant are hereby authorized to amend the articles of incorporation to add the Declarant as a Member, to change the registered agent and to complete the organization of the Association, including but not limited to adopting the initial Bylaws of the Association and appointing the initial officers and directors of the Association ("Association Setup"). No approval or vote of the other Members other than Declarant shall be required in order for Declarant or the Board of Directors appointed by the Declarant to approve and complete the Association Setup.

11. **Assessments for Boca Bay Recreation Center.** Declarant and the Association agree that the Oaks HOA and the Palms HOA have each agreed to allow certain existing Owners, which Owners have been determined as of the Effective Date (each being a "Non-Recreation Owner"), to opt out of the use of the Common Area and Properties and opt out of paying Assessments for the Association during such period of time as that Non-Recreation Owner is an Owner, provided however, any Non-Recreation Owner shall not be allowed to use the Common Area or the Properties. If any Non-Recreation Owner uses the Common Area or Properties, such Non-Recreation Owner shall thereafter be subject to Assessments for the Association and shall no longer have the option of opting out of paying Assessments for the Association. The exemption provided under this paragraph shall only apply to certain designated Non-Recreation Owners that have been determined as of the Effective Date and disclosed to Declarant. All Owners acquiring title to any Lot after the Effective Date shall be required to pay Assessments towards the Association and shall not be allowed to opt out of such Assessments regardless of whether such Lot

was previously owned by a Non-Recreation Owner. The Oaks HOA and the Palms HOA shall not be required to pay dues to the Association for a Non-Recreation Owner unless and until such Non-Recreation Owner becomes subject to Assessments as provided under this section.

12. **Stormwater Provisions.** Article VI, Sections 4 and 5 of the Declaration impose certain stormwater related conditions, provisions and restrictions including but not limited to those provisions and restrictions under permit number SW8050552 (collectively, "Stormwater Provisions"). Declarant reserves the right to delete, alter and amend any Stormwater Provisions under the Declaration including but not limited to any terms and conditions of **Exhibit B** to the Declaration.

13. **Appointment of Declarant; Prior Declarant Obligations.** SLA Surf City, LLC was assigned all rights and interests, if any, as Declarant under the Declaration. The Parties hereby ratify, confirm, approve and appoint SLA Surf City, LLC as the Declarant as such term is defined under the Declaration and as amended by this Amendment. Declarant shall not be required to perform nor have any liability for any matters, any work, obligations or duties of Declarant, or lack of performance thereof, that occurred or should have occurred or arose prior to the Effective Date.

14. **Estoppel as to Property.** The Parties hereby confirm the following with respect to the Property:

- a. The Property is in compliance with and is not in violation of the Declaration;
- b. There are no assessments, special assessments, and other amounts, dues or fees to which the Property is subject under the Declaration currently due and payable and there are no outstanding amounts owed pursuant to the Declaration other than Assessments that the Association began collecting after the date Declarant took title to the Property;
- c. There are no special assessments pending under the Declaration; and
- d. No person or entity is in default under the Declaration.

(As used herein, Property means and includes "Properties" as defined in the Declaration.)

15. **Binding Effect.** The covenants, easements, restrictions, rights, obligations, terms and conditions set forth in the Declaration, as amended by this Amendment shall run with title to the Property, and any part thereof, for the benefit of the Parties, and shall be binding upon, inure to the benefit of, and be enforceable by and against, the Parties and their respective heirs, executors, successors, and assigns. Except as expressly modified herein, the Declaration shall remain in full force and effect.

16. **Representation and Warranties.** Each Party represents, warrants, and covenants to the other that the execution of this Amendment and any other documents required or necessary to be executed pursuant to the provisions hereof are valid and binding obligations, enforceable against such Party in accordance with their terms.

17. **Entire Agreement; Amendment or Termination.** This Amendment, together with the Declaration, contains the entire agreement relating to the subject matter hereof. This Amendment may not be amended except in accordance with the amendment provisions set forth in this Amendment.

18. **Sealed Instrument**. The Parties agree that by signing below, they intend to place their hands and seals upon this Amendment, and that this Amendment shall be considered in every respect to be a sealed instrument.

19. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

20. **Planned Community Act**. Except as required by applicable law, the Parties agree that the Declaration is hereby amended to delete any reference to the North Carolina Planned Community Act ("Act"), and the Declaration is hereby further amended to make clear the Property and the Declaration are not subject to the Act unless otherwise required by applicable law.

[SIGNATURE PAGES ATTACHED HERETO]

IN WITNESS WHEREOF, the Parties have caused their respective duly authorized officer, partner or representative to execute, seal and deliver this Amendment as of the Effective Date.

SLA SURF CITY, LLC a South Carolina limited liability company

Name: RAS  
Title: Vice President

State of South Carolina  
County of York

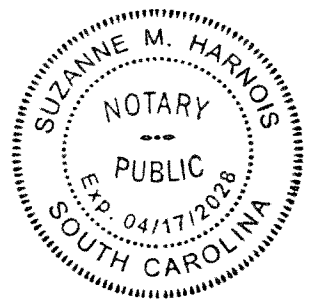
(Official/Notarial Seal)

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

~~Suzanne M. Harnois~~ R. Alexander Sullivan  
Suh

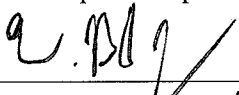
Date: 8/25/20 Suzanne M. Harnois  
Notary Public

My Commission Expires: 4/17/2028



This is to certify that upon proper notice given, a meeting of the Board of Directors of The Oaks at Boca Bay HOA, Inc. was held on 6/30/2020. The purpose of the meeting was to approve of this Amendment. At such meeting, at which a quorum was present, in person or by proxy, The Oaks at Boca Bay HOA, Inc. approved of this Amendment in accordance with and as required by the Bylaws of The Oaks at Boca Bay HOA, Inc.

**THE OAKS AT BOCA BAY HOA, INC.,** a North Carolina non-profit corporation

By: 

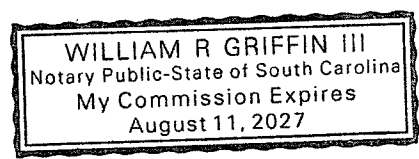
Name: W. Freeman Barber, Jr.

Title: Director

State of South Carolina  
County of Charleston

(Official/Notarial Seal)

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:  
W. Freeman Barber, Jr.



Date: June 30 2020

Notary Public 

My Commission Expires: 8/11/27

This is to certify that upon proper notice given, a meeting of the members of The Palms at Boca Bay HOA, Inc. was held on 18 April 2020. The purpose of the meeting was to approve of this Amendment. At such meeting, at which a quorum was present, in person or by proxy, The Palms at Boca Bay HOA, Inc. approved of this Amendment in accordance with and as required by the Bylaws of The Palms at Boca Bay HOA, Inc.

**THE PALMS AT BOCA BAY HOA, INC.**, a North Carolina non-profit corporation

By: *Kathleen G Sumner*

Name: Kathleen G. Sumner

Title: Secretary, The Palms at Boca Bay HOA, Inc.

State of North Carolina

County of Pender

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

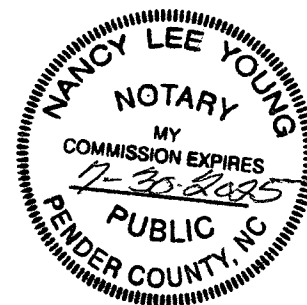
Kathleen G. Sumner

Date: 27 August 2020

*Nancy L Young*  
Nancy L. Young, Notary Public

My Commission Expires: 7-30-2025

(Official/Notarial Seal)



**EXHIBIT A**  
**Property**

Lot 1, The Oaks at Boca Bay, Topsail Township, Pender County, North Carolina, The Town of Surf City.

Commencing at an existing iron rod in the southern margin of an ingress, egress, regress, drainage and utility easement, and being the southwestern corner of Lot 1, The Oaks at Boca Bay, formerly know as The Residences at Boca Bay as recorded in Map Book 45, Page 148 of the Pender County Registry, and being THE TRUE POINT OF BEGINNING: thence from the above described true point of beginning and crossing said easement North 37 degrees 54 minutes 26 seconds West 185.50 feet to an existing iron rod in the normal high water line of Topsail Sound, thence along said normal high water line the following courses and distances: North 19 degrees 04 minutes 26 seconds East 16.65 feet and North 37 degrees 56 minutes 13 seconds East 88.38 feet to an existing iron rod in the normal high water line of Topsail Sound, thence leaving said normal high water line South 47 degrees 36 minutes 28 seconds East 138.21 feet to an existing iron rod in the northern margin of an ingress, egress, regress, drainage and utility easement, thence along said northern margin, North 38 degrees 36 minutes 17 seconds East 75.16 feet to an existing iron rod, thence along the eastern margin of said easement South 47 degrees 36 minutes 28 seconds East 19.20 feet to an existing iron rod in the center of a 25' access and utility easement as recorded in Map Book 38, Page 84 of the Pender County Registry, thence along the center of said easement South 26 degrees 39 minutes 21 seconds West 77.92 feet to a point, thence continuing along the center of said easement South 33 degrees 57 minutes 17 seconds West 72.49 feet to a point in the eastern margin of an ingress, egress, regress, drainage and utility easement, thence along the eastern margin of said easement South 37 degrees 54 minutes 26 seconds East 3.31 feet to a point in the southern margin of said easement, thence along said southern margin South 34 degrees 14 minutes 59 seconds West 63.03 feet to a existing iron rod in the southern margin of said ingress, egress, regress, drainage and utility easement and being the point and place of beginning. Containing 0.533 acres as surveyed by Charles Francis Riggs, P.L.S. L-2981 October 11, 2007. The courses contained within are correct in angular relationship and are referenced to NAD 83 (1986) of the Pender County Registry.



Doc No: 20062441  
Recorded: 04/21/2020 11:03:03 AM  
Fee Amt: \$34.00 Page 1 of 17

Pender County North Carolina  
Sharon Lear Willoughby, Register of Deeds  
BK **4709** PG **1857 - 1873 (17)**

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**AMENDED AND RESTATED BYLAWS OF  
THE PALMS AT BOCA BAY HOA, INC.**

**Adopted by the:  
The Palms at Boca Bay HOA, Inc.  
At the Special Meeting Held on  
18 April 2020**

**KATHLEEN G. SUMNER** ✓

**AMENDED AND RESTATED**

**BYLAWS OF**

**THE PALMS AT BOCA BAY HOA, INC.**

**Adopted 18<sup>th</sup> April 2020**

**At a Special Meeting of the Membership of the Association**

**Article I**

**Name: Principal Office, and Definitions.**

**1.1 Name.**

The name of the corporation is The Palms at Boca Bay HOA, Inc. [Association].

**1.2 Principal Office.**

The principal office of the Association shall be located in Pender County, North Carolina.

**1.3 Definitions.**

**A.** "Act" shall refer to the North Carolina Planned Community Act (N.C. GEN. STAT. § 47F *et seq.*).

**B.** "Declaration" shall mean the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Palms at Boca Bay [Second Restatement] recorded on at Book 4709 at Page 1466-1487 of the Office of the Register of Deeds of Pender County, as further amended from time to time.

**C.** All other definitions are set forth in the Second Restatement or the Act.

**Article II**

**Association Powers, Membership, Meetings, Voting.**

**2.1 Association Powers.**

As set out in section 47F-3-102 of the Act, the powers of the Association are:

**Unless the articles of incorporation or the declaration expressly provides to the contrary, the association may:**

- (1) *Adopt and amend bylaws and rules and regulations;*
- (2) *Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from lot owners;*
- (3) *Hire and discharge managing agents and other employees, agents, and independent contractors;*
- (4) *Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community;*
- (5) *Make contracts and incur liabilities;*
- (6) *Regulate the use, maintenance, repair, replacement, and modification of common elements;*
- (7) *Cause additional improvements to be made as a part of the common elements;*
- (8) *Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47F-3-112;*
- (9) *Grant easements, leases, licenses, and concessions through or over the common elements;*
- (10) *Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than the limited common elements and for services provided to lot owners;*
- (11) *Impose reasonable charges for late payment of assessments, not to exceed the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any assessment installment unpaid and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer;*
- (12) *After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the association (except rights of access to lots) for reasonable periods for violations of the declaration, bylaws, and rules and regulations of the association;*
- (13) *Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the declaration or statements of unpaid assessments;*

- (14) *Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees, and agents;*
- (15) *Assign its right to future income, including the right to receive common expense assessments;*
- (16) *Exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and*
- (17) *Exercise any other powers necessary and proper for the governance and operation of the association.*

N.C. GEN. STAT. § 47F-3-102.

## **2.2 Membership.**

As set forth in Article VI Section 1 of the Declaration:

*Every Owner of a Townhome or lot, which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any townhome or lot, which is subject to assessment.*

The membership rights of an Owner, which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association, provided that only one person may be designated to act in such capacity for such an Owner at any particular time.

Membership in the Association shall be conveyed automatically to Owners upon acquisition of the fee simple title to any one or more Lots. The date of recordation in the Office of the Register of Deeds of Pender County of the conveyance of a particular Lot shall govern the date of ownership of that Lot.

The membership rights of a deceased Owner may be exercised by the properly qualified, under North Carolina law, Personal Representative of the estate of the deceased Owner.

## **2.3 Membership Meetings.**

Meetings of the Association shall be held at a suitable place convenient to the Members as the Board may select.

**A. Annual Meetings and Special Meetings.**

As provided by N.C. GEN. STAT. § 47F-3-108 of the Act:

*A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.*

Special Meetings may be called as set forth above. A Special Meeting shall not satisfy the requirement of the Annual Meeting.

**B. Action Without a Meeting.**

An action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, provided that the Owners of at least two-thirds (2/3) of the Lots consent thereto. Except as provided herein, Members may take no action without a meeting.

**C. Waiver of Notice.**

If a Member fails to receive proper notice of a meeting as set forth above, such failure of notice may be waived in writing or by attendance at the meeting.

At the time any meeting is called to order, the President shall establish that there is no objection to proceed with the meeting on the basis of lack of proper notice.

If a Member objects to proceed with the meeting on the basis of lack of proper notice, and the President rules that proper notice was not given or waived to all Members, then the meeting shall be reconvened following proper notice to all Members.

**D. Conduct of Meetings.**

The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings. The minutes shall be submitted to the Board for approval thereafter. After approval by the Board, all Annual and Special Meeting minutes shall be made available to Members through the method approved by the Board.

**2.4 Voting.**

**A. Proxies.**

Members who are current on all assessments may vote either in person or by agents duly authorized by written proxy. A proxy may only be given to a Member of the Association.

Every proxy, for a specific meeting, shall be in writing specifying the Lot for which it is given, signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to that meeting, for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes for that meeting, which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable by the appearance of the Owner at that meeting.

**B. Majority/Quorum.**

As used in these Bylaws, unless otherwise indicated, the term "majority" shall mean those votes or proxies of Members representing at least fifty-one percent (51%) of the Owners of the Lots.

Except as otherwise provided in these Bylaws or in the Declaration, the presence in person or by proxy of Members representing at least fifty-one percent (51%) of the Owners of the Lots shall constitute a quorum at all Association meetings.

**C. Voting Required to Transact Business.**

The voting rights of the Members shall be as set forth in the Act and in these Bylaws. Where the Act allows, with regard to the voting rights of Members, these Bylaws are intended to take precedence over the Act. In any vote, only one vote per Lot may be cast. In the event of multiple owners of a Lot, **fractional votes may not be cast**; the owners of the Lot will determine among themselves how the vote will be cast.

When a quorum is present at any meeting, unless provided otherwise by the Act or these Bylaws, a majority of the votes entitled to be cast by the Members present, or represented by proxy, shall decide any item brought before the meeting. However, if the item is one upon which, by express provision of the Declaration, the Act, or these Bylaws, a different vote is required, such express provision shall govern.

Once a quorum is established at a meeting, Members may continue to conduct business as long as a quorum is maintained. If a Member must leave prior to adjournment, then the Member should sign a proxy or that member forfeits his/her right to vote on issues that are addressed in his/her absence.

N.C. GEN. STAT. § 47F-3-109 (c) of the Act provides:

*In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the declaration or the bylaws, the quorum requirement at the next meeting shall be one half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.*

### **Article III**

#### **Board of Directors: Selection, Meetings, Powers.**

##### **3.1. Composition and Selection.**

###### **A. Directors.**

**Only an Owner shall be eligible to be a Director.** If an Owner is a corporation, partnership, trust, or estate, the Owner may designate a representative to serve as a Director. In the event of multiple Owners of the same Lot, only one of the Owners or their representative may serve on the Board at a time.

The Board, referenced as Executive Board in the Act, shall consist of five (5) directors, each of whom shall have one vote.

**B. Nomination and Election Procedures.**

Prior to each election of Directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a director may file as a candidate for any position to be filled by votes of the Members. The Board shall also establish such other rules and regulations, as it deems appropriate to conduct the nomination of directors in a fair and efficient manner. Nominations also may be permitted from the floor.

**C. Election and Term of Office.**

Except as these Bylaws may otherwise specifically provide, election of directors shall take place at the Association's annual meeting.

(a) The term of office of a Director elected by the Members shall be two (2) years, unless to fill a vacancy. A Director shall not serve more than two elected consecutive full terms. After the completion of two elected consecutive full terms, a Member may again be eligible for service following at least a one-year break of service as a Director. Directors shall hold office until their respective successors have been elected.

(b) The Association shall publish the names and addresses of all officers and directors within thirty (30) days of their election.

**D. Removal of Directors and Vacancies.**

N.C. GEN. STAT. § 47F-3-103(b) provides for removal of directors as follows:

*Notwithstanding any provisions of the declaration or bylaws to the contrary, the lot owners, by a majority vote of all persons present and entitled to vote at any meeting of the Members at which a quorum is present, may remove any Director of the executive board with or without cause...*

N.C. GEN. STAT. § 47F-3-103(b) provides for vacancies as follows:

*The executive board may not act unilaterally on behalf of the association ... to elect members of the executive board or to determine the qualifications, powers and duties, or terms of office of executive board members, but the executive board may unilaterally fill vacancies in its membership for the unexpired portion of any term.*

**E. Duties, Powers.**

The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, and as provided by law. ***The Board may do or cause to be done on behalf of the Association all acts and things except those, which the Declaration or North Carolina law require to be done and exercised exclusively by the Members or the membership generally.*** The Board shall strive at all times to represent the consensus of the entire Membership.

N.C. GEN. STAT. § 47F-3-103 of the Act that provides that the Executive Board of the Association [**Board**] – except as limited in these Bylaws and the Declaration - may act in all instances on behalf of the Association.

The Duties of the Board shall include, without limitation:

- (a) opening and managing bank accounts, which shall include an Operating Account and a Reserve Account, on behalf of the Association and designating the signatories required;
- (b) keeping books with detailed accounts of the Association's cash receipts, expenditures, and all assets and liabilities in accordance with Section 3.16 of these Bylaws;
- (c) preparing an annual budget of expenses, which generates a positive cash flow, and presenting it at the Annual meeting of the Membership; *(Pursuant to Section 3-103(c) of the Act "The budget is ratified unless at that meeting a majority of all the lot owners in the association or any larger vote specified in the declaration rejects the budget.)* ;
- (d) levying and collect Annual Assessments in monthly installments;
- (e) levying and collecting Special Assessments;
- (f) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (g) depositing all funds received on behalf of the Association in a bank depository which it shall approve; and using such funds to operate the Association; provided, with the approval of the Members at a

meeting of the Membership, any reserve funds may be deposited, in depositories other than banks;

- (h) making and amending use restrictions and rules in accordance with these By-laws and the Declaration;
- (i) making, providing, or contracting for the upkeep and maintenance of repairs, additions, and improvements to or alterations of lawn and landscaping elements and the Common Elements in accordance with the Declaration and these Bylaws;
- (j) enforcing the provisions of the Declaration and instituting proceedings on behalf of the Association;
- (k) responding to regulatory proceedings or legal actions affecting the Association or The Palms at Boca Bay Community,
- (l) to maintain such insurance as the Board deems advisable;
- (m) providing for the payment of expenses incurred by the Association;
- (n) permitting utility suppliers and contractors to use easements reasonably necessary for the ongoing development or operation of The Palms at Boca Bay.

### **3.2 Board Meetings.**

#### **A. Organizational Meetings.**

The first meeting of the Board following each annual meeting of the membership shall be held within thirty (30) days thereafter at such time and place as the Board shall fix.

#### **B. Meetings.**

Meetings of the Board may be held at such time and place as a majority of the directors shall determine, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter.

#### **C. Notice.**

Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each Director.

**D. Telephonic Participation in Meetings.**

Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference calls, or other approved means. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

**E. Quorum of Board.**

At all Board meetings, a majority of the Directors shall constitute a quorum for the transaction of business. Any action taken by the Board requires a minimum of three affirmative votes.

If any meeting of the Board cannot be held because a quorum is not present, a majority of the Directors who are present at such meeting shall recess the meeting to a time not less than five (5) or more than thirty (30) days from the time the original meeting was called, until a quorum is confirmed.

**F. Conduct of Meetings.**

The President shall preside over all meetings of the Board, and the Secretary shall keep minutes of the Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

All minutes, once approved by the Board, shall be provided to all Members.

**G. Members' Opportunity to Attend Board Meetings; Executive Session.**

All Board meetings are open to all Members. However, the Board may place reasonable restrictions on external matters. The President may call an executive session at which time only the Directors may be present, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

**H. Compensation.**

Directors shall not receive any compensation from the Association for Board participation.

Any Director may be reimbursed for budgeted expenses incurred on behalf of the Association upon prior approval of a majority of the other Directors.

Nothing herein shall prohibit the Association from compensating a Director, or any entity with which a Director is affiliated, for services or supplies furnished to the Association in a capacity other than as a Director pursuant to a contract or agreement with the Association, provided that such Director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested Director.

**I. Management.**

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such tasks and services as the Board shall authorize.

**J. Accounts and Reports.**

The Board shall ensure that the Association keeps financial records sufficiently detailed to enable the Association to comply with the Act (N.C. GEN. STAT. § 47F-3-118). The Board by resolution may specifically determine other management standards provided they comply with the Act. Such standards shall include monthly and annual accounting as defined by generally accepted accounting principles.

**1. Operating Account.**

The Operating Account is the account from which the annually recurring budgeted expenses are paid. The sole funding of the Operating Account shall be from the monthly assessment of the Membership, as outlined in the Declaration.

**2. Reserve Account.**

The Reserve Account is the account in which funds are reserved to repair, restore, replace, or maintain major components for which the Membership is responsible. The operating budget shall be established in such a manner that the monthly contribution to the Reserve Account shall be no less than 10% of the annualized gross operating income.

**K. Borrowing.**

The Association shall have the power to borrow money for any purpose; provided, however, the Board shall obtain Member approval, as set forth herein, and in the same manner as provided in the Declaration and the Act.

**1. Limit on External Borrowing from Financial Institutions.**

- a. Any external borrowing of funds recommended by the Board of the Association from financial institutions or other sources must be approved in person or by proxy, by Members having at least 80% of the total eligible votes of the Association, at a meeting of the Members of the Association that included the proposed external borrowing as an agenda item on the notice sent to Members.

**2. Limit on Internal Borrowing of Reserve Funds.**

- a. The use of Reserve Funds may amount to a Special Assessment, thus, approval must be obtained from the Members in the same manner as a Special Assessment.
- b. In an emergency, the Board of Directors, may, in its exercise of prudent fiscal management, recommend internal borrowing from the Reserve Fund, not more than 10% of the Association's budgeted gross expenses for the relevant year.
- c. Any other transfer of funds greater than 10%, recommended by the Board of the Association from the Reserve Account to the Operating Fund or any other fund (**internal borrowing**) must be approved in person or by proxy by Members having at least two-thirds percent of the total eligible votes of the Association, at a meeting of the Members of the Association that included the proposed internal borrowing of Reserve Funds as an agenda item on the notice sent to Members.

**3. Special Assessment.**

A Special Assessment of the Membership is anticipated solely in the event of catastrophic storm damage or as a result of an unexpected and unplanned major expense not budgeted for by the Board of Directors in the annual Operating Budget. Any Special Assessment shall be made in accordance with the procedures set forth in the Act and the Declaration.

**Article IV**  
**Enforcement**

The Association shall have the power, as provided in the Declaration, the Act, and other governing documents and/or regulations to impose sanctions for any violation thereof.

**4.1 Liens for Sums due the Association.**

N.C. GEN. STAT. § 47F-3-116 of the Act establishes a lien on Lots for

any assessment that remains unpaid for thirty (30) days or longer, when a claim of lien is filed in the Office of the Clerk of Court for the county in which the Lot is located. The Act, and other governing documents referenced herein, further set out the process for enforcing a lien.

**4.2. Procedure for fines or suspension of privileges or services.**

By adoption of these Bylaws, the Association has amended the procedure set forth in N.C. GEN. STAT. § 47-3-107.1 of the Act, as referenced in the Second Restated Declaration for imposing fines on an Owner or suspending the privileges or services provided to an Owner, for violation of the Declaration, these Bylaws, or rules and regulations adopted by the Association.

**4.3. Rules and Regulations.**

Rules and Regulations have been established for The Palms at Boca Bay. The Rules and Regulations govern items and issues that ensure a pleasant and well-maintained appearance for the community while also promoting the health, welfare, and safety of PBB residents and guests. The Rules and Regulations may be amended periodically when determined to be necessary by a majority of the members present and voting. Copies of the current Rules and Regulations shall be furnished to each owner of the Association upon request.

**Article V**  
**Committees**

**5.1 General.**

The Board may appoint such committees, as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

**Article VI**  
**Miscellaneous**

**6.1 Fiscal Year.**

The Association's fiscal year shall be the calendar year.

## **6.2 Parliamentary Rules.**

Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association and Board proceedings when not in conflict with North Carolina law.

## **6.3 Conflicts.**

If there are conflicts among the provisions of North Carolina law, the Articles of Incorporation, the Declaration, and these Bylaws – then the provisions of North Carolina law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) shall prevail.

## **6.4 Inspection of Books and Records.**

**A. Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Declaration, the Articles of Incorporation, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within The Palms at Boca Bay as the Board shall designate.

**B. Rules for Inspection.** The Board shall establish rules with respect to: (i) notice to be given to the custodian of the records; and (ii) hours and days of the week when such an inspection may be made; (iii) payment of the cost of reproducing documents requested.

**C. Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the Association's expense.

## **6.5 Notices.**

Except as otherwise provided in the Declaration or these Bylaws, all notices, demands, bills, statements, or other communications under the Declaration or these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or electronically, or if sent by United States mail, first class postage prepaid:

(a) if to a Member or Members, at the address which the Member or Members has designated in writing and filed with the Secretary or,

if no such address has been designated, at the address of the Lot of such Member or Members;

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or

(c) if to any committee, at the principal address of the Association or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

## **6.6 Amendment.**

**A. By Members.** These Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least fifty-one percent (51%) of the Owners of the Lots .

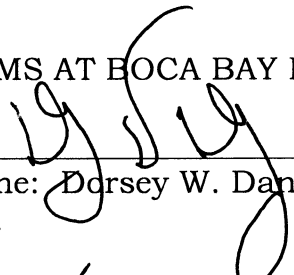
**B. Officers Authorized to Prepare, Execute, and Certify Amendments to the Bylaws.** In the event an amendment to the Bylaws is approved in accordance with these Bylaws, such amendment shall be prepared, executed and certified by the President and Secretary of the Association and shall be made reasonably available to the Members.

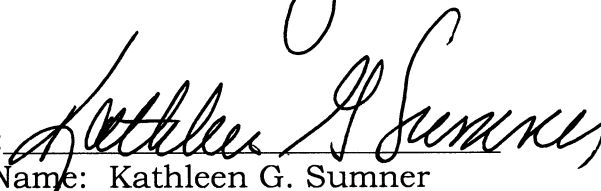
**CERTIFICATION**

I, the undersigned, do hereby certify:

The undersigned, duly authorized officers of the Association, hereby certify that the foregoing Bylaws constitute the Amended and Restated Bylaws of said Association, as duly adopted by a majority of affirmative votes of Members representing at least fifty-one percent (51%) of the Owners of the Lots at a Special Meeting of the Membership of the Association held on the 18th day of April 2020.

THE PALMS AT BOCA BAY HOA, INC.

By:   
Print Name: Dorsey W. Daniel, Jr.  
President

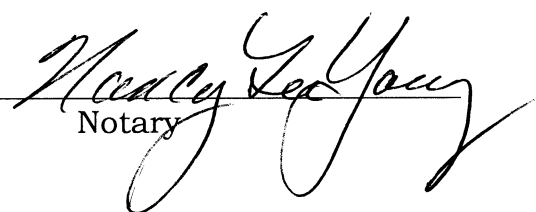
Attest:   
Print Name: Kathleen G. Sumner  
Secretary

STATE OF NORTH CAROLINA  
COUNTY OF PENDER

I, Nancy Lee Young, a Notary Public of the County and State aforesaid, certify that Dorsey W. Daniel, Jr. and Kathleen G. Sumner personally came before me this day and acknowledged that he is the President of The Palms at Boca Bay HOA, Inc., and that by authority duly given and as the act of the corporation, they signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and official seal this 18<sup>th</sup> day of April 2020.



My commission expires: June 6, 2022  
Date

  
Notary

# **THE PALMS AT BOCA BAY DESIGN GUIDELINES**

**Revised 30 January 2023**

***It is the responsibility of every homeowner to review, understand, and abide by the Palms at Boca Bay Design Guidelines.***

## **ARTICLE 1 Design Guidelines**

### **Section 1.01 Introduction**

The Palms at Boca Bay (PBB) benefits from a location of natural beauty and appealing architecture. Owners were attracted by the uniform townhome design characteristics, neighborhood design, landscape features, exterior colors, window, door, and lighting details and other features that distinguish the community. The positive features of the Palms at Boca Bay are preferentially preserved in these Design Guidelines.

### **Section 1.02 Objectives**

The PBB Design Guidelines will provide the following:

- (a) Serve as a guide for the Board of the PBB Homeowners Association (“the Board”), the Architectural Review Committee (ARC), and homeowners seeking to make exterior improvements or modifications to their property.
- (b) Define improvements or modifications which will require a Certificate of Approval Application.
- (c) Define the application process, to include forms and timelines for homeowners seeking approval for proposed projects to improve or modify their property.

### **Section 1.03 Authority**

- (a) The authority for maintaining the quality of design at The Palms at Boca Bay is found in Article XII of the *Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of the Palms at Boca Bay HOA, Inc.* (recorded April 20, 2020).
- (b) The Design Guidelines for the Palms at Boca Bay Homeowners’ Association applies to all existing and future owners.
- (c) The Palms at Boca Bay is a planned development. Surf City and Pender County require the PBB Homeowners Association to administer and enforce the provisions that govern our community.

## **Section 1.04 Modifications**

These Guidelines may not anticipate every improvement or modification situation. These Guidelines may be modified by a majority vote of the Members of the HOA to allow evolution of the document.

## **Section 1.05 Homes in Disrepair**

Nothing in the Design Guidelines will preclude the Board from requiring corrective action for any homeowner who allows their home to fall into a state of disrepair or to allow their home to be in such condition that it detracts from the appeal of the community or that has the potential to negatively impact property values within the neighborhood.

## **Section 1.06 Appeals**

Decisions made by the Board may be appealed to the full membership of the PBB Homeowners Association. Reversal of Board decisions will require a supermajority vote (two-thirds) of the HOA membership.

# **ARTICLE 2 General Considerations**

## **Section 2.01 Design Compatibility**

Projects must replicate original architectural elements or complement them.

## **Section 2.02 Location and Impact**

Projects must relate favorably to the landscape, the existing structure, the neighborhood, and surrounding neighborhood boundaries. Concerns include access, view, sunlight, ventilation, drainage, privacy of adjoining properties, and overall community impact.

## **Section 2.03 Scale**

The size (height, length, and width) of the project must relate well (i.e., does not overwhelm or otherwise appear grossly out of proportion) to adjacent structures and its surroundings.

## **Section 2.04 Workmanship**

Work quality must be consistent with the high-quality construction of the community. It must not, in the judgment of the Board, be visually objectionable, unsafe, or create re-sale problems for owners and neighbors.

## **ARTICLE 3 Architectural Review Committee (ARC)**

### **Section 3.01 Purpose**

The purpose of the ARC will be to serve the Board in a review capacity only for proposed projects submitted by PBB homeowners that will potentially modify or alter the appearance or functionality of the exterior of any townhome or land around any townhome.

### **Section 3.02 Authority**

The ARC will have the authority to recommend approval or disapproval of proposed projects to the Board. The ARC may also request that proposed projects be modified and resubmitted or to request additional information regarding any project before a recommendation can be made to the Board.

### **Section 3.03 Membership**

The ARC will consist of three HOA members appointed by the Board. No two ARC members can reside at the same Boca Bay address. A Board Member cannot serve concurrently on the ARC. If an ARC member resigns, the Board will appoint a replacement.

## **ARTICLE 4 Certificate of Approval (COA) Process**

### **Section 4.01 Projects Requiring Application**

Projects and activities that require a COA Application are listed in the PBB Rules and Regulations (updated 30 January 2023). Projects that require a COA Application and may also require special considerations are noted in ARTICLE VI of this document.

### **Section 4.02 Application Content**

- (a) Applications must include a description of the project to include materials, representative drawings, style, color, etc., as appropriate for each proposal.
- (b) Drawings appropriate to the complexity of the proposed project are required. The ARC or the Board may require additional or modified drawings if deemed necessary for a decision to be made.
- (c) Location of easements (especially access and utility easements) must be designated in scaled site drawings.

### **Section 4.03 Federal/State/Local Permits**

(a) COA Applications should precede applications to pertinent local, state, and federal permitting authorities.

(b) A Certificate of Approval is required for all projects listed in the PBB Rules and Regulations and in Article VI of these Design Guidelines. The COA is independent from local/state/federal permitting authorities. Owners are advised that permits from outside authorities do not confer project approval by the Board.

(c) The owner will submit copies of all required local/state/federal permits to the Secretary of the Board, who will confirm receipt of these documents prior to commencement of construction. Failure to do so will trigger the hearing and fee/fine process outlined in Article V.

### **Section 4.04 Certificate of Approval Owner Responsibility**

Submission of properly completed applications and direct communication with the ARC ensuring receipt of a complete application is the responsibility of the homeowner/applicant.

Homeowners who submit a COA Application where the proposed project may create an objectionable or negative impact on a neighboring property should provide courtesy notification of the project with adjacent neighbors before submitting the application to the ARC. Examples of such proposals would be any potential project that may impede a neighbor's view or block prevailing breezes from a neighboring property.

When a new COA Application is submitted, it is the applicant's responsibility to conform to all relevant local, state, and federal regulations.

Permits from the Town of Surf City, the North Carolina Department of Environmental Quality, Division of Coastal Management (CAMA permits), and/or other local or state agencies do not eliminate the requirement to submit a written application to the ARC and do not override the ability of the Board to deny or require alterations to any project.

### **Section 4.05 Certificate of Approval Application Review Process**

#### **ARC Review**

There must be complete transparency between the ARC, the Board, and the homeowner(s) who submitted the COA Application throughout the review, approval/denial, and project construction process.

COA Applications must be sent to the Chair of the ARC. Incomplete, unsigned, or inadequate applications will be returned to the applicant for revision. Applicants should read the application carefully to ensure that all required documentation is included or attached before submitting the application.

When a complete and proper COA application is received by the ARC Chair, the ARC Chair will document the date of receipt on the application and forward the application to the full ARC. The ARC will have 15 days to submit a recommendation to the Board to either approve or deny the project. However, if the ARC determines that additional information is needed from the applicant or that modifications to the project are necessary before a recommendation can be rendered, the ARC Chair will advise the applicant of what is needed to allow for completion of the review process. A new 15-day review process will begin again when the revised COA Application with the appropriate information/modification is returned to the ARC Chair.

Upon completion of the ARC review, the ARC Chair will submit the COA Application to the Secretary of the Board along with a recommendation to either approve or deny the project. If a recommendation has not been rendered by the ARC at the end of the 15-day review period, the Board will assume that the ARC recommendation is for project approval.

### **HOA Board Review**

The Secretary of the Board will document the date of receipt of the ARC recommendation on the COA Application and forward the application to all members of the Board. Upon receipt of the application and ARC recommendation, the Board will have 15 days to render a final decision unless the Board determines that additional information or modifications to the proposed project are needed. If additional information or project modification are required by the Board, a second ARC review will not be required. The Board will have 15 days to render a final decision upon receipt of the revised project proposal. If a decision is not made by the Board within the 15-day timeline, the project will be considered approved and the homeowner may commence with the project. **All PBB homeowners must consider these timelines when planning a project or activity that requires a Certificate of Approval.**

For projects denied by the Board, see Section 1.06 regarding appeals.

All work proposed in the Certificate of Approval Application must be completed within 180 days of notification to the applicant that the Board has approved the project.

Owners must contact “Miss Utility” at 1-800-257-7777 at least 48 hours before beginning any exterior construction project and allow the required time for the marking of any underground cables and/or pipes.

## **Section 4.06 Replicated Projects**

When replicating projects that have previously been approved by the Board for other homes in the neighborhood, the applicant should note in the COA Application that the project will be the same in size, scope, and nature, as previously approved projects. It is recommended that the applicant cite the address(es) where the project has previously been approved in the Palms at Boca Bay. Submitting a copy of relevant portions of the project diagram from previously approved projects within the neighborhood is acceptable. Any proposed or potential variation from previously approved projects must be noted in the application and on the drawings/diagram. **IMPORTANT:**

**Replicating projects that have previously been approved by the PBB Board do not preclude the owner from submitting a COA Application for the proposed project. Also, each project is evaluated on its particular merits, circumstances, and potential impact on neighbors and the HOA. Prior approval of any specific project does not guarantee approval for replicated subsequent projects elsewhere in the Palms at Boca Bay.**

## **Section 4.07 Like-For-Like Projects**

Projects proposed by PBB homeowners that are entirely comprised of replacing items that were installed as part of the original construction of the home or that have been previously approved by the Board, do not require a COA Application if the proposed project only replaces the original item(s) with the exact same style, size, material, and color item(s). If the same item is no longer available, the homeowner must propose an alternative item that is as close as possible to the same style, size, material and color of the previous item and must submit a COA application to the ARC. Including photos of the new item with the COA application is recommended. An example of a like-for-like replacement is replacing damaged driveway pavers with the same style of pavers as those originally installed, or if applicable, pavers that were previously approved for the townhome by the Board. Questions regarding like-for-like projects should be directed to any member of the ARC.

## **ARTICLE 5 Fees/Fines**

### **Section 5.01 Failure to Obtain Certificate of Approval Prior to Project**

Any homeowner who commences with a project not approved by the Board will be subject to an HOA Board hearing and fine of up to \$100 per day from the date the homeowner began the project. Remediation costs for unapproved work will be at the owner's expense and will NOT be subtracted from the fees that accrue for the violation. The fines are additional expenses.

## **Section 5.02 Construction Not In Compliance With Items Approved by the Board**

(a) All projects are subject to inspection by ARC and Board members during and after completion. Non-compliant construction will prompt a Board hearing if the non-compliance issues are not promptly rectified.

(b) Remediation at owner's expense must occur within 30 days of written notification by the Board.

(c) After 30 days, fines of up to \$100 per day will apply if non-compliance issues are not properly abated.

(d) After 90 days, remediation may be undertaken by the Board. Remediation costs will be re-paid by the owner within 30 days of remediation completion. **Important:** If Board remediation is required, the owner will pay previously unpaid fines as well as the cost of remediation. If not paid within 30 days, the Board may take legal action against the owner.

## **Section 5.03 Construction Without Appropriate Local/State/Federal Permits**

For all projects approved by the Board that also require permits from regulatory agencies, homeowners must submit copies of the relevant permits to the Secretary of the Board prior to beginning construction. Failure to do so will trigger the fine/fees process outlined in **Section 5.01**.

## **ARTICLE 6 Projects Requiring a Certificate of Approval**

All items requiring a Certificate of Approval are listed in the PBB Rules and Regulations. In addition to those items, the proposed activities or projects noted below also require a Certificate of Approval and necessitate special attention due to their possible complexity and potential impact to neighboring properties. Questions by homeowners regarding these proposed activities should be directed to a member of the PBB Architectural Review Committee.

### **Section 6.01 Excavations, Changes of Grade and Drainage**

(a) No proposal will be approved that may result in negative changes to drainage patterns or that will unduly affect neighboring properties, wetlands, or marsh either during or after construction, with the exception of a retaining wall for erosion control. This wall must be 30 feet from the normal high tide marsh line and meet specifications approved by the Board.

- (b) Major excavations and changes of grade that may result in changes to the drainage pattern require a permit from the Town of Surf City.
- (c) All activities that may potentially result in alteration of drainage within the community must meet the provisions of the *Palms at Boca Bay Stormwater Management Permit*. (See Palms at Boca Bay State Stormwater Management Permit No. SW8 050127 in the PBB Governing Documents Welcome Packet.)

### **Section 6.02 Pier/Docks**

- (a) An application for a permit from the North Carolina Department of Environmental Quality, Division of Coastal Management (DCM) and the Town of Surf City along with a Certificate of Approval from the PBB Board are required to build a pier/dock. A copy of the permits from DCM and the Town of Surf City are required to be submitted to the Secretary of the Board prior to commencing construction of the pier or dock.
- (b) In addition to compliance with town and state regulations, the following are required by the Board:
- Color: may be natural, painted with neutral, “driftwood,” or other wood colored stain color. Bright or inappropriate colors are prohibited.
  - Materials: Must be made of treated wood or Trex (composite). Stainless steel nails are required.
  - Covering: Roofs and other shelter coverings are not permitted.
  - Seating: Attached benches are permitted on the observation deck.

### **Section 6.03 Modification of Decks**

No additions or modification of decks may be made unless at least one of the following exceptions are met:

- (a) Screening of back decks may be permitted if approved by the Board. Screening of front decks is prohibited.
- (b) Minimal extensions of back decks may only be permitted in conjunction with the installation of a stairway to the ground that will provide an additional method of egress from the home.