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BY: KELLIE GILES
DEPUTY



2019000961
NEW HANOVER COUNTY, NC
TAMMY THEUSCH BEASLEY
REGISTER OF DEEDS

NC FEE \$26.00

RESTRICTIVE COVENANT FOR WETLANDS

Owner: FDC Amberleigh Shores II SPE, LLC

HUD: United States Department of Housing and Urban Development

Prepared by: Thomas Kelly Derryberry

After Recording, Return to:

Thomas Kelly Derryberry
Peaseley & Derryberry PLC
504 Autumn Springs Ct, Suite 26
Franklin, TN 37067

**RESTRICTIVE COVENANT for
WETLANDS**

PREPARED BY AND AFTER RECORDING RETURN TO:

Thomas Kelly Derryberry
Peaseley & Derryberry PLC
504 Autumn Springs Ct, Suite 26
Franklin, TN 37067

DECLARATION OF RESTRICTIVE COVENANT

This Declaration of Restrictive Covenant ("**Declaration**") is executed as of this 1st day of January, 2019 (the "**Effective Date**"), by FDC Amberleigh Shores II SPE, LLC, a limited liability company organized and existing under the laws of the State of Delaware ("**Owner**").

RECITALS

- A. Owner is the owner of that certain parcel of land located in the County of New Hanover, State of North Carolina (the "State"), which is more fully described on Exhibit A hereto (the "**Property**").
- B. That portion of the Property which is described and/or depicted on Exhibit B hereto contains wetlands as defined at 24 CFR 55.2(b)(11) as depicted on a Survey prepared by Christopher James Gagne, said portion of the Property hereinafter referred to as the "**Wetlands**".
- C. In connection with the financing of the Property through a loan from Berkeley Point Capital LLC d/b/a Newmark Knight Frank, insured by the United States Department of Housing and Urban Development ("**HUD**"), Owner has agreed to establish certain restrictions with respect to the use of the Wetlands that are intended to run with the land as more fully set forth herein.
- D. The purpose of this Declaration is to provide for permanent preservation of the Wetlands, as set forth herein.

NOW THEREFORE, in consideration of the foregoing premises, the making, receiving and insuring of the loan, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner declares as follows:

1. Use Restrictive Covenant.

- (a) From and after the Effective Date, (i) no new structure, paving, or other improvements shall be constructed on, and no new modifications or landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding or seeding, or other similar activities) shall be carried out within the Wetlands; and (ii) the use of the Wetlands shall be limited solely to passive open or green space.

In addition, from and after the Effective Date, (i) no new construction activities, including draining, dredging, channelizing, filling, diking, impounding, flooding, releasing wastes, and related activities that impact the Wetlands shall be performed; and (ii) no exotic species shall be introduced into the Wetlands, except biological controls preapproved in writing by the Army Corps of Engineers local office or the State environmental office. Provided, that the following are expressly permitted: (i) cumulatively very small impacts associated with hunting (excluding planting or burning), fishing, and similar recreational or educational activities, consistent with the continuing natural condition of the Property; and (ii) restoration or mitigation required under law.

- (b) This Declaration and the covenants set forth herein restricting the use and occupancy of the Wetlands (i) shall be and are covenants running with, touching, and encumbering the Property, binding upon the Owner and all successors in interest or title, transferees, vendees, lessees, mortgagees, and assigns who are owners and/or users of the Property, and (ii) are not merely personal covenants of the Owner.

- (c) Any and all requirements of the laws of the State to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and any requirements or privileges of estate are intended to be satisfied, or in the alternate, an equitable servitude has been created to insure that these restrictions run with the land. Each and every contract, deed, or other instrument hereafter executed conveying the Property or portion thereof (excluding instruments granting security interests) shall expressly provide that such conveyance is subject to this Declaration, provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Property or portion thereof provides that such conveyance is subject to this Declaration.

2. Enforcement. In the event of a breach or threatened breach of this Declaration, any party adversely affected by such breach, the county or municipality where the Property is located, the State, or the United States of America shall be entitled to institute proceedings at law or in equity for relief from the consequences of said breach including seeking injunctive relief to prevent a violation thereof. The prevailing party in any such action shall be awarded its costs and expenses, including reasonable attorneys' fees,

which shall be deemed to have accrued on the commencement of such action and shall be awarded whether or not such action is prosecuted to judgment.

3. Superiority. The charges and burdens of this Declaration are, and shall at all times be, prior and therefore superior to the lien or charge of any mortgage or deed of trust hereafter made affecting the Property or any part thereof, including any improvements now or hereafter placed thereon, and notwithstanding a foreclosure or other voluntary or involuntary transfer of title pursuant to such instrument, shall remain in full force and effect, but are subordinate to the security interests of record on the Effective Date. Provided, however, that a breach of any of the restrictions hereof shall not defeat or render invalid the lien or charge of any mortgage or deed of trust. The charges and burdens of this Declaration are not intended to either create a lien upon the Property, or grant any right of foreclosure, to any person or party.
4. Release. Any person or entity having or acquiring fee or leasehold title to the Property or any portion thereof shall be required to comply with this Declaration only during the period such person or entity is the fee or leasehold owner of the Property, and thereafter shall be released therefrom, except that such person or entity shall continue to be liable for, and shall not be released from liability for, obligations, liabilities or responsibilities that accrue or accrued during said period of ownership. Although persons or entities may be released under this paragraph, the restrictions of this Declaration shall continue to be restrictions upon the Property, running with the land, and shall inure to the benefit of, and be binding upon, their successors and assigns in title or interest.
5. Notices. All notices provided for herein may be delivered in person, sent by Federal Express or other overnight courier service, mailed in the United States mail postage prepaid, or sent by electronic or facsimile transmission, and, regardless of the method of delivery used, shall be considered delivered upon the actual receipt or refusal of receipt thereof. The name, address and other information to be used in connection with such correspondence and notices to Owner shall be the then-current owner's name and address information maintained in the official real property tax records with respect to the Property.
6. Miscellaneous.
 - (a) Headings. The headings in this Declaration are for convenience only and do not in any way limit or affect the terms and provisions hereof.
 - (b) Unenforceability. If any provision of this Declaration is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remainder of such provision or any other provisions hereof.
 - (c) Gender. Wherever appropriate in this Declaration, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of certain genders shall be deemed to include either or both of the other genders.

- (d) Governing Law. This Declaration shall be construed and enforced in accordance with the laws of the State.
- (e) INTENTIONALLY OMITTED
- (f) Amendments. This Declaration may be amended or canceled only by written instrument executed by HUD and the then-current owner of the Property.
- (g) No General Public Access. This Declaration does not establish any rights of access in favor of the general public for any purposes whatsoever.
- (h) Entire Agreement. This Declaration constitutes the entire agreement of Owner with respect to the subject matter hereof and supersedes all prior negotiations or discussions, whether oral or written, with respect thereto.

(Signatures appear on following page)

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be signed by its duly authorized representatives, as of the day and year first above written.

OWNER

FDC Amberleigh Shores II SPE, LLC,
a Delaware limited liability company

By: FDC Amberleigh Shores II Member, LLC,
a Delaware limited liability company
Its sole Member

By: Flournoy Development Group, LLC,
a Delaware limited liability company
Its sole Member and Manager

By: [Signature]
Thomas H. Flournoy, President

STATE OF Colorado
COUNTY OF Boulder

I, Shawn Mitchell, a Notary Public of the County and State aforesaid, certify that Thomas H. Flournoy, being either personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged that he is the President of Flournoy Development Group, LLC, a Delaware limited liability company, the sole Member and Manager of FDC Amberleigh Shores II Member, LLC, a Delaware limited liability company, the sole Member of FDC Amberleigh Shores II SPE, LLC, a Delaware limited liability company, and being authorized to do so, voluntarily executed the foregoing instrument for the purposes stated therein.

Witness my hand and official stamp or seal, this 2nd day of January, 2019.

[Signature]
Notary Public

My commission expires: 02/20/22 [Affix Notarial Seal]

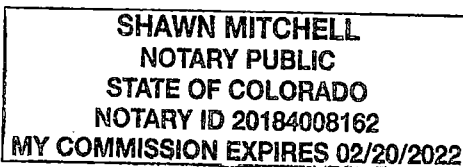


EXHIBIT A**DESCRIPTION OF THE LAND****FEE TRACT ONE**

Being all the 15.240 acre parcel as shown on plat entitled "Recombination Plat Amberleigh Shores-Phase

II" recorded in Plat Book 65, page 355, New Hanover County Registry.

FEE TRACT TWO

BEGINNING at an iron pipe in the southern edge of a dirt road leading westward to US Highway 17, said

pipe being North 89° 15' East 629.38 feet from an old iron pipe, the third corner described in the deed to

J.C. Holt and wife, recorded in Book 521 at page 95, said old pipe being located North 39° 09' West along a Holt line 151.3 feet from an old axle, another corner of said Holt tract, said old pipe also being located South 39° 09' East along a Holt line 515 feet from an iron stake in the southeastern line of U.S. Highway 17; then from said POINT OF BEGINNING, running South 72° 45' East along the southern line of said dirt road 266.7 feet to an iron pipe; then South 17° 15' West 150.0 feet to an iron pipe; then North 72° 45' West 266.7 feet to an iron pipe; then North 17° 15' East 150.0 feet to the POINT OF BEGINNING, consisting of 0.92 acre, together with a right of way or easement 15 feet wide for ingress and egress over and across the present graded dirt road leading from the northeastern corner of the above-described tract westward to U.S. Highway 17, or such other means of ingress and egress as might from time to time be provided in substitution thereof by the purchaser or anyone else at their sole option, being the property conveyed to US Bank National Association, as Trustee, by deed recorded in Book 5881 at page 1654, New Hanover County.

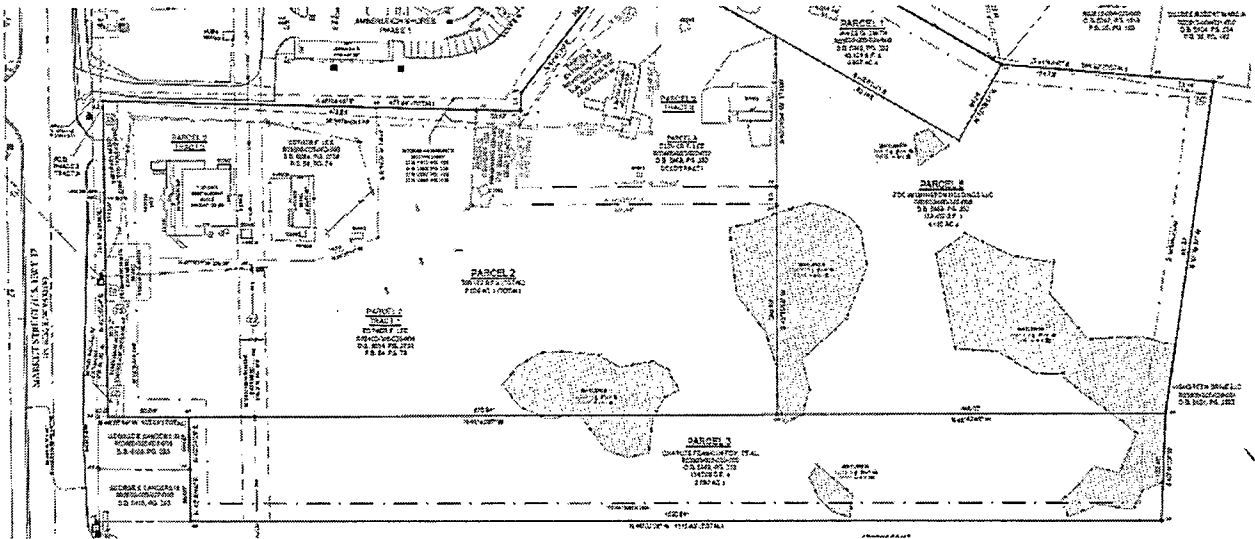
EASEMENT TRACT

TOGETHER WITH easements contained or conveyed in that certain Reciprocal Easement Agreement by and between Amberleigh Shores, LLC and FDC Amberleigh Shores II SPE, LLC, recorded in Book ~~6189~~, page ~~986~~, New Hanover County Registry.

6189 986

EXHIBIT B

(Description and/or Depiction of the Wetlands)



THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS

**Multifamily Deed of Trust, Security Agreement,
Assignment of Rents and Fixture Filing**

(North Carolina)

Borrower: FDC Amberleigh Shores II SPE, LLC
Lender: Berkeley Point Capital LLC d/b/a Newmark Knight Frank
Trustee: Thomas Kelly Derryberry

Prepared by: Thomas Kelly Derryberry

After Recording, Return to:

Thomas Kelly Derryberry
Peaseley & Derryberry PLC
504 Autumn Springs Ct, Suite 26
Franklin, TN 37067

TAMMY THEUSCH
BEASLEY
Register of Deeds

New Hanover County

Register of Deeds

320 CHESTNUT ST SUITE 102 • WILMINGTON, NORTH CAROLINA 28401
Telephone 910-798-4530 • Fax 910-798-7716



State of North Carolina, County of NEW HANOVER
Filed For Registration: 01/10/2019 03:20:42 PM
Book: RB 6189 Page: 1015-1024
10 PGS \$26.00
Real Property \$26.00
Recorder: KELLIE GILES
Document No: 2019000961

DO NOT REMOVE!

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