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NEW HANOVER COUNTY, NC

TAMMY THEUSCH BEASLEY

REGISTER OF DEEDS

NC FEE \$182.00

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS,
AND RESTRICTIONS FOR
MIDDLE SOUND VILLAGE

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL
SIGNS.**

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EXHIBIT "A" - Property
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DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS
FOR
MIDDLE SOUND VILLAGE

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS FOR MIDDLE SOUND VILLAGE ("Declaration") is made this 25th day of July, 2017 by **GHD-MIDDLE SOUND, LLC**, a North Carolina limited liability company (herein referred to as the "Declarant"); **AF-MIDDLESOUND, LLC**, a North Carolina limited liability company ("Lender"); and **ALL PROSPECTIVE PURCHASERS AND OWNERS** of real property within the planned community generally known as "Middle Sound Village."

WHEREAS, Declarant is the owner in fee simple of the real property described in Exhibit "A", which is attached hereto and incorporated herein by reference, and desires to create a planned community pursuant to the provisions of Chapter 47F of the General Statutes of North Carolina and impose upon the Property (as defined in Article 1) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property and establish a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Property; and,

WHEREAS, Declarant hereby declares that all of the Property and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article 1) shall be held, sold, used and conveyed subject to the Act (as defined in Article 1) and to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the desirability of, and which shall run with, the real property subjected to this Declaration. This Declaration shall be binding on and shall inure to the benefit of all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, successors-in-title, and assigns.

Article 1. Definitions.

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "Act": Chapter 47F of the General Statutes of North Carolina designated as the North Carolina Planned Community Act.

1.2 "Articles": The Articles of Incorporation of **Middle Sound Village Association**, as filed with the North Carolina Secretary of State.

1.3 "Assessment": Assessments levied on all Lots to fund the Common Expenses.

1.4 "Association": **Middle Sound Village Association** a North Carolina nonprofit corporation, its successors and assigns.

1.5 "Association Documents": Collectively the Articles of Incorporation of the Association, the Bylaws of the Association, this Declaration, any Supplemental Declaration as may be applicable to separate portions of the Property, the Rules and Regulations, the Design Guidelines adopted by the Association, and any resolutions adopted by the Board, all as may be amended, restated and revised from time to time. Any exhibit, schedule or amendment to an Association Document shall be considered a part of that document.

1.6 "Benefited Assessment": Assessments levied under Section 10.5.

1.7 "Board of Directors" or "Board": The body responsible for administration of the Association selected as provided in the Bylaws.

1.8 "Builder": Any Person who purchases one or more Lots for the purpose of constructing Dwelling Units for resale to consumers in the ordinary course of its business, or who purchases one or more parcels of land within the Property for further development and/or sale resale in the ordinary course of its business.

1.9 "Business and Trade": Shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the family of the producer of such goods or services and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

1.10 "Bylaws": The Bylaws of the Association as they may be amended from time to time.

1.11 "Common Elements": All real and personal property in which the Association now or hereafter owns, leases or otherwise holds possessory or use rights for the common use and enjoyment of the Owners, including easements held by the Association for those purposes. The term shall include, without limitation, signage and/or landscape easements as the same may be depicted on recorded maps of the Property, landscape medians, roads, cul de sacs, lakes, ponds, rivers, streams, wetlands and preservation areas. The term shall also include any and all permits and other such intangible property including, but not limited to, the Stormwater Management Permit. Notwithstanding this definition, to the extent that the provisions of the Act apply to "Common Elements," including without limitation, the provisions of the N.C. Gen. Stat. § 47F-3-112, those provisions shall only apply to Common Elements as defined in the Act.

1.12 "Common Expenses": Any and all expenditures made by or financial liabilities and obligations of the Association, including without limitation ad valorem taxes levied against the Common Elements, together with any allocations to reserves.

1.13 "Community-Wide Standard": The standard of conduct, upkeep, or other activity generally prevailing throughout the Property. The standard shall be established initially by Declarant and thereafter shall be determined by the Board of Directors and the Architectural Committee (as defined in Section 11.2(a)). The standard may contain both objective and subjective elements, and may evolve and change as development progresses and as the needs and desires within the Property change.

1.14 "Declarant": **GHD-Middle Sound, LLC**, a North Carolina limited liability company, or any successor, successor-in-title, or assignee thereof, which has or takes title to any portion of the Property for the purpose of development and/or resale in the ordinary course of business and who is designated as Declarant in a recorded instrument executed by the immediately preceding Declarant.

1.15 "Declaration": This Declaration, any Supplemental Declaration as may be applicable to separate portions of the Property, any exhibit, schedule or amendment thereto, all as may be amended, restated and revised from time to time.

1.16 "Design Guidelines": The architectural, design, development, and other guidelines, standards, controls, and procedures including but not limited to, application and review procedures, adopted pursuant to Article 11 and applicable to the Property.

1.17 "Development Period": The period ending on the earliest of (a) twenty-five (25) years from the date this Declaration is recorded in the Register of Deeds; provided, that if Declarant is delayed in the improvement and development of the Property as a result of a sewer, water or building permit moratorium or other cause or event beyond Declarant's control, then the aforesaid period shall be extended for the length of the delay plus an additional two (2) years upon written notice to the Association of such extension; or (b) the date specified by Declarant in a written notice to the Association that the Development Period is to terminate on that date so stated.

1.18 "Dwelling Unit": Any building or structure or portion of a building or structure situated upon a Lot which is intended for use and occupancy as an attached or detached residence for a single family. The term shall include within its meaning Townhouse Units.

1.19 "Landscaping": Living plants, shrubs, trees, vegetation, ground coverings (including grass and sod) and appurtenant live/growing vegetative materials, straw, mulches, composting materials, pools (other than swimming pools), ornamental ponds, ornamental structures and any other living or non-living material or structure reasonably constituting a part of any or all of the foregoing installed upon a Lot.

1.20 "Limited Common Elements": A portion of the Common Elements allocated by this Declaration or by operation of law for the exclusive use of one (1) or more but fewer than all of the Lots. Limited Common Elements may also be shown on any map of the Project recorded in the Register of Deeds. Limited Common Elements shall include driveways that provide access from the private streets to each Dwelling Unit.

1.21 "Lot": A portion of the Property, whether improved or unimproved, other than Common Elements and property dedicated to the public, which may be independently owned and conveyed and which is separately identified on a map of all or any portion of the Property recorded in the Register of Deeds. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon including but not limited to the Dwelling Unit.

For all purposes set forth in the Association Documents, a Lot comes into existence on the later of recordation in the Register of Deeds of (i) a map or plat depicting said Lot or (ii) a Supplemental Declaration defining and subjecting the proposed Lot to the same and this Declaration.

1.22 "Member": A Person having membership in the Association consistent with Section 3.2 of this Declaration.

1.23 "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.24 "Mortgagee": A beneficiary or holder of a Mortgage.

1.25 "Owner": One or more Persons who hold the record title to any Lot, except Persons holding an interest merely as security for the performance of an obligation in which case the equitable owner will be considered the Owner.

1.26 "Permit": North Carolina Stormwater Management Permit No. SW8 070671 issued for the real property described in Exhibit "A", and any additional North Carolina Stormwater Management Permits, applicable to the Property, and any amendments, additions or replacements thereof.

1.27 "Person": A natural person, corporation, limited liability company, partnership, trust, or any other legal entity.

1.28 "Project": The **Middle Sound Village** development located on the Property.

1.29 "Property": The real property described in Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article 9.

1.30 "Register of Deeds": The office of the Register of Deeds of New Hanover County, North Carolina.

1.31 "Stormwater Management Facilities": All areas consisting of ditches and swales, retention ponds and other improvements which are constructed pursuant to, and regulated by, the Permit.

1.32 "Supplemental Declaration": An amendment or supplement to this Declaration filed pursuant to Article 9 which subjects additional property to this Declaration and

identifies the Common Elements within the additional property, if any, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

1.33 "Townhouse Unit": A structure situated on two Lots which is intended for separate ownership by each Lot Owner and for use and occupancy as two separate attached residences, each for a single family.

1.34 "Upkeep": Care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

1.35 "Use Restrictions": The rules and use restrictions are more fully defined as set forth in Article 12.

1.36 "Utility Company": A public or private company or entity duly licensed and authorized by the North Carolina Utilities Commission to provide utility services within a specified franchise area and any entity providing utility services on behalf of a body politic, municipality or other governmental body or entity.

Article 2. Property Rights.

2.1 Common Elements: Every Owner shall have a right and nonexclusive easement, in common with all other Owners, of use, access, and enjoyment in and to the Common Elements, subject to:

- (a) The Association Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) All applicable provisions of the Act including, but not limited to, the following:
 - (i) The right of the Board to adopt rules, regulations or policies regulating the use and enjoyment of the Common Elements to Owners, their families, lessees and guests, and rules limiting the number of occupants and guests who may use the Common Elements;
 - (ii) The right of the Association to dedicate or transfer all or any part of the Common Elements to governmental entities pursuant to Section 4.3;
 - (iii) The right of the Board to impose reasonable requirements and charge reasonable admission, or other fees for the use of any improvements situated upon the Common Elements;

- (iv) The right of the Board to create, enter agreements with, grant easements to and transfer portions of the Common Elements to tax-exempt organizations under Section 4.9;
 - (v) The right of the Association to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred by the Association; and
 - (vi) The right of the Association to convey or encumber portions of the Common Elements as provided in the Act.
- (d) The right of the Board to suspend the privilege of an Owner to use the Common Elements.
- (e) The right of the Association to rent or lease portions of the Common Elements on a short-term basis to any Owner for the exclusive use of such Owner and such Owner's family and guests.

2.2 Limited Common Elements. Limited Common Element driveways that provide access from the private streets to each Dwelling Unit are allocated to the particular Lot on which the applicable Dwelling Unit is located.

Article 3. Association Function, Membership and Voting Rights.

3.1 Function of Association. The Association shall be the entity responsible for management, Upkeep, operation and control of the Common Elements. The Association shall be the primary entity responsible for enforcement of the Association Documents. The Association shall perform its functions in accordance with the Association Documents and North Carolina law. The Association shall have all powers reasonably necessary to perform its functions and obligations described in the Association Documents including, but not limited to, all powers set forth in Chapter 55A of the North Carolina General Statutes and the Act.

3.2 Membership. Every Owner shall be a Member of the Association. If a Lot is owned by more than one Person, all co-Owners shall be Members and share the privileges of such membership, subject to reasonable Board regulation, such reasonable fees as may be established under Section 2.1, and the restrictions on voting set forth in Section 3.3 and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is a corporation, limited liability company, partnership or other legal entity may be exercised by any officer, director, manager, 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.

3.3 Voting. All Owners shall have one (1) equal vote for each Lot in which they hold the interest required for membership under Section 3.2, provided, there shall be only one (1) vote per Lot.

(a) Declarant may, by Supplemental Declaration, create additional classes of membership for the Owners of Lots within any additional property made subject to this Declaration, with such rights, privileges and obligations as may be specified in such Supplemental Declaration in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

(b) Except as otherwise specified in this Declaration or the Bylaws or as required by law, the vote for each Lot shall be exercised by the Owner. In any situation in which there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such notice to the Association, the Lot vote shall be suspended if more than one Person seeks to exercise it. If the co-Owners are unable to agree on how the vote should be cast, it will be disregarded.

Article 4. Association Rights, Obligations and Services.

4.1 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real estate located within the Property, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Common Elements by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed, including but not limited to restrictions governing the use of such property.

4.2 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by the Association Documents or which may be reasonably implied from, or reasonably necessary to effectuate, any such right or privilege. Except as otherwise specifically provided in the Association Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.3 Dedication of Common Elements. The Association may dedicate or grant easements over portions of the Common Elements to any local, state, or federal governmental entity or any Utility Company.

4.4 Disclaimer of Liability. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to promote the health, safety and welfare of Owners and occupants of any Lot.

(a) Notwithstanding anything contained herein or in the Association Documents or the Act, neither the Association, the Board, the management company of the Association, Declarant nor any successor Declarant shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or occupant of any Lot or any tenant, guest or invitee of any Owner or occupant or for any property of any such Persons. Each Owner and occupant of a Lot and each tenant, guest and invitee of any Owner or occupant shall assume all risks associated with the use and enjoyment of the Property.

(b) Neither the Association, the Board, the management company of the Association, Declarant, nor any successor Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Property. Each Owner and occupant of a Lot and each family member, tenant, guest, and invitee of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines or utility sub-stations and further acknowledges that the Association, the Board, the management company of the Association, Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any family member, tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

(c) No provision of the Association Documents shall be interpreted as creating a duty of the Association, the Board, the management company of the Association, Declarant nor any successor Declarant to protect or further the health, safety or welfare of any Person(s), even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Lot) and each other Person having an interest in or lien upon, or making any use of, any portion of the Property (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands and causes of action against the Association, the management company of the Association, if any, Declarant and any successor Declarant, their directors, officers, committee and Board members, employees, agents, contractors, subcontractors, successors and assigns arising from or connected with any matter for which the liability has been disclaimed.

4.5 Safety. The Association may maintain or support certain activities within the Property designed to provide a greater level of safety than exists within the Property.

(a) Neither the Association, any management company of the Association, Declarant, nor any successor declarant shall in any way be considered insurers or guarantors of safety within the Property. Neither the Association, any management company of the Association, Declarant, nor any successor declarant shall be held liable for any loss or damage for failure to provide adequate safety or ineffectiveness of safety measures undertaken.

(b) All Owners and occupants of any Lot, and all family members, tenants, guests, and invitees of any Owner, acknowledge that the Association, its Board of Directors, and Association committees, the management company of the Association, Declarant, any successor declarant, and the Architectural Committee and the MC (as defined in Section 11.2(b) hereof) do not represent or warrant that any entry gate, patrolling of the Property, neighborhood watch group or volunteer safety patrol, or any safety system that may be designated by or installed according to guidelines established by Declarant or the Architectural Committee or the MC may not be compromised or circumvented; nor that any entry gate, patrolling of the Property, neighborhood watch group or volunteer safety patrol, or any security systems will prevent loss by burglary, theft, hold-up, or otherwise; nor that any entry gate, patrolling of the Property, neighborhood watch group or volunteer safety patrol, or any security

systems will in all cases provide the detection or protection for which the system is designed or intended.

(c) All Owners and occupants of any Lot, and all family members, tenants, guests, and invitees of any Owner, acknowledge and understand that the Association, its Board and committees, the management company of the Association, Declarant, or any successor declarant are not insurers of safety within the Property. Each Owner acknowledges, understands and shall be responsible for informing its tenants and all occupants of its Lot that the Association, its Board and committees, and Declarant are not guarantors of security or safety and that each person using Property within the Project assumes all risks of personal injury and loss or damage to property including Lots, improvements thereon and the contents thereof, resulting from acts of third parties.

(d) All Owners and occupants of any Lot and all family members, tenants, guests, and invitees of any Owner assume all risks for loss or damage to Persons, to Lots, and to the contents of Lots and further acknowledge that the Association, its Board and committees, the management company of the Association, Declarant, or any successor declarant have made no representations or warranties, nor has any Owner, occupant, or any tenant, guest, or invitee of any Owner relied upon any representations or warranties, expressed or implied, relative to any entry gate, patrolling of the Property, neighborhood watch group or volunteer safety patrol, or any security systems recommended or installed or any safety measures undertaken within the Property.

4.6 Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Board, without the consent of the Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to what services and facilities, if any, will be provided by the Association. This paragraph shall be specifically construed to allow the Association to enter into a contract for the overall management of the Association with any individual or corporation. The Association or its managing agent shall also be permitted to provide services to any Owners where it deems it to be in the interest of the Association to do so.

4.7 Change of Use of Common Elements. Upon (a) adoption of a resolution by the Board stating that, in the Board's opinion, a service provided by the Association pursuant to Section 4.6 or the then present use of a designated part of the Common Elements is no longer in the best interest of the Owners or is no longer necessary or appropriate for the purposes intended, and (b) the consent of Declarant during the Development Period, the Board shall have the power and right to terminate such service or change the use of any Common Elements (and,

in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided that any such new use (i) shall be for the benefit of the Owners, and (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Elements.

4.8 View Impairment. Neither Declarant nor the Association guarantees or represents that any view over and across any property, including any Lot, from adjacent Lots will be preserved without impairment. Neither Declarant nor the Association shall have the obligation to prune or thin Landscaping except as set forth in Article 5. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

4.9 Relationship with Tax-Exempt Organizations. The Association may create, enter into agreements or contracts with, grant exclusive and/or non-exclusive easements over the Common Elements to, or transfer portions of the Common Elements to non-profit, tax-exempt organizations, including but not limited to organizations that provide facilities or services designed to meet the physical or social needs of a particular group or class of persons, for the benefit of the Property, the Association, its Members and residents. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense of the Association and included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as but not limited to entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

Article 5. Maintenance.

5.1 Association's Responsibility. The Association shall provide Upkeep for the Common Elements, which shall include, but need not be limited to:

- (a) all Common Elements, all improvements upon the Common Elements, and the Stormwater Management Facilities;
- (b) all Landscaping, signage, and improvements, including any parks, structures, bike, pathways and trails, situated upon the Common Elements;
- (c) all private streets, including any asphalt repairs thereto, within Middle Sound Village;
- (d) all walls and fences constructed by Declarant on any Lots which serve as perimeter walls for the Property or which separate any Lot from Common Elements;
- (e) Rain barrels;
- (f) the twenty-five foot (25') Conservation Overlay District established by New Hanover County;