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NEW HANOVER COUNTY, NC  
TAMMY THEUSCH BEASLEY  
REGISTER OF DEEDS

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STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
OF SUMMER HILL TRACE, SECTION 1

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF SUMMER HILL TRACE, SECTION 1 made this the 23rd day of March, 2020, by NC AVE, LLC, hereinafter referred to as "Developer" or "Owner" or "Declarant".

WITNESSETH:

That Whereas, Owner is the owner of certain property located in New Hanover County, North Carolina as is hereinafter described; and

Whereas, the Owner desires to insure the use of the hereinafter described property for attractive residential purposes only, to prevent the impairment of the attractiveness of the property, to maintain the desired tone of the community, and thereby to secure to each lot owner the full benefit and enjoyment of his or her home with no greater restriction upon the free and undisturbed use of his or her lot than is necessary to ensure the same advantages to the other lot owners;

NOW THEREFORE, the undersigned Owner does hereby covenant, agree, and declare to and with all persons, firms, or corporations owning or hereafter acquiring any lots made subject to this Declaration that all of the properties described herein shall be held, sold, and conveyed subject to the North Carolina Planned Community Act set forth in Chapter 47F of the North Carolina General Statutes, as well as the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the real property, and be binding on all parties having any right, title, or interest in the said properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof, to-wit:

- 1. SCOPE OF DECLARATION This Declaration of Restriction shall apply to all lots in

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SUMMER HILL TRACE, SECTION 1 as shown upon a map recorded in Map Book 67 at Page 366 of the New Hanover County Registry and all successive sections thereto.

2. **LOT USE** No lot located within the subdivision shall ever be used for business, manufacturing, commercial, or professional purposes, it being intended that all lots shall be used for residential purposes only. No mobile home, modular home, or other manufactured housing shall be allowed to be placed, located, or constructed on any of the lots in the subdivision. Houses shall contain a minimum of 1,000 heated square feet, must be built on concrete slab or crawl space, and must be constructed according to ARC Guidelines.

3. **SETBACK REQUIREMENTS** Since the establishment of standard inflexible building setback lines for the location of structures on lots tends to force construction of structures directly to the side of other structures with detrimental effects on privacy, views, preservation of important trees and other vegetation, ecological, and related considerations, no specific setback lines are established by these restriction. In order to assure, however, that the foregoing considerations are given maximum effect, the Owner or its duly appointed agent or agents reserve the right to control and approve absolutely the site and location of any structure upon any lot. All houses must comply with applicable City of Wilmington setback requirements for the subdivision.

4. **TEMPORARY STRUCTURES AND OTHER STRUCTURES** Unless specifically approved in writing by the Owner or the designated agent of the Owner as hereinafter provided, no structure of a temporary character, trailer, tent, shack, garage apartment, barn, or other outbuilding shall be erected on any lot or used as a residence thereon. This restriction shall not be applicable to a temporary construction trailer used by a builder while a residence is being built on the lot, so long as such trailer is not used as a residence or living quarters.

Owner or its designated agent shall approve placement of a structure as herein provided, the structure shall be constructed of the same materials and be of the same design as the residence located on that lot. Should such structure encroach upon any of the common areas or limited common areas, there shall be an easement reserved upon such common areas or limited common areas for the location of such structure as hereinafter provided.

5. **BUILDING DESIGN AND LANDSCAPE PLAN** The design of all buildings erected or moved onto any lot and all landscaping plans shall be subject to the approval of an Architectural Control Committee selected by the Owner, or of some person or persons designated by the Architectural Review Committee to pass upon said designs. The initial committee shall consist of G. Eric Staton and his successors and assigns. This person shall be the only member of the committee, and he shall not be replaced until all of the houses to be built on all lots have been approved and completed, at which time the Association shall appoint the Committee. Upon written request of a lot owner for approval of construction plans and/or landscaping plans, which request shall be by the submission to the Committee of a **full and complete architectural and landscaping package** containing blueprints, drawings, site plans, construction specifications, and such other documents as the Committee may request, the Architectural Review Committee or its duly authorized agent, or such other person or persons who shall have been selected by the Committee, shall have thirty days within which to approve or disapprove such plans. In the event of failure to approve or disapprove such plans within thirty days, such approval will not be required; but the design of the proposed building and the landscaping must be in harmony with the existing structures and landscaping in this subdivision. SUMMER HILL TRACT HOMEOWNERS ASSOCIATION, INC. shall not be responsible for approvals required under this section and, more specifically, shall have no control or authority over building design or landscape design on any of the lots subject hereto.

6. **BUILDING CONSTRUCTION** The construction materials used for any residence or other structure upon any of the lots must be approved in writing by the Architectural Control Committee or by such person or entity as the Architectural Control Committee may direct. No exterior colors may be changed without the written permission of the Architectural Control Committee, or of such person or entity as shall be authorized by the Architectural Control Committee to approve a change of the exterior colors. It is the express intention of the Owner to maintain a uniform plan of development with respect to design, size, type, cost, and general appearance of all structures upon the lots in the subdivision.

Construction activity on a lot within the subdivision shall be confined to the boundaries of the lot. Each Lot owner shall have the obligation to collect and dispose of rubbish and trash resulting from the construction on the lot at such time and upon such schedule as is required by the Architectural Control Committee and to make any repairs to the roads in the subdivision damaged by construction vehicles. All requests for approval of plans and construction of any residence on any lot shall be accompanied by a \$2,000.00 deposit to be used for the collection and disposal of said rubbish and trash in the event that the lot owner or builder should fail to do so, and to repair any road damage caused by the lot owner or builder should such repairs not be made by the owner or builder. Upon completion of construction and the collection and disposal of trash and rubbish as provided herein, and/or the repair of any road damage as described herein, the \$2,000.00 deposit shall be returned to the owner or builder making such deposit.

7. A. **MAINTENANCE OF LOT, NUISANCES** It shall be the duty of each homeowner or occupant to keep his or her property (or that of the occupant's landlord) in a neat and tidy condition, well maintained, with no unsightly debris or litter or the like in view. No homeowner or occupant shall place on his lot, or cause or allow to be placed on his lot, any kind of statue, sculpture, "object d'art", yard decoration, artificial wildlife, or any other similar type of object. No noxious or offensive trade or activity shall be carried on or maintained on any lot, nor shall any activity be conducted which constitutes an annoyance or nuisance to the neighborhood. Any oil stains or similar spills on driveways or other roadways shall be immediately cleaned up or removed by the lot owner responsible for such stain or spill. If such stain or spill is not immediately cleaned up or removed, the Homeowners Association as hereinafter established shall clean up or remove the stain or spill and the cost of such cleanup shall be assessed against and collected from such responsible lot owner in the same manner as assessments are assessed and collected as herein provided.

From the date of the conveyance of a lot from the Developer to a lot owner, and regardless of whether the lot is vacant or a dwelling is completed on the lot, each lot owner must maintain their lot in such manner as is reasonably consistent with the standards of the other lots in the subdivision. At a minimum, (1) each lot must be mowed free of grass taller than eight inches (8"), (2) all tree limbs from the ground up to six feet shall be removed from trees, and (3) all limbs, leaves, fallen trees, trash, refuse, garbage, and other such debris must be immediately and regularly removed from the lot. In the event of a dispute as to the "standards of the other lots in the subdivision", the Developer shall make the final decision as to such standards. In the discretion of the Developer, this responsibility may be turned over to the Association at any time. If the lot owner should fail to maintain the lot as herein provided, the Developer or the Association may cause such lot to be cleaned and maintained as herein provided, and the costs of such cleaning and/or maintenance shall be charged to such lot owner, plus a service charge of fifteen percent (15%) of such cost, and assessed and collected against the lot and the individual lot owner as a special assessment pursuant to the regulations regarding liens and assessments as hereinafter set forth in this Declaration.

B. **PARKING** All vehicles must be parked in driveways and no vehicles may be parked at any time on lawns or common areas. No vehicle shall be allowed to block any street, roadway, or other access area. Any vehicles parked on lawns, roadways overnight, or common areas shall be subject to be towed at the owner's expense at the request of the Homeowners Association.

**C. JUNK VEHICLES AND TRACTOR TRAILERS** No inoperable vehicle or vehicle without current registration, current state inspection sticker, current license plate, and current insurance will be permitted on the premises, and no tractor-trailers or tractors for semi-rigs will be permitted on the premises. The Association shall have the right to have all such vehicles towed away at the owner's expense.

**D. TRASH RECEPTACLES, LAWN FURNITURE, TOYS, PERSONAL PROPERTY AND LIGHTS** All trash receptacles, lawn furniture, toys, lawnmowers, bicycles, grills, stored materials, and other such similar personal property must be kept and stored out of view from the street. All light bulbs or other lights installed in any fixture located on the exterior of any building or any lot shall be clear, white, or non-frost lights or bulbs. No colored bulbs or lights will be allowed except during generally recognized holiday periods. The Association may limit the amount of holiday lighting or the hours that such holiday lighting is lit in its sole discretion.

**E. VEHICLE REPAIRS** No repairs to any vehicle may be made in driveways unless such repairs may be completed in one day. During the course of repair work, no vehicle shall be permitted to remain in any driveway on any type of jacks or stands more than one day.

**F. RECREATIONAL VEHICLE/BOATS** The open storage of boats, motorboats, personal watercraft, campers, recreational vehicles, trailers, recreational trailers, motor homes, or similar type vehicles is prohibited in The Overlook at Trails End. These items must be stored in an enclosed garage and not visible to persons on other lots, streets, or recreational areas. In the event of a natural disaster or act of god, these items may be stored openly up to seven (7) days.

**G. GARAGE SALES/YARD SALES/RUMMAGE SALES** No "garage sales", "yard sales", or rummage sales shall be allowed on any lot in the subdivision.

**8. ANIMALS** No, animals, livestock, or poultry of any kind shall be raised, bred, or kept or maintained on the Property or in any Improvement thereto, except that a reasonable number of domesticated household pets may be kept on any Lot, provided that such pet(s): (a) are not kept for breeding or commercial purposes, (b) do not pose an unreasonable disturbance to adjacent neighbors, do not unreasonably interfere with a Lot Owner's peaceful enjoyment of their Lot or of the Common Properties, and do not constitute a nuisance or annoyance to the neighborhood; (c) do not pose an unreasonable risk to the safety, health or wellbeing of adjacent neighbors or to the neighborhood; (d) can be, and are, restrained by a fence of not more than six feet in height; (e) are reasonably restrained while outside of the residence; and (f) are not permitted access to an outside shelter which is (i) not approved by the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee, or (ii) visible from the street. The term "domesticated household pet," as used herein, means, among other things, that the pet regularly resides within the home on the Lot or is a pet of a kind or nature that is capable of regularly residing within the home on the Lot. Notwithstanding the foregoing, any animal with a bite history as evidenced by documentation from a state or local animal control agency or other reliable medical or veterinary records are specifically prohibited from being kept or maintained on the Properties, or on a Lot. No pet shall be permitted upon the Common Area unless attended and carried or leashed by a Person who can control the pet. All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including but not limited to loud or excessive barking) on the Property. All Owners and their respective tenants and invitees who own pets (collectively, the "Pet Owners") shall immediately clean up any waste on the Property from his/her pet. All Pet Owners shall indemnify and hold the Declarant (during the Declarant Control Period) and the Association harmless from any claim, action or demand against the Declarant or Association that arises out of or results from any act of their pet. All Pet Owners shall promptly repair, at his/her own cost, any

damage to the Common Area caused by their pet. If any Pet Owner violates this Section 8., the Declarant (during the Declarant Control Period) and the Association shall have the right, but not the obligation, to require the Pet Owner to permanently remove the pet from the Property upon no less than ten (10) days prior written notice, in addition to any other remedy. In addition, the Declarant (during the Declarant Control Period) and the Association shall specifically have the power and authority to designate by rule from time to time, based upon temperament, size, nature or tendencies, a list of animal breeds or types which shall be additionally prohibited on the Property or on any Improvements thereto.

9. **FENCED AREAS** Owner or the authorized agent of the Owner may construct a fenced area adjacent to the houses or units for the use of the owner of that house or unit. Maintenance of the fence and the fenced areas within the fences shall be the responsibility of the owner of the house. All fences must be approved by the architectural control committee or its assigns, and the written design guidelines shall be available from the architectural control committee. **No chain link, split rail, or welded wire fences shall be allowed on any lot.**

10. **UTILITY EASEMENTS** The Owner reserves for itself, its successors, and assigns, an easement in and right at any time in the future to grant a right of way under, over, and along the side, rear, and front property lines of each and every lot in the Subdivision, for the installation and maintenance of poles, lines, conduits, pipes, and other equipment necessary to or useful for furnishing electric, power, gas, telephone service, cable television, or other utilities including water, sewer and storm water drainage. Also, easements for drainage and utilities are reserved as shown on the recorded plat of the Subdivision. Owner reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing improvements.

11. **LOT GRADING** The general grading, slope, and drainage plan of a lot may not be altered without the express written approval of the New Hanover County authorities and Owner, and other appropriate agencies having authority to grant such approval.

12. **EXTERIOR MAINTENANCE** Each lot owner shall maintain the exterior of all buildings, walls, and other improvements on his lot in good condition and repair, and shall replace worn and rotten parts and shall regularly repaint all painted surfaces and shall not permit the roofs, rain gutters, down spouts, exterior walls, windows, doors, or other exterior portions of the improvements to deteriorate in an unattractive manner. The maintenance referenced herein shall be supervised and regulated by the SUMMER HILL TRACT HOMEOWNERS ASSOCIATION, INC., as hereinafter provided and hereinafter referenced as "The Association". In the event that the lot owner shall fail to comply with these maintenance requirements, the Association is hereby expressly authorized, and the lot owner hereby expressly agrees, that said maintenance and/or repair may be effected by the said Association with the expenses incurred for the same to be assessed against the individual lot owner as a special assessment and subject to the regulations regarding liens and assessments as herein set forth.

13. (A) **DIRECTIONAL SIGNS** The Owner reserves for itself, its successors and assigns, a temporary easement to place directional signs upon any of the lots in said Subdivision and upon the street rights of way, in order to assist prospective purchasers in locating other lots or houses which are for sale in the Subdivision, or in other future subdivisions coming out of adjoining lands. The right to place and maintain such signs shall terminate when the last lot owned by the Owner is sold.

(B) **"FOR SALE", "FOR RENT", OTHER SIGNS** Except for an 18" x 24" "For Sale" sign placed on a lot by the original builder of a house on a lot, and/or an "18 x 24" "For Sale" sign placed on a lot by a realty company or real estate agent advertising the lot and house for sale, no signs shall be allowed on any lots, in or on any houses, or on any of the rights of ways of any street within the subdivision until the last lot owned by the Owner or Developer is sold.

14. **STREET LIGHTING** Subject to the requirements of the City of Wilmington, the Declarant reserves the right to subject the real property in this Subdivision to a contract with Duke Energy Progress for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Duke Energy Progress by the owner of each lot.

15. **MAILBOXES AND NEWSPAPER BOXES** Each lot in the Subdivision shall have one mailbox and this box shall be provided by the Builder or Owner. The design of such mailboxes shall be selected by the Developer. The maintenance of such boxes shall be the responsibility of the homeowner.

16. **WINDOW COVERINGS** To insure consistency and attractiveness within the Subdivision, white window treatments must be installed in all of the windows of all homes within ten (10) days of occupancy, such that the total view of all windows from the outside of the house is white window coverings. Window treatments inside of the house and not visible from the outside of the house or unit are in the discretion of the homeowner. Bed sheets, towels, blankets, etc. are not considered acceptable window treatments.

17. **EXTERIOR ANTENNAE** Exterior television or radio antennae are not permitted. Television or radio satellite dishes are permitted within the Subdivision, as long as they are not visible from the street and are subject to ARC approval before installation.

18. **CLOTHESLINES** The outdoor drying or airing of clothes and the erection of outdoor clotheslines or similar devices on any lot in the Subdivision shall be subject to the approval of the Owner, and then only when thoroughly concealed or screened from public view within a fenced yard area.

19. **FUEL TANKS AND STORAGE RECEPTACLES** No fuel tanks or similar storage receptacles located on any lot may be exposed to public view. Any such receptacles must be installed only within a fenced area adjacent to the house or unit within the Subdivision and are subject to prior ARC approval before construction.

**20. WATER AND SEWAGE**

(a) All water to be used in the Subdivision for domestic purposes shall be obtained from the City of Wilmington, unless other sources are approved by the City/County Board of Health and the owner of the community water system, or their successors. An eight (8) foot radius from each water meter shall be an easement for maintenance and repair of such meter. Additionally, the front ten (10) feet of each lot is hereby reserved for utility easements.

The Developer hereby grants an easement to the Cape Fear Public Utility Authority along all streets and roads in the Subdivision for the purpose of installing, maintaining, repairing, and replacing water and sewer lines.

(b) Should the Owner install a master lawn irrigation system for the common areas of the Subdivision, or for any areas not reached by the individual systems as herein provided, the maintenance, inspection, and operation of such system shall be the responsibility of the Owners' Association as hereinafter provided.

## 21. ACCESS, MAINTENANCE, CONSTRUCTION EASEMENTS

(a) The Association, acting through its officers, agents, servants, and/or employees shall have the right of unobstructed access at all reasonable times to all properties as may be reasonably necessary to perform the exterior maintenance provided for by this Declaration.

(b) Easements are reserved over those portions of any lot that may be necessary or required to accommodate overhanging eaves or other cantilevered construction which may encroach upon such lot or lots, or the air and light space above such lot or lots.

(c) Each lot is hereby subjected to an easement for the repair, maintenance, expansion, reduction, inspection, removal, relocation, or other service of or to all gas, electricity, television, telephone, water, plumbing, sewer, utility, and drainage lines or conveyances, whether or not the cause of any or all of those activities originates on the lot or unit in which the work must be performed.

(d) Each lot shall be subject to an easement for encroachments created by construction, settling, and overhangs for all buildings, structures, and other improvements constructed by Owner, including but not limited to, sidewalks, walks, paths, patios, decks, fences, parking areas and parking pads, driveways, stoops, porches, roofs, outbuildings, and other similar appurtenances. A valid easement for such encroachments and for the maintenance of same, so long as such encroachments stand, shall and does exist.

(e) In the event that ingress or egress to any lot or unit is through or across any other lot, such lot is hereby subjected to an access easement for such owners' ingress, egress, and regress to and from such lot.

(f) All easements and rights described herein are easements appurtenant, running with the land, and shall be binding on the Owner, its successors and assigns, and any owner, purchaser, mortgagee, and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

## 22. OWNERS ASSOCIATION

(a) To provide for the maintenance, repair, upkeep and replacement of the subdivision entrance sign, streets, access easements, utility easements, stormwater facilities, ditches, swales, common area irrigation systems, street signs, walkways, and landscaped common areas and other easements in the Subdivision, the Developer has formed the SUMMER HILL TRACE HOMEOWNERS ASSOCIATION, INC., a non-profit corporation organized pursuant to Chapter 55A of the General Statutes of North Carolina. The Association shall also be responsible for providing any necessary liability insurance. The Articles of Incorporation for said corporation are recorded in the New Hanover County Registry. The By-Laws for said corporation are attached hereto and are incorporated herein by reference.

(b) Every owner of a fee simple title to a lot within the Subdivision shall be deemed to own, possess and have accepted:

(1) A Class "A" membership in SUMMER HILL TRACE HOMEOWNERS ASSOCIATION, INC., (Association), appurtenant to his lot(s);

(2) An undivided equal interest with all other owners, for each membership in the Association owned, in the Association and all of its assets;

(3) The duty of complying with and abiding by all of the provisions of these Articles, the By-Laws of the Association and the Rules and Regulations of the Association, including the payment of dues, assessments, and penalties as provided elsewhere herein.

(4) A right and easement of enjoyment, equal to that of all other owners, in and to the common areas and amenities, which is appurtenant to the title to each lot, subject to the right of the Association to dedicate or transfer all or any part of the common areas and amenities, for such purposes and subject to such conditions as the Association may determine, acting by and pursuant to the provisions of its duly enacted By-Laws.

(c) The Association shall have two classes of voting membership:

(1) Class "A". Class A members shall be all lot and unit owners with the exception of the Owner and shall be entitled to one vote for each lot or unit owned. When more than one person holds an interest in any lot or unit, all such persons shall be members. The vote for such lot or unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot or unit.

(2) Class "B". The Class B member shall be the Owner, and Owner shall be entitled to three (3) votes for each lot or unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

A. When all of the lots are deeded to the homeowners, or

B. On December 31, 2035.

**23. LIENS AND ASSESSMENTS** THE SUMMER HILL TRACT HOMEOWNERS ASSOCIATION, INC. has heretofore been given the authority to administer the operation and management of the property and to enforce these covenants, it being recognized that the delegation of such duties to one entity is in the best interests of the owners of all lots subject hereto to properly administer the operation and management of the subdivision. The Association will incur, for the mutual benefit of all the owners of such lots, costs and expenses sometimes herein referred to as "common expenses". To provide the funds necessary for such proper operation and management of the subdivision, and for the proper enforcement of these covenants, the Association has heretofore been granted the right to make, levy and collect assessments against the members of the Association and their lots. In furtherance of this grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation of and the management of the association and for the enforcement of these covenants, following shall be operative and binding upon the owners of all lots:

(a) The owner of any lot subject hereto, with the exception of the Owner, by acceptance of a Deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (1) annual assessments or charges;
- (2) special assessments for capital improvements or special assessments as established by the Board of Directors of the Association, such assessments to be established and collected As hereinafter provided;

- (3) a nonrefundable working capital assessment in the amount of \$200.00 payable at the time of the purchase of the property.

(b) The annual and special assessments, together with the interest, costs, and reasonable attorney's fees, if any, shall be a charge on the lots and shall be a continual lien upon each lot against which they are levied. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person or entity who is the owner of such lot at the time when the assessment falls due. The personal obligation for delinquent assessments shall not pass to any successor in title unless expressly assumed by him.

(c) The Owner shall not be required to pay regular annual assessments on any lot owned by it prior to its sale.

(d) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties and for the improvement, maintenance, and repair of all easements, including, but not limited to, access easements, landscaping easements and stormwater easements, utilities, irrigation systems, subdivision signs, yard areas, parking areas, roads, walkways, ditches and swales as herein provided as well as any ad valorem taxes on the common areas and facilities. The funds arising from said assessments or charges, may be used for any or all of the following purposes: maintenance, repair, and improvement of the irrigation systems, drainage and utility easements, and rights of ways; maintenance of any parking areas, walkways, and yard areas as herein provided, enforcing these restrictions, and, in addition, doing any other things necessary, proper, or desirable in the opinion of the Association to keep the property in neat and good order and to provide for the health, welfare and safety of the owners and residents of the subdivision.

(e) The annual assessments for each calendar year shall be established by the Board of Directors, and may be increased by the Board of Directors for any calendar year without approval by the membership by an amount not to exceed twenty-five percent (25%) of the maximum annual assessment of the previous year. The maximum annual assessment for any calendar year may be increased without limit by a vote of two-thirds (2/3) of the Class A members who are voting in person or by proxy at a meeting called for this purpose.

(f) In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for purpose of defraying in whole or in part, any major expense of the Association, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of the Class A members who are voting in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed to the uniform rate for all lots and may be collected on a monthly basis.

(g) Written notice of any meeting called for the purpose of taking any action authorized under Paragraph 25(e) or Paragraph 25(f) set forth above shall be sent to all members not less than then (10) days nor more than (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty-one percent (51%) of all votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

(h) The annual assessments provided for herein shall be collected no more frequently than a quarterly basis and shall commence as to all lots in the subdivision on the first day of the month following recordation of the Declaration of Restrictions for the subdivision. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Upon the closing of a lot subject hereto, there shall be an assessment due for the remainder of the quarter in which the closing occurs, plus the amount of the assessment due for the following quarter.

(i) Any assessment not paid within thirty (30) days after the due date shall bear interest at the highest rate allowed by law from the date due until paid. The Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the lot and interest, costs, and reasonable attorney's fee of such action or foreclosure shall be added to the amount of such assessment.

(j) The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim of lien in the public records of New Hanover County, North Carolina, which claim shall state the description of the lot encumbered thereby, the name of the record owner, the amount due and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, and attorney's fees thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record. The lien provided for herein shall be subordinated to the lien of any first mortgage or Deed of Trust and any person, firm, corporation or other entity acquiring title to any lot by virtue of any foreclosure, deed in lieu of foreclosure or judicial sale, shall be liable and obligated only for assessments as shall accrue and become due and payable subsequent to the date of acquisition of such title, and it shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. In the event of the acquisition of title to a lot by foreclosure, deed in lieu of foreclosure or judicial sale, any assessment or assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by all owners of all lots as part of the common expenses, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

(k) The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any lot or unit shall not affect the assessment lien. However, the sale or transfer of any unit 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 or unit from liability for any assessments thereafter becoming due or from the lien thereof.

(l) Mortgagees are not required to collect assessments, and the failure of the owner to pay assessments shall not constitute a default under a mortgage.

(m) Upon the sale of all lots owned by Declarant, including Section 2, if any, subject to these covenants, the owner will turn over control of the Association to the Board of Directors to be elected by the membership in accordance with the By-Laws of the Association. Until such time, however, the owner shall elect the Board of Directors of the Association.

(n) In order to enforce the terms of this Declaration, the Association shall provide penalties for failure to obey the duties required by this Declaration, and such penalties shall be assessed against each lot, be payable by the lot owners, and be collected by the Association in the same manner as any other lot

assessment provided for by the terms of this Declaration.

**24. RIGHTS OF ELIGIBLE MORTGAGE HOLDERS** To the extent permitted by law, an Eligible Mortgage Holder, that is, a holder of a first mortgage or lien on a lot or unit who has requested notice of certain matters from the Association, upon written request to the Association, identifying the name and address of the owner and holder, will be entitled to timely written notice of:

(a) Any condemnation, loss, or casualty loss which affects a material portion of the project or any units on which there is a mortgage held by such Eligible Mortgage Holder.

(b) Any delinquency in payment of assessments or charges owed by an owner of the unit subject to a first mortgage held by such Eligible Mortgage Holder which remains uncured for a period of sixty days.

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.

(e) In addition to the foregoing rights, the Eligible Mortgage Holders shall be afforded the following rights subject to the extent permitted by law and as allowed by the North Carolina General Statutes as they now exist or as they may be amended from time to time.

(1) Any election to terminate the legal status of the project after substantial destruction or substantial taking in condemnation of the project property must require the approval of at least 51% of the votes of the owners of the units or lots subject to Eligible Mortgage Holders.

(2) Unless otherwise provided in the Declaration or Bylaws, no relocation of interest in the common areas resulting from a partial condemnation or partial destruction of the project may be affected without the prior approval of Eligible Mortgage Holders holding mortgages on all remaining units or lots whether existing whole or in part, and which have at least 51% of the votes of such remaining lots or units subject to Eligible Mortgage Holders

**25. INSURANCE** It shall be the individual responsibility of each lot owner to maintain casualty and liability insurance on his lot or unit, including the exterior. It shall be the duty of the Association to maintain in effect casualty and liability insurance as follows:

(a) Amount and scope of Insurance: All insurance policies shall be secured by the Board of Directors or its designee on behalf of the Association with full authority, which shall obtain such insurance against (1) loss or damage by fire or other hazards normally insured against, and (2) public liability insurance. Such liability coverage shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insured for property damage, bodily injuries, and deaths of persons in connection with the operation of the Association and its fulfillment of the duties and responsibilities set forth herein, and legal liability arising out of lawsuits relating to employment contracts of the Association.

(b) Insurance provisions. The Board of Directors shall make diligent effort to ensure that said insurance policies provide for the following:

- (1) A waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent, or employee of the Association, the lot owners, and their employees, agents, tenants, and invitees.
- (2) A waiver by the insurer of its right to repair and reconstruct instead of paying cash.
- (3) Coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days prior written notice to the named insured.
- (4) Coverage will not be prejudiced by act or neglect of the lot owners when said act or neglect is not within the control of the Association.
- (5) The policy on the common areas cannot be canceled, invalidated, or suspended on account of the conduct of any one or more individual lot owners.
- (6) The policy on the common areas cannot be canceled, invalidated, or suspended on account of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association.

(c) Premiums. All insurance premiums for insurance for the benefit of the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a common expense and the Association shall levy against the owners equally, as an additional annual assessment, herein called "Insurance Assessment" which shall be in addition to the amounts provided for herein, an amount sufficient to pay the annual cost of all such insurance premiums.

(d) Proceeds. All insurance policies purchased pursuant to these provisions shall provide that all proceeds shall be payable to the Board as insurance trustee or to such attorney at law or institution with trust powers as may be approved by the Board of Directors.

(e) Policies. All insurance policies purchased by the Board of Directors shall with a company or companies permitted to do business in the State of North Carolina and holding a rating of "A" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Board of Directors and the lot owners and their mortgagees as their respective interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors and duplicates of said policies and endorsements and all renewals thereof, or certificates thereof, together with proof of payment of premiums, shall be delivered to the owners at least ten (10) days prior to the expiration date with respect to the then current policies.

(f) Distribution of Insurance Proceeds. Proceeds of insurance policies shall be distributed to or for the benefit of the beneficial owners in the following manner:

- (1) Expenses of Trust. All reasonable expenses of the insurance trustee shall be first paid or other provisions therefore made.

- (2) Reconstruction or Repair. The remaining proceeds shall be used to defray the cost of repairs for the damage or reconstruction for which the proceeds are paid. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, including lienholders of record, or retained by the Association for such common expenses or purposes as the Board shall determine.

## 26. FIDELITY BONDS

(a) The Association shall maintain blanket fidelity bonds for all those officers, directors, employees, and all other persons handling or responsible for funds of the Association. If the Association shall delegate some or all of the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees, and agents handling or responsible for funds of or administered on behalf of the Association.

(b) Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months aggregate assessments on all units plus reserve funds.

(c) Other requirements. Fidelity bonds required herein must meet the following requirements:

- (1) Fidelity bonds shall name the Association as an obligee.
- (2) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definitions of "employees", or similar terms of expressions.
- (3) The premiums on all bonds required herein for the Association (except for premiums of fidelity bonds maintained by a management agent for its officers, employees, and agents) shall be paid by the Association as a common expense.
- (4) The bonds shall provide that they may be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Association, to any insurance trustee, and each Eligible Mortgage Holder.

## 27. DEVELOPER'S RIGHTS

(a) The Developer hereby reserves the right to annex additional land within an area of one mile from the property described without the consent of the Class A members within fifteen (15) years of the date of this instrument provided that HUD, the FHA, or VA determines that the annexation is in accord with the general plan hereto approved by them. Any property annexed for such purpose will be subject to and under the jurisdiction of the Association and shall be designated as consecutively numbered sections or such other similar designations for any additional section added.

(b) The rights reserved by the developer also include the power to amend this Declaration of Restrictions to subject any property described above to the jurisdiction of the Association and to the rights and obligations of this Declaration of Restrictions without the consent of Class A members, subject, however, to approval by the Department of HUD or the Veterans Administration.

28. **VA/HUD APPROVAL** So long as there is a Class B Membership, annexation of additional of additional properties, dedication of common areas, and the amendment of this Declaration of Covenants, Conditions, and Restrictions shall require the approval of the Veterans Administration or the Department of Housing and Urban Development.
29. **AMENDMENT** Except as otherwise provided herein, these restrictions may be altered, modified, canceled, or changed at any time as to said subdivision as a whole or as to any subdivided lot or part thereof by a written document, recorded in the New Hanover County Registry, executed by the owners (not including mortgagees, trustees, or other lienholders) of not less than two-thirds (2/3) of the subdivided lots to which these restrictions apply. Developer's power to amend this Declaration as provided herein shall not require the consent of the Class A members and shall be valid when signed by the Owner and recorded in the New Hanover County Register of Deeds.
30. **VIOLATIONS** If the parties hereto, or any of them or their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for the Association or any other person or persons owning any real property situated in said subdivision to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate such covenants and either prevent him or them from so doing or recover damages or other dues for such violations.
31. **INVALIDATION** The invalidation of any one of these covenants by judgment or court order shall in no way effect any of the other covenants herein, which shall remain in full force and effect.
32. **TERM** All covenants, restrictions, and affirmative obligations set forth in these Restrictions shall run with the land and shall be binding on all parties claiming under them to specifically include, but not be limited to the successors and assigns, if any, of Owner, for a period of twenty (20) years from the date hereof after which time all said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the owners of two-thirds (2/3) of the lots (not including mortgagees or trustees under deeds of trust) has been recorded, agreeing to change said covenants in whole or in part.
33. **LOTS AND UNITS SUBJECT TO DECLARATION** All present and future owners, tenants, and occupants of lots or units and their guests and invitees shall be subject to and shall comply with the provisions of this Declaration, as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering of a lease or the entering into occupancy of any lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such owner, tenant, or occupant. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable by the Association, or the owner of any lot or unit, their respective legal representative, heirs, successors, and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any lot as though such provisions were made a part of each and every deed of conveyance or lease.
34. **APPLICABILITY TO OTHER PROPERTIES** These restrictions shall apply only to the lots specifically subjected to these restrictions by the Declarant and shall not be applicable to any other properties owned by the Declarant. Declarant specifically reserves the right to develop adjacent or nearby properties in any manner whatsoever without regard to the development scheme contemplated herein, including the right to construct apartments, condominiums, townhouses, duplexes, triplexes, or any other form of multifamily housing or other form of housing allowed by the applicable zoning ordinances and regulations.

IN TESTIMONY WHEREOF, the Owner has caused this instrument to be executed in its company name by its duly authorize manager, the day and year first above written.

NC AVE, LLC

By *G. Eric Staton* (SEAL)  
G. Eric Staton, Manager

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Alan M. Solana, a Notary Public of the County and State aforesaid, certify that G. Eric Staton, personally appeared before me this day and acknowledged the execution of the foregoing instrument in the capacity indicated.

Witness my hand and notarial stamp or seal, this 23rd day of March, 2020.

My Commission Expires: 5/30/2024

*[Signature]*  
Notary Public

