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Pender County, North Carolina
Sharon Lear Willoughby, Register of Deeds

Prepared by and return to: Ellen Wortman,
Marshall Williams & Gorham, P.O. Box 2088,
Wilmington, NC 28402-2088

STATE OF NORTH CAROLINA
COUNTY OF PENDER

DECLARATION OF COVENANTS
CONDITIONS, RESTRICTIONS AND
EASEMENTS FOR MAGNOLIA RESERVE

**THIS DOCUMENT REGULATES OR PROHIBITS
THE DISPLAY OF THE UNITED STATES OF AMERICA OR STATE
OF NORTH CAROLINA AND THIS DOCUMENT REGULATES OR
PROHIBITS THE DISPLAY OF POLITICAL SIGNS.**

This Declaration of Covenants, Conditions, Restrictions and Easements for Magnolia Reserve is entered into this the _____ day of _____, 2020 by Tom, LLC, a N.C. Limited Liability Company, hereinafter "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Pender County, North Carolina, known as MAGNOLIA RESERVE, which is shown on plat recorded in the Office of the Register of Deeds of Pender County, North Carolina, in Map Book 65, Page 102, to which reference is made for a more particular description (the "Property"); and

NOW, THEREFORE, Declarant declares that the Property described above 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 (the "Act"), as well as the following easements, restrictions, covenants, and conditions.

ARTICLE 1.
DEFINITIONS

In addition to other terms defined herein, the following capitalized terms shall have the following meanings as used herein:

SECTION 1. Allocated Interest shall mean the Common Expense Liability and vote in the Association allocated to each Lot.

SECTION 2. Association shall mean and refer to Magnolia Reserve HOA, Inc., a North Carolina non-profit corporation, its successors and assigns, the owners association organized pursuant to the Act for the purposes set forth herein.

SECTION 3. Common Elements shall mean and refer to all lands and easements within or appurtenant to the Planned Community owned by the Association, other than a Lot, or intended for the common use and enjoyment of the Owners, including, without limitation, open space and storm water ponds and facilities within the Planned Community. Common Elements need not be contiguous to or abutting the Property or any Additional Property. All roads

within the Planned Community are intended to be and shall be public roads, but the Association shall have the right and obligation to maintain said roads until such time as such roads are turned over to the appropriate governmental authority for maintenance.

SECTION 4. Common Expenses means expenditures made by or financial liabilities of the Association, together with any allocations to reserves. "Common Expenses" shall be construed broadly.

SECTION 5. Common Expense Liability means the liability for Common Expenses allocated to each. Lot as permitted by the Act, this Declaration or otherwise by law.

SECTION 6. Declarant shall be used interchangeably with Developer (which designations shall include singular, plural, masculine and neuter as required by the context) and shall mean and refer to TOM, LLC, its successors and assigns, if such successors or assigns should acquire undeveloped property from the Declarant or a Lot not previously disposed of for the purpose of development and reserves or succeeds to any Special Declarant Right.

SECTION 7. Declarant Control Period shall, have the meaning set forth in Article III. hereof.

SECTION 8. Declaration shall mean this instrument as it may be from time to time amended or supplemented.

SECTION 9. Board of Directors shall be used interchangeably with the Board of Directors and means the body, regardless of name, designated in this. Declaration or otherwise to act on behalf of the Association.

SECTION 10. Limited Common Elements shall mean areas and facilities which are for the exclusive use of the Lot Owner but which the Association is obligated to maintain pursuant to the terms of this Declaration. There are no limited common elements at this time.

SECTION 11. Lots shall mean and refer to any portion of the Planned Community designated for separate ownership by a Lot Owner.

SECTION 12. Owner shall mean the Declarant or other Person who owns a fee simple title to any Lot, including builders and contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 13. Person means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, or agency or other legal or commercial entity.

SECTION 14. Purchaser means any Person, other than the Declarant or a Person in the business of selling real estate for the purchaser's own account, who by means of a voluntary transfer acquires a legal or equitable interest in a Lot, other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.

SECTION 15. Reasonable Attorneys' Fees means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

SECTION 16. Special Declarant Rights means rights reserved for the benefit of the Declarant including without limitation the right (i) to complete improvements intended or planned by Developer for the Property or Additional Property; (ii) to exercise any development or other right reserved to the Declarant by this Declaration or otherwise; (iii) to maintain within the Planned Community sales offices, management offices, construction offices/trailers, signs advertising the Planned Community, and models; (iv) to use the Common Elements for the purpose of making improvements within the Planned Community; or (v) to appoint or remove any officer or Board of Directors member of the Association during the Declarant Control Period.

SECTION 17. Stormwater Permit shall mean Stormwater Permit # SW8 200108 issued by the North Carolina Department of Environmental Quality, under Title 15A NCAC 2H.1000.

ARTICLE II. PROPERTY RIGHTS AND EASEMENTS

SECTION 1. Owners' Property Rights and Easement of Enjoyment. Every Owner shall have and is hereby granted a right and easement of enjoyment in

and to the Common Elements, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. The Association may make and amend reasonable rules and regulations governing use of the Common Elements;

B. The Association may grant a security interest in or convey the Common Elements, or dedicate or transfer all or party of the Common Elements, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by at least eighty percent (80%) of the Members, excluding the Developer; provided, however, that the Association may without the consent of the Owners grant easements, lease, licenses and concessions through or over the Common Elements. No conveyance or encumbrance of Common Elements shall deprive any Lot of its rights or access or support.

SECTION 2. Easements in Favor of Declarant and Association. The following easements are reserved to Declarant and the Association, their agents, contractors, employees, successors and assigns:

A. Easements as necessary in the lands constituting the Common Elements, public access easement, open space and drainage easements for maintenance of utilities, drainage facilities/storm water ponds and access easements.

B. Easements over all private roads, if any, access easements, and Common Elements within the Planned Community as necessary to provide access, ingress and egress to and the installation of utilities for any Additional Property.

C. An easement of unobstructed access over, on, upon, through and across each Lot and the Limited Common Elements located thereon, if any, at all reasonable times to perform any maintenance and repair to the Limited Common Elements required by this Declaration.

SECTION 3. Other Easements. The following additional easements are granted by Declarant:

A. An easement to all police, fire protection, ambulance and all similar person, companies or agencies performing emergency services, to enter upon all Lots and Common Elements in the performance of their duties.

B. In case of any emergency originating in or threatening any Lot or Common Elements, regardless of whether any Lot Owner is present at the time of such emergency, the Association or any other person authorized by it, shall have the immediate right to enter any Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Owners.

C. The Association is granted an easement over each Lot for the purposes of providing Lot maintenance when an Owner fails to provide maintenance and upkeep in accordance with this Declaration. In the event the Association provides Lot maintenance for an Owner's failure to maintain his/her Lot as required by these Declarations, the charge for the Association's remedy maintenance shall be taxed against the Owner in violation as an individual Assessment.

SECTION 4. Nature of Easements. All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Declarant and the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Planned Community, or any part or portion thereof, regardless of whether or not reference 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.

ARTICLE III. HOMEOWNERS' ASSOCIATION

SECTION 1. Formation of Association. The Association is a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to operate and maintain the Common Elements in accordance with this Declaration and Bylaws. The Association shall be empowered to perform and/or exercise those powers set forth in the Act as it may be amended from time to time, in addition to any powers and authority otherwise granted to it.

SECTION 2. Membership. Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may, not be separated from Lot ownership.

SECTION 3. Voting Rights. The Association shall have two classes of voting Membership.

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is prohibited.

Class B. The Declarant shall be a Class B Member and shall be entitled to ten (10) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earlier:

(a) Thirty years from the date of recordation of this Declaration; or

(b) Upon the voluntary surrender of all Class B Membership by the holder thereof.

The period during which there is Class B Membership is sometimes referred to herein as the "Declarant Control Period".

SECTION 4. Government Permits. After completion of construction of any facilities required to be constructed by Declarant pursuant to permits, agreements and easements for the Planned Community, all duties, obligations, rights and privileges of the Declarant under any water, sewer, stormwater and utility agreements, easements and permits for the Planned Community with municipal or governmental agencies or public or private utility companies, shall be the duties, rights, obligations, privileges and the responsibility of the Association, notwithstanding that such agreements, easements or permits have not been assigned or the responsibilities thereunder specifically assumed by the Association. There are additional provisions made in this Declaration concerning stormwater facilities and the Stormwater Permit.

SECTION 5. Common Elements. The Association shall at its sole cost and expense be responsible for the operation and maintenance of each Common Element

within the Planned Community from the date of completion of its construction or improvement by the Developer, whether or not (i) such Common Element has actually been deeded to the Association, or (ii) any permit issued by a governmental agency to Declarant for the construction and operation of the Common Elements has been transferred from the Declarant to the Association or assumed by the Association. If the Declarant is *required* by any government agency to provide any operation or maintenance activities to a Common Element for which the Association is liable to perform such operation and maintenance pursuant to this section, then the Association agrees to reimburse the Declarant the cost of such operation and maintenance within 30 days after Declarant renders a bill to the Association therefor. The Association agrees to levy a Special Assessment to cover the amount of such bill if it does not have other sufficient funds available. Declarant shall be entitled to specific performance to require the Association to levy and collect such Special Assessment.

SECTION 6. Insurance. The Board of Directors on behalf of the Association, as a Common Expense, may at all times keep the Common Elements and other assets of the Association, if any, insured against loss or damage by fire or other hazards and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees. At a minimum, the Association shall maintain the insurance coverages required by the Act.

SECTION 7. Architectural Control Committee. The Board of Directors shall perform all duties of the Architectural Control Committee if no such committee is appointed by it, subject, however, to the Special Declarant Rights. Any Architectural Control Committee appointed by the Board of Directors shall consist of at least 3 members.

ARTICLE IV. COVENANTS FOR ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. Each Lot Owner covenants and agrees to pay to the Association the following assessments (collectively the "Assessments"):

A. Annual Assessments;

- B. Special Assessments;
- C. Individual Assessments;
- D. Insurance Assessments;
- E. Ad Valorem Tax Assessments; and
- F. Working Capital Assessments.

The Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the respective Lot against which the Assessments are made. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the, personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

SECTION 2. Purpose of Annual Assessments. The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Planned Community and for the maintenance, repair and replacement of the Common Elements. The funds arising from said assessments or charges, may be used for any or all of the following purposes: Operations, maintenance and improvement of the Common Elements, including payment of utilities; enforcing this Declaration; paying taxes, insurance premiums for the Association, its property, members, directors, officers, employees and agents as may be deemed necessary by the Board of Directors, legal and accounting fees and governmental charges; establishing reserves; and in addition, doing any other things necessary or desirable in the opinion of the Association to keep the Common Elements in good operating order and repair.

SECTION 3. Annual Assessments. The Board of Directors shall adopt a proposed annual budget at least 90 days before the beginning of each fiscal year of the Association. Within 30 days after adoption of the proposed budget for the Planned Community, the Board of Directors shall provide to all of the Lot Owners a summary of the budget and notice of a meeting to consider its ratification, including a statement that the budget may be ratified without a quorum. The budget is ratified unless at the meeting a majority of all of the Lot Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget. The Annual Assessment for each Lot shall be established based on the annual budget thus adopted; provided, however, that the first Annual Assessment shall be set by the Declarant prior to the conveyance of the first Lot to an Owner. The due date for

payment shall be established by the Board of Directors. The Board of Directors shall have the authority to require the Assessments to be paid in periodic installments. The Association shall, upon demand, and for a reasonable charge furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid.

SECTION 4. Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to the year only for the following purposes:

A. To defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements and any Limited Common Elements, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of two-thirds (2/3) of the Members of each class who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting of Owners called for the purpose of approving such Special Assessment shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting.

B. Without a vote of the Members, to provide funds to reimburse the Declarant as provided for in Article III, Section 5, hereof.

SECTION 5. Individual Assessments. To the extent an Owner or their guest, tenant or invitees violate these Declarations, the Association's Bylaws, or the Rules and Regulations, an Individual Assessment in the form of a fine may be assessed, after following the due process requirements of the Planned Community Act, or in the event the Association enters a Lot to perform maintenance required the Lot Owner failed to perform, an Individual Assessment in the amount of the cost paid by the Association for that maintenance will be an Individual Assessment. In the event a fine is imposed or costs are incurred, that fine or those costs become an Individual Assessment against the Lot and can be collected as the other Assessments described herein.

SECTION 6. Insurance Assessments. All premiums on insurance policies 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 may at any time levy against the Owners equally an "Insurance Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay the cost of all such deductibles and insurance premiums not included as a component of the Annual Assessment.

SECTION 7. Ad Valorem Tax Assessments. All ad valorem taxes levied against the Common Elements, if any, shall be a common expense, and the Association may at any time levy against the Owners equally an "Ad Valorem Tax Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay ad valorem taxes not included as a component of the Annual Assessment.

SECTION 8. Rate of Assessment. The Association may differentiate in the amount of Assessments charged when a reasonable basis for distinction exists, such as between vacant Lots of record and Lots of record with completed dwellings for which certificates of occupancy have been issued by the appropriate governmental authority, or when any other substantial difference as a ground of distinction exists between Lots. However, Assessments must be fixed at a uniform rate for all Lots similarly situated.

SECTION 9. Commencement of Assessments. Assessments for each Lot shall commence upon the date of acceptance of a deed from Declarant; however Declarant has the sole right to enter into an agreement with the builders to whom it sells Lots to delay commencement of assessments for those Lots. Subsequent purchasers shall be obligated to pay Assessments commencing upon the date a deed is recorded, transferring ownership to them.

SECTION 10. Effect Of Nonpayment of Assessments And Remedies Of The Association. Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner falls to pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments.

SECTION 11. Lien for Assessments. The Association may file a lien against a Lot when any Assessment levied against said Lot remains unpaid for a period of 30 days or longer.

A. The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the office of the Clerk of Superior Court of the county in which the Lot is located. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, interest, and other charges imposed pursuant to Sections 47F-3-102, 47F-3-107, 47F-3-107.1 and 47F-3-115 of the Act are enforceable as Assessments.

B. The lien under this section shall be prior to all liens and encumbrances on a Lot except liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot.

C. The lien for unpaid assessments is extinguished unless proceedings to enforce the tax lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court.

D. Any judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.

E. Where the holder of a first mortgage or deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors and assigns shall not be liable for the Assessments against the Lot which became due prior to the acquisition of title to the Lot by such purchaser. The unpaid Assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners including such purchaser, its heirs, successors and assigns.

F. A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed.

ARTICLE V RIGHTS OF DEVELOPER

The Declarant shall have, and there is hereby reserved to the Declarant, the Special Declarant Rights as herein defined and the following rights, powers and

privileges which shall be in addition to the Special Declarant Rights and any other rights, powers and privileges reserved to the Declarant herein:

SECTION 1. The Architectural Control Committee/Board of Directors. All duties and responsibilities conferred upon, the Architectural Control Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant shall own any Lot within the Property or any Additional Property. The Declarant shall be entitled during the Declarant Control Period to appoint and remove the officers and members of the Board of Directors.

SECTION 2. Plan of Planned Community. The right to change, alter or redesignate the allocated planned, platted, or recorded use or designation of any of the lands constituting the Planned Community including, but not limited to, the right to change, alter or redesignate road, utility and drainage facilities and easements and to change, alter or redesignate such other present and proposed amenities, Common Elements, or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable. The Declarant hereby expressly reserves, unto itself, its successors and assigns, the right to re-plat any one (1) or more Lots shown on the plat of any subdivision of the Property or Additional Property in order to create one or more modified Lots; to further subdivide tracts or Lots shown on any such subdivision plat into two or more Lots; to recombine one or more tracts or Lots or a tract and Lots to create a larger tract or Lot (any Lot resulting from such recombination shall be treated as one Lot for purposes of Assessments); to eliminate from this Declaration or any plats of the Planned Community Lots that are not otherwise buildable or are needed or desired by Declarant for access or are needed or desired by Declarant for use as public or private roads or access areas, whether serving the Planned Community or other property owned by the Declarant or others, or which are needed for the installation of utilities, Common Elements or amenities, and to take such steps as are reasonably necessary to make such re-platted Lots or tracts suitable and fit as a building site, access area, roadway or Common Elements.

SECTION 3. Amendment of Declaration by the Declarant. This Declaration may be amended without Member approval by the Declarant, or the Board of the Association, as the case may be, as follows:

- (a) In any respect, prior to the sale of the first Lot.
- (b) To the extent this Declaration applies to Additional Property.
- (c) To correct any obvious error or inconsistency in drafting, typing or reproduction.

(d) To qualify the Association or the Property and Additional Property, or any portion thereof, for tax-exempt status.

(e) To incorporate or reflect any platting change as permitted by this Article or otherwise permitted herein.

(f) To clarify the intent of or further define existing restrictions.

(g) To conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or any Additional Property or to qualify the Property or any Additional Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Department of Veterans Affairs, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. Notwithstanding anything else herein to the contrary, only the Declarant, during the Declarant Control Period, shall be entitled to amend this Declaration pursuant to this Section.

SECTION 4. Annexation of Additional Property.

(a) During Declarant Control. Declarant may annex to and make a part of the Planned Community any other real property which Declarant now owns or which Declarant may hereafter acquire or develop (the "Additional Property"). Annexation of Additional Property to the Planned Community shall require the assent of 67% of the Class A Members who are voting in person or by proxy at a meeting called for this purpose; provided, however, Additional Property may be annexed to the Planned Community by Declarant without the assent of the Members so long as the Additional Property is adjacent to the Planned Community. Nothing

herein shall require the Developer to annex any lands to the Planned Community. The Developer shall be entitled to develop any lands currently owned by it, other than the Property, in accordance with any scheme of development that Developer chooses, including adding additional or differing conditions, easements and restrictions, or creating a sub-association, in the Declarant's sole discretion.

(b) After Declarant Control. After Declarant Control Period ends, upon the request of an owner of property outside the Planned Community, the Association shall have the authority to annex additional property into the Planned Community, provided said property is adjacent to or adjoining any of the Lots in the Planned Community, and provided that seventy-five percent (75%) of the Members approve such Annexation.

ARTICLE VI. USE RESTRICTIONS, ARCHITECTURAL CONTROL AND MAINTENANCE

SECTION 1. Approval of Builders. No dwelling can be constructed by any person, company, or legal entity except as approved in advance by Declarant. Declarant may compose a list of approved builders, such builders to be approved in its sole discretion.

SECTION 2. Minimum Square Footage. The minimum heated square footage for a dwelling unit is 1,600 square feet.

SECTION 3. Plans for Building and Site Improvements. No dwelling, wall or other structure (including mail boxes) shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee. If the Architectural Control Committee fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations that in the sole and uncontrolled discretion of the Architectural Control Committee shall be

deemed sufficient. One copy of all plans and related data shall be furnished to the Architectural Control Committee for its records. The Architectural Control Committee shall not be responsible for any structural or other defects in plans and specifications submitted to it or in any structure erected according to such plans and specifications.

SECTION 4. Minimum Standards for Site Improvements.

A. All service utilities, fuel tanks, and wood piles are to be enclosed within a wall or plant screen of a type and size approved by the Architectural Control Committee, so as to preclude the same from causing an unsightly view from any highway, road or way within the subdivision, or from any other residence within the subdivision. Clothes lines are not permitted on any Lot.

B. All light bulbs or other lights installed in any fixture located on the exterior of any building or any Lot for the purpose of illumination shall be white or non-frost lights or bulbs.

C. All front and side windows which install blinds shall have well maintained white, two-inch (2") horizontal blinds, or a style of blinds otherwise approved by the Architectural Control Committee. Damaged blinds shall be replaced immediately.

D. Owners shall not plant or landscape any flowers, bushes or trees in the front yard of the Lot, or undertake any landscaping activity in the front yard without approval by the Architectural Control Committee.

E. Owners shall maintain the entire yard in their lot: front, back and sides so as to keep grass mowed and watered and in good condition. More specific guidelines for lawns and additional guidelines for other landscaping may be established by the Board of Directors as set out in Section 6 and subsection G. herein.

F. Owners shall not remove any tree more than four (4) inches in diameter (twelve and one-half inches in circumference) at a point four and one-half (4 ½) feet above the ground shall be removed without the prior written consent of the Architectural Control Committee except (a) dead or diseased trees; (b) trees that are located within ten (10) feet of a drainage area, a sidewalk, a residence or a driveway, (c) trees removed by Declarant, or (d) trees removed during construction of an original dwelling on a Lot. Additionally, no landscaping can be removed from any of the Property which was or is required by the Town of Surf City.

G. The Board of Directors shall have the power to draft reasonable architectural guidelines or design guidelines to administer the process of applying for architectural approval and to establish certain guidelines and rules for improvements to Lots, in accordance with and not in contravention of other provisions of this Declaration. The Board of Directors shall have the right to amend said architectural guidelines from time to time in its sole discretion.

SECTION 5. Fences.

A. Fences on any Lot are subject to the complete jurisdiction of the Association. As used herein, fences shall include walls, barricades, shrubbery or other impediments to reasonable mobility and visibility. Absent an extraordinary showing of need by the owner of a Lot, no fence shall be allowed in any front yard and any fence in the side yard shall be at least 20 feet back from the front corner of the dwelling. The Association shall only approve the construction of a fence in any location upon a determination that the fence is aesthetically pleasing and does not detract from the reasonable value of any Lot or property. The Association shall adopt guidelines concerning permissible location of fences, and the permissible styling and construction standards of allowable fences. All fences shall be constructed on the common property line with the adjacent Lot unless Declarant, Association, or Committee allows an exception in their sole discretion. Every Lot owner shall have the right to tie in with an existing fence wall running down the common property line of his Lot, such that the fence along the common property line becomes a shared fence wall unless Declarant, Committee, or Association allows an exception in their sole discretion. Every Owner is deemed to agree that minor deviations (less than one foot) in the actual layout of the fence along the common property line shall be waived upon completion of construction.

B. All reconstruction of shared fence walls shall be subject to general rules of law regarding party walls. The cost of reasonable repair and maintenance of a shared fence wall shall be shared by the Owners who make use of the fence. Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a shared fence wall and those improvements belonging to his Lot which encroach on an adjoining Lot or Common Area. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Owner shall restore the adjoining Lot or Lots and

Common Area to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable

SECTION 6. Use Restrictions.

A. Land Use And Building Type. No Lot shall be used for any purpose except for residential purposes, subject, however, to the rights of the Declarant contained herein, and short term rentals of less than six months, including those through VRBO or Air BnB are not permitted. Prohibited business activities include, but are not limited to, a rooming house, boarding house, gift shop, antique shop, professional office, daycare or beauty shop or the like or any trade of any kind whatsoever; however nothing contained herein shall be construed so as to prohibit a Lot Owner from maintaining a professional office within his dwelling, provided said office shall not cause an increase in vehicular or pedestrian traffic in the Planned Community. Additionally, nothing shall prevent the construction of homes to be sold on said Lots or the showing of said house for the purpose of selling houses in the Planned Community. No Lot or dwelling shall be "time-shared" or rented on a weekly or daily basis, not shall any Lot or structure be owned, used or operated so as to constitute such Lot or dwelling as a "time-sharing" unit within the meaning of such statutory provisions.

B. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the enjoyment of other Lots by the Owners thereof. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or unkempt condition of buildings or grounds on the Owner's Lot which would tend to decrease the beauty of the neighborhood as a whole or the specific area.

C. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot any time as a residence either temporarily or permanently without the written consent of the Association.

D. Vehicles/Boats. No boat, motor boat, camper, trailer, motor or mobile homes, tractor/trailer, or similar type vehicle, shall be permitted to remain on any Lot or on any street or Common Element at any time, without the written consent of the Association. No inoperable vehicle or vehicle without current registration and insurance will be

permitted on any Lot, street or Common Element. The Association shall have the right to have all such vehicles towed away at the owner's expense.

E. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or In any dwelling except that no more than a total of two (2) dogs, cats or other household pet may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free, are at all times kept properly leashed or under the control of their owner and do not become a nuisance. American Pit Bull Terriers, American Staffordshire Terrier, American Bully, and Staffordshire Bull Terriers are not permitted to be kept or maintained on any Lot.

F. Statuary, TV Satellite Dishes and Outside Antennas. No yard statuary are permitted on any Lot and no outside radio or television antennas or satellites shall be erected on any Lot or dwelling unit unless and until permission for the same has been granted by the Architectural Control Committee; provided, however, satellite dishes not over 18" in diameter which cannot be seen from the street are permitted, so long as their installation does not cause damage to the exterior of the building.

G. Construction in Common Elements. No Person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction or with the express written consent of the Association.

H. Signs. No signs (including "for sale" or "for rent" signs) shall be permitted on any Lot or in the Common Elements without permission of the Board of Directors; provided, however, the Declarant may so long as it owns any Lot maintain for sale signs on Declarant's Lots and signs on its Lots and in the Common Elements generally advertising the Planned Community. Notwithstanding the above provision, Owners may place one "for sale" sign in the grass area of his/her own Lot.

I. Mail Boxes. Each Lot shall have one mail box at the common cluster postal center the design of which shall be approved by the Architectural Control Committee.

J. Fire Pits, Grills and Open Flames No fire pits or open flames are permitted on any Lot. Grills are permitted so long as they are kept and used in the backyard, behind the house, so as not in view from the street the house faces.

K. Exterior Flags No exterior flag poles are permitted to be mounted to the exterior of the building and no flag poles are permitted to be constructed in the front yard of any Lot. Placement of any other exterior flags, or flags visible from the exterior, including garden size flags, must be approved by the Architectural Control Committee.

L. Trash Cans Each Lot Owner shall have roll-out garbage containers of the type approved by the Declarant, which shall be visible from the roads only at times allowed by the Board of Directors. At all other times, Owners shall be required to place garbage containers screened so as to be concealed from view of adjacent Lots and roads. The Association shall have the authority to determine and designate the garbage collection company which shall organize pickups on a schedule to be approved by the Board. No garbage or trash incinerator shall be permitted upon the premises. No burning, burying or other disposal of garbage on any Lot or Lots within the Planned Community shall be permitted. Provided, however that Owner shall be permitted to modify the requirements of this Section where necessary to comply with orders of governing bodies.

SECTION 7. Maintenance. The Association shall maintain, as a Common Expense, the Common Elements, Public Right Of Way, Open Space and Drainage Easements within the Property. Each Owner shall keep his/her Lot free from weeds, underbrush or refuse piles, or unsightly growth or objects. All structures shall be kept neat and in good condition and repair. All shrubs, trees, grass and plantings shall be kept neatly trimmed and properly cultivated. Owners shall be responsible for maintenance, repair and replacement of all components of their structures, including their driveways; however the Architectural Control Committee shall approve all replacement doors, windows, garage doors and paint color prior to installation.

ARTICLE VII STORMWATER

The Association shall comply with all terms, provisions and requires of the Stormwater Permit, including all maintenance requirements of the vegetative buffer and the Schedule of Compliance set forth in the Stormwater Permit. The cost of such maintenance shall be a Common Expense shared equally among the Owners.

The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 200108, as issued by the Division of Energy, Mineral and Land Resources under the Stormwater Management Regulations.

The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit.

These covenants are to run with the land and be binding on all persons and parties claiming under them.

The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Energy, Mineral and Land Resources.

Alteration of the drainage as shown on the approved plan may not take Place without the concurrence of the Division of Energy, Mineral and Land Resources.

The maximum allowable built-upon area per lot is **3,600** square feet. This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but it not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking or the water surface of swimming pools.

For those lots within the CAMA Area of Environmental Concern, where DCM calculates a different maximum lot built-upon area, the governing maximum lot BUA shall be the more restrictive of the two amounts.

Built-upon area in excess of the permitted amount will require a permit modification to ensure compliance with the permit and stormwater rules.

Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings is strictly prohibited by any persons.

A 30-foot wide vegetative setback must be provided and maintained adjacent to all surface waters, measured horizontally from the normal pool elevation of impounded structures, from the top bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline.

All roof drains shall terminate at least 30 feet from the mean high water mark of surface waters.

Any individual or entity found to be in noncompliance with the provisions of a stormwater management permit or the requirements of the Stormwater Rules is subject to enforcement procedures as set forth in NCGS 143, Article 21.

Owners shall not impede the design of the stormwater system or Stormwater Permit by constructing fencing, landscaping, berms or hardscape to prevent stormwater ingress and egress between Lots or on the common boundaries of Lots.

ARTICLE VIII ENFORCEMENT AND REMEDIES

SECTION 1. Enforcement and Remedies. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable (by proceedings at law or in equity) by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns. The Board of Directors shall be entitled to enforce its Articles of Incorporation, Bylaws and Rules and Regulations. In addition to the remedies otherwise provided for herein concerning the collection of Assessments, the following remedies shall be available:

A. Association to Remedy Violation. In the event an Owner (or other occupant of a Lot) is in violation of or fails to perform any maintenance or other activities required by this Declaration, the Association's Bylaws, Rules and Regulations, the Board of Directors or its designee, after 30-days' notice, may enter upon the Lot and remedy the violation or perform the required maintenance or other activities, all at the expense of the Owner. The full amount of the cost of remedying the violation or performing such maintenance or other activities shall be chargeable to the Lot, including collection costs and reasonable attorneys' fees. Such amounts shall be due and payable within 30 days after Owner is billed. If not paid within said 30 day period, the amount thereof may immediately be added to and become a part of the Annual Assessment levied against said Owner's Lot. In the event that any maintenance activities are necessitated to any Common or Limited Common Elements by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors, the cost of the same shall be the personal obligation of the Owner and

if not paid to the Association upon demand, may immediately be added to and become a part of the Annual Assessment levied against said Owner's Lot.

B. Fines: The Association may in accordance with the procedures set forth in the Act establish a schedule of and collect fines for the violation of this Declaration or of the Association's Articles of Incorporation, Bylaws or Rules and Regulations. If an Owner does not pay the fine when due, the fine shall immediately become a part of and be added to the Annual Assessment against the Owner's Lot and may be enforced by the Association as all other Assessments provided for herein.

C. Suspension of Services and Privileges. The Association may in accordance with the procedures set forth in the Act suspend all services and privileges provided by the Association to an Owner (other than rights of access to Lots) for any period during which any Assessments against the Owner's lot, remain unpaid for at least 30 days or for any period that the Owner or the Owner's Lot is otherwise in violation of this Declaration or the Association's Charter, Bylaws, or Rules and Regulations.

SECTION 2. Miscellaneous. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The remedies provided herein are cumulative and are in addition to any other remedies provided by law.

ARTICLE IX. GENERAL PROVISIONS

SECTION 1. Rights of Institutional Note Holders. Any institutional holder of a first lien on a Lot will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the Planned Community or the property securing its loan, (e) receive written notice of any sixty-day (60) delinquency in the payment of Assessments or charges owed by any Owner of any property which is security for the loan, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the content of a specified percentage of mortgage holders, and (h) be furnished with a copy of any master insurance policy.

SECTION 2. Utility Service. Declarant reserves the right to subject the Property to contracts for the installation of utilities, cable TV and street lighting, which may require an initial payment and/or a continuing monthly payment by the Owner of each Lot. Each Lot Owner will be required to pay for any water connections, sewer connections, impact fees or any other charges imposed by any entity furnishing water, sewer or other utility service to the Lots. In the alternative, the Developer may collect such connection, impact and other fees, and charges directly from the Lot Owners. All Lot Owners shall be required, for household purposes, to use water and sewer supplied by the companies/governmental units servicing the Planned Community. Separate water systems for outside irrigation and other outdoor uses shall be permitted so long as the system is approved by the Architectural Control Committee.

SECTION 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

SECTION 4. Amendment of Declaration. Except in cases of amendments that may be executed by the Declarant under this Declaration or by certain Lot Owners under the Act, this Declaration may be amended by affirmative vote or written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, or by the Declarant if necessary for the exercise of any Special Declarant Right or development or other right reserved to the Declarant herein.

SECTION 5. FHA/VA Approval. So long as there is Class B membership, annexation of Additional Properties, dedication of Common Elements and amendments to this Declaration must be approved by the Federal Housing Administration and/or the Department of Veterans Affairs, as the case may be, if either of those agencies has approved the making, insuring or guaranteeing of mortgage loans within the Planned Community.

SECTION 6. North Carolina Planned Community Act. It is the intent of the Declarant to comply with the requirements imposed on the Planned Community by the Act and to the extent any of the terms of this Declaration violate the Act, the terms of the Act shall control.

SECTION 7. Roads. Each of the roads in the Planned Community now or hereafter designated on any plat is a Common Area until accepted by the Town

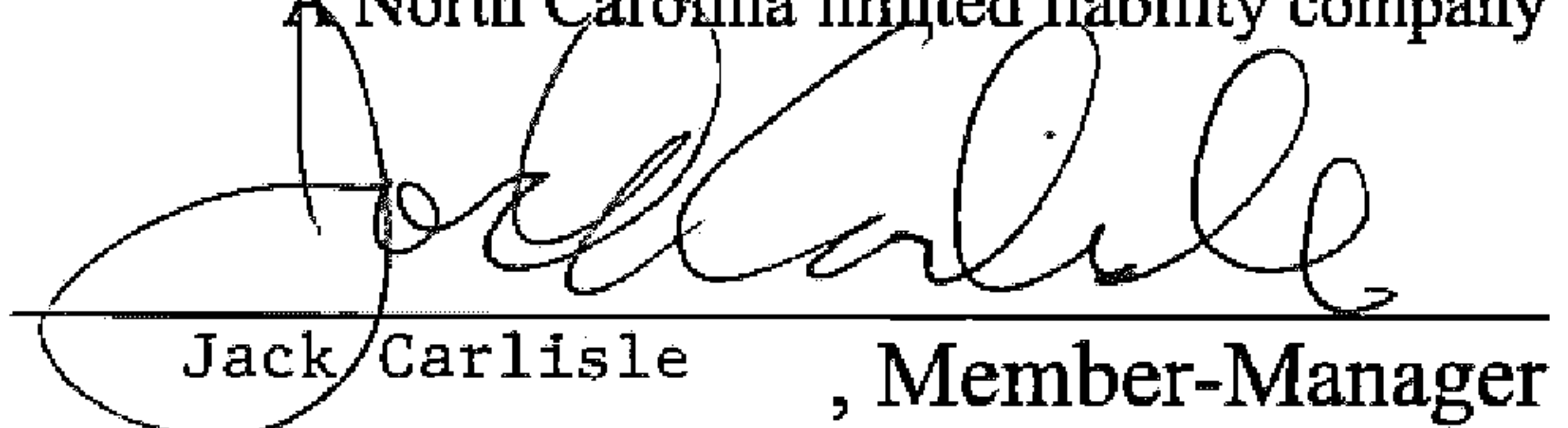
of Surf City. The Declarant will build the roads to standards set by the Town of Surf City and will maintain the roads until they are turned over to the Town of Surf City. If the Town of Surf City does not accept the roads, the roads shall remain Common Area and the Association shall maintain them as any other Common Area.

IN TESTIMONY WHEREOF, Declarant has caused this Declaration to be signed in its corporate name by its member-manager pursuant to authority of Declarant's Members as of the day and year first above written.2

TOM, LLC

A North Carolina limited liability company

By:


Jack Carlisle, Member-Manager

State of North Carolina

County of Durham

I, the undersigned Notary Public of the County and State aforesaid, certify that Jack Carlisle personally came before me this day and acknowledged that she is the Member-Manager of TOM, LLC, and that by authority duly given and as the act of such entity, he attested the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this 4 day of June, 2020.

My Commission Expires: 5 July 2020

