

40  
131



FOR REGISTRATION REGISTER OF DEEDS  
REBECCA P. SMITH  
NEW HANOVER COUNTY, NC  
2008 OCT 10 04:21:29 PM  
BK: 5352 PG: 1309-1349 FEE: \$131.00

INSTRUMENT # 2008040316

Prepared by: Block, Crouch, Keeter, Behm & Sayed, LLP  
310 North Front Street, Suite 200  
Wilmington, North Carolina 28401

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR TIDALWALK, PHASE 1

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

**THIS DECLARATION**, made this 10<sup>th</sup> day of October, 2008, by MYRTLE GROVE INVESTMENTS, L.L.C., a North Carolina limited liability company, ("**Declarant**").

**WITNESSETH:**

**WHEREAS**, the Declarant is the owner of certain Property in New Hanover County, North Carolina, known as TIDALWALK, Phase 1, as the same is more particularly shown on a plat thereof recorded in Map Book 53 at Page 214 of the New Hanover County Registry (the "Property"); and

**WHEREAS**, Declarant has developed the Property as a residential community with substantial concerns for the protection of the natural beauty and ecological well being of the Property consistent with the nature and scope of development; and

**WHEREAS**, Declarant desires to provide for the continuing upkeep and maintenance of Common Areas and facilities in an exceptional and first-class manner; and

**WHEREAS**, Declarant deems it in the best interest of the Property that architectural, landscaping and design of the residences to be in harmony with a common plan of development as envisioned by Declarant; and

**WHEREAS**, Declarant desires to subject the Property to the terms and conditions of Chapter 47F of the General Statutes of the State of North Carolina entitled “The Planned Community Act” (the “Act”); and

**WHEREAS**, Declarant further desires to subject said Property to certain protective covenants, conditions, restrictions, liens and charges as hereinafter set forth for the mutual benefit of Declarant and succeeding property owners consistent with the values set forth above, and desires that said covenants, conditions, restrictions, liens and charges run with the land and be binding upon the Declarant, its successors and assigns.

**NOW, THEREFORE**, the Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and which shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the described Property or any part thereof, and shall inure to the benefit of each owner thereof.

## **ARTICLE I**

### **Definitions**

Section 1: “**Act**” shall mean the North Carolina Planned Community Act as set forth in Chapter 47F of the General Statutes of the State of North Carolina as the same may be amended from time to time.

Section 2: “**Annexed Property**” shall mean those properties which may be annexed and added to the Property and hereafter subjected to this Declaration pursuant to the provisions of Article XII hereof. However, nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any additional property in any manner whatsoever.

Section 3: “**Approved Builder**” shall mean any licensed general contractor who is a member in good standing of the “Tidalwalk Builders Guild” as hereinafter defined.

Section 4: "Association" shall mean and refer to TidalWalk Home Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 5: "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

Section 6: "Builders Guild" or "TidalWalk Builders Guild" shall mean and refer to those licensed general contractors who shall be designated by the Declarant as members thereof, which designation may be modified and amended from time to time by the Declarant in its sole discretion.

Section 7: "Building" shall mean and refer to a home, townhome, associated garage and other outbuildings approved by the Architectural Control Committee constructed or erected on a Lot or Lots shown on a recorded map of the Property. Further, with regard to any multifamily buildings,, "Building" shall further refer to any Unit within any such multifamily structure, or as the context requires, the entire multifamily structure.

Section 8: "By-Laws" mean the by-laws of the Association as they now or may hereinafter exist.

Section 9: "Home Unit" shall mean and refer to a detached, free-standing dwelling or place of residence and attached or detached garage constructed upon a Lot or Lots within the Property.

Section 10: "Common Areas" shall mean and refer to all land within the Property owned by the Association, along with facilities and improvements erected or constructed thereon, for the use and enjoyment of the members of the Association as shown on the map of TidalWalk, Phase 1, recorded in Map Book 53 at Page 214 of the New Hanover County Registry. In addition, all private streets, water lines located outside public rights-of-way and individual Lots, all sewer lines located outside public rights-of-way, public sanitary sewer easements and within the boundaries of individual Lots, which water or sewer lines serve the Property are declared to be common area. Declarant reserves the right to alter and amend the recorded Map to amend, delete or relocate common areas and facilities as Declarant, in its sole discretion, deems appropriate.

Section 11: "Common Expenses" shall mean and include:

a. All sums lawfully assessed by the Association against its Members pursuant to the Act;

b. Expenses of administration, maintenance, repair or replacement of the Common Areas (specifically including any and all amenities), and other areas defined herein, or in supplementations or amendments to this Declaration, which are the maintenance, repair and replacement responsibility of the Association. Without limiting the foregoing, such expenses shall extend to and include the administration, maintenance, repair and replacement of any private streets, detention and or retention ponds, boat docks, piers, gazebos, swimming pools, community buildings, walkways including those walkways which may be constructed above wetlands, sidewalks, gated entrances, fountains, and bulkheads. Further and without limiting the foregoing sub-paragraph (b), common expenses shall include any and all expenses relating to installation and maintenance of landscaping in the common areas and within the rights of ways of streets and alleys within the Property;

c. Expenses declared to be common expenses by the provisions of this Declaration, the By-Laws or the Act;

d. Insurance premiums for liability, casualty, officer and director liability and other coverage as required by the Act, this Declaration or the By-Laws;

e. Expenses agreed by the members to be common expenses of the Association including but not limited to the maintenance and landscaping of yards and other areas which may not be included within a Lot;

f. Any ad valorem taxes and public assessments levied against the Common Areas;

g. Expenses incurred as a result of the design and maintenance of any community signage located within or neighboring TidalWalk; and,

h. Expenses associated with Progress Energy's installation and maintenance of lighting structures and/or street lighting within the TidalWalk community as directed by the Declarant or the Association, as well as the payment of any and all ongoing fees and expenses relating to the operation and maintenances of the lighting structures.

Section 12: "**Declarant**" shall mean and refer to MYRTLE GROVE INVESTMENTS, LLC, a North Carolina limited liability company, its successors and those assigns to whom the rights of Declarant are expressly transferred in whole or in part, by written instrument as required by G.S. 47F-3-104.

Section 13: "**Declaration**" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for TidalWalk as the same may be amended and supplemented from time to time in accordance with the terms of this Declaration.

Section 14: "**Limited Common Areas**" shall mean a portion of the Common Areas/ Common Elements allocated by this Declaration or by designation on the Map or by operation of law for the exclusive use of one or more but fewer than all of the Units.

Section 15: "**Lot**" shall mean and refer to those plots of land, other than the Common Area or Limited Common Area, designated on the recorded subdivision map referred to above and upon which a Unit (as that term is defined below) be constructed. The term Lot shall also include any of those plots of land designated on subsequent maps for TidalWalk, as and when recorded, and upon which a Unit may be constructed. The number of Lots may be increased or decreased as determined by the Declarant in accordance with the provisions of this Declaration. The Declarant anticipates, but is not necessarily obligated to, developing a maximum of 197 Lots within TidalWalk.

Section 16: "**Map**" shall mean that map recorded in Map Book 53 at Page 214 of the New Hanover County Registry, as the same may be modified or supplemented from time to time.

Section 17: "**Master Association**" means an organization to which powers have been delegated to act on behalf of or for the benefit of one or more other planned communities in accordance with the provisions of G.S. 47F-2-120.

Section 18: "**Member**" shall mean and refer to every person who is a member of the Association.

Section 19: "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Property, including contract sellers, but excluding those who have such interests merely as security for the performance of any obligation.

Section 20: "Person" shall mean and refer to an individual, corporation, partnership, association, trustee or other legal entity.

Section 21: "Property" shall mean and refer to that certain real property shown on the Map.

Section 22: "Townhome Unit" shall mean and refer to any free-standing dwelling or place of residence constructed upon a Lot or Lots within the Property which is planned and/or built as a single-family townhome.

Section 23: "Unit" shall mean and refer to that portion of the Property, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include, by way of illustration but not limitation, Townhome Unit and Home Unit.

## ARTICLE II

### Property Rights

Section 1: **Owner's Easements of Enjoyment:** Every Owner shall have a right to and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every designated Unit, subject to each of the following provisions:

- a. The right of the Association to limit the number of guests of members.
- b. The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Areas and facilities and in aid thereof to mortgage the Common Areas and facilities and the rights of such mortgagee in said properties shall be subordinate to the rights of the Unit owners hereunder.
- c. The right of the Association to suspend the voting rights and rights to the use of the Common Areas and facilities (except streets) by a member, or any person to whom he has delegated his voting right, for any period not to exceed sixty (60) days for an infraction of its published rules and regulations.
- d. Those easements as provided in ARTICLE VIII hereon.

**Section 2: Delegation of Use:** Any owner may delegate in accordance with the By-Laws, his right of enjoyment of the Common Areas to the members of his family, his tenants, guests and invitees, provided the Declarant or the Association may enact rules and regulations requiring that any guest or invitee shall be accompanied by the Owner, a family member or tenant actually residing on the Property. Special use delegation provisions may be applicable to the amenity package as hereinafter set forth.

**Section 3: Maintenance of Common Areas:** The Association shall maintain and keep in good repair the Common Area, which may include, but need not be limited to:

(a) all landscaping and other flora, parks, and signage situated upon the Common Area; structures and improvements situated upon the Common Area, including any private streets and rights of way and islands within their streets and cul-de-sacs; bicycle and pedestrian pathways and trails situated upon the Common Area; any other areas designated as Common Area by Declarant;

(b) all mailbox facilities, and other amenities if there shall be any, constituting a portion of the Common Area;

(c) any other Common Area designated by the Board or the Declarant from time to time in a Supplemental Declaration, or Amendment to this Declaration.

(d) In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Townhome Unit which is subject to assessment hereunder as follows: paint, repair, replace and care of roofs, gutters, downspouts, exterior building surfaces, brick walls and other exterior improvements. Such exterior maintenance shall not include glass surfaces, exterior doors, and window frames (i.e. entire window unit) unless approved by the Board, except the Association shall be responsible for painting exterior doors.

**Section 4: Parking Rights and Restrictions:** Off-street parking shall be provided by the Owner of each Unit for the parking of automobiles and other vehicles owned or controlled by such Owner, members of the Owner's family or employees of the owner and tenants. On-street parking for personal motor vehicles shall be allowed subject to the rules and regulations established and maintained by the Association. Neither Owners nor their guests or invitees may park trucks, boats,

trailers and other vehicles on the streets or Common Areas located on the Property. No boats, trailers or commercial vehicles shall be stored, housed or parked on the Property except within an enclosed garage or properly screened by landscaping approved by the Architectural Control Committee.

Section 5:     **Limited Common Area Adjacent to Townhome Units:** Declarant shall have the right to designate on a recorded plat or otherwise, certain areas in the front and rear of each Townhome Unit as Limited Common Area for the sole benefit and enjoyment of the Owner and occupants of such Unit.

### **ARTICLE III**

#### **Membership**

Every person who is record owner of a fee or undivided fee interest in any Unit which is subject by covenants of record to assessment by the Association, including contract sellers, but excluding persons who hold an interest merely as security for the performance of any obligations, shall be a member of the Association. Ownership of such interest shall be the sole qualification for such membership. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment. The Board of Directors may make reasonable rules regarding proof of ownership.

### **ARTICLE IV**

#### **Voting Rights**

Section 1:     **Classes:** The Association shall initially have the following two classes of voting membership:

a.     Class A: Class A members shall be all Owners, with the exception of the Declarant. Class A members shall be entitled to one vote for each Unit owned. When more than one person holds an interest in any Unit all such persons shall be members. The vote for such Unit shall be exercised as the owners thereof determine, but in no event shall more than one vote be cast with respect to any Unit, and no fractional vote may be cast with respect to any Unit. In the event all Owners of a Unit are unable to agree upon the casting of a vote, the vote shall be deemed present for quorum purposes but shall not be considered for the purpose of voting upon any matter.



b. Class B: The Class B member shall be the Declarant, and it shall be entitled to Three (3) votes for each Unit planned in TidalWalk, in which it holds a fee or undivided fee interest, provided that the Class B membership shall cease and shall be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:

(1) The Declarant's conveyance of eighty percent (80%) of the maximum number of Units planned for TidalWalk;

(2) The twenty-fifth (25<sup>th</sup>) anniversary of recordation of this Declaration.

c. Annexation: Declarant anticipates that it may, but is not necessarily obligated hereby to annex some or all of that property described on Exhibit "A" hereto into additional sections or phases of TidalWalk. For the purpose of determining voting rights hereunder, Declarant shall be deemed owner of 197 additional lots constituting all additional sections or phases of TidalWalk for and shall be entitled to three (3) votes for each such Unit for so long as Declarant owns said Units; provided, however, such entitlement shall cease upon the fifteenth (15<sup>th</sup>) anniversary date of the recording of this Declaration.

Section 2: Right to Create Additional Classes of Memberships. Declarant specifically reserves the right to create additional Classes of memberships to be composed of the following owners: (i) Owners of boat slips which Declarant may construct on the Property; and (ii) the owners of units in any multifamily structures that are annexed into TidalWalk. Any such new classes of memberships shall become effective at such time as Declarant or his designee has constructed and annexed any multifamily structure into TidalWalk and/or constructed and created boat slips (and has sold and conveyed the boat slips to one or more purchaser(s)). Such new classes of memberships shall only be effective upon amendment of this Declaration as set forth herein. Said Amendment shall set forth the manner in which the new classes of memberships shall be assessed and shall further set forth voting rights to be exercised by any new class of membership. Declarant is under no obligation to construct, create or sell any such boat slip, nor to develop and annex any additional property into TidalWalk.

## **ARTICLE V**

### **Covenant for Assessments**

**Section 1: Creation of the Lien and Personal Obligation of Assessments:** The Declarant, for each Unit owned within the Property which may be hereafter created and subjected to this Declaration, hereby covenants, and every other Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association all Assessments or charges specified herein.

Such assessments shall be fixed, established and collected from time to time as hereinafter provided. The working capital assessment shall be equal to three (3) months of annual assessments and shall be payable by the purchaser of any Units from the Declarant at the time of closing on such Unit. In the event Declarant assigns its Declarant rights upon the transfer of any Units, no working capital assessment shall be due until the Unit is sold by the Successor Declarant to a purchaser without any assignment of Declarant rights.

The annual and special assessments, together with such interest thereon, costs of collection thereof, and reasonable attorneys' fees as may be established by the Association, shall be a charge on the land and shall be a continuing lien upon the Unit and improvements against which each such assessment is made. Each such assessment, together with such interest and costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of the Unit at the time the assessment became due. The personal obligation of an owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them and then only with the consent of the Association. All assessments shall be shared equally by the owners of each Unit.

**Section 2: Purpose of Assessments:** The assessments levied by the Association shall be used exclusively for promoting the recreation, health, safety and welfare of the residents and the Property; for enforcing these covenants and the rules of the Association; for providing the services and facilities for the purposes of or related to the maintenance, use and enjoyment of the common area and facilities; for the purpose of payment of common expenses; and for the maintenance and upkeep of all water lines and systems as well as for payment of all sums due for water service to the

premises; for the maintenance of all ponds and bulkheads within or abutting the project; for maintenance of private roadways; and, as applicable, for the upkeep and maintenance of exterior components or portions of any multifamily structures as may, hereafter, be incorporated into Tidalwalk upon recording an Amendment to this Declaration, as herein provided.

**Section 3: Amount of Annual Assessment:**

a. **Initial Annual Assessment:** Assessments shall commence for all Units on November 1, 2008.

b. **Increase by Association Board of Directors:** Through and including December 31, 2008, the maximum annual assessment shall be \$2,400.00 per Unit. Commencing January 1, 2009, the annual assessment which may be established effective January 1 of each year by the Board of Directors, may not be increased by more than ten percent (10%) of the prior year's assessment without a vote of the members as provided below. For example, the 2009 assessment may not exceed \$2,640.00 per Unit absent approval of the membership as set forth below.

c. **Increase by Members:** From and after the date specified in subparagraph (a) above, the annual assessment may be increased by more than ten percent (10%) only by an affirmative vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose. Written notice of said meeting, setting forth the purpose of the meeting, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The limitation herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

d. **Criteria for Establishing Annual Assessment:** In proposing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts and reserves for future needs.

**Section 4:** The Board of Directors shall fix the amount of the annual assessment against each Unit at least ten (10) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due date shall be established by the President. The Association, upon demand and at any time, shall furnish a

certificate in writing signed by a member of the Association setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Unit is binding upon the Association as of the date of its issuance.

**Section 5: Special Assessments:** In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purposes of: (i) defraying, in whole or in part, the costs of construction or reconstruction, repairs or replacement of described capital improvements upon the Common Areas and within any amenity package, including the necessary fixtures and personal property related thereto, and specifically including the water lines and systems within the project; and, (ii) for unbudgeted expenses (including, without limitation, expenses required to complete repair, maintenance and/or clean-up which the Board deems necessary or advisable after a storm, hurricane or other casualty event) or other expenses in excess of those budgeted. Any such special assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of such meeting, setting forth the purpose of the meeting, shall have been sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The voting rights set forth in Article V hereof shall be applicable to all votes for special assessments.

**Section 6: Insurance Assessment:** Except as otherwise provided in these Declarations, insurance premiums for the insurance coverage obtained by the Board pursuant to Article VII herein and as necessary to pay the cost of deductibles shall be Common Expenses to be paid by a regular insurance assessment (an "Insurance Assessment") against individual Owners of Townhome Units. In accordance with these Declarations, the Board shall make appropriate allocations of the cost of any insurance carried by the Association for the benefit of a particular Owner.

**Section 7: Individual Assessments:** The Board shall have the power to levy Individual Assessments against a particular Unit or Units constituting less than all Units within the Property as follows:

- (a) to cover the costs, including overhead and administrative costs, of providing

benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, handyman service, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner;

(b) to cover costs including overhead and administrative costs and reserves incurred for maintenance, repair and replacement of any private roads, signs, mail boxes, fences and berms which are constructed for the benefit of certain specified Units, as shall be more specifically set forth in a Supplemental Declaration;

(c) to cover costs incurred in bringing the Unit into compliance with the terms of these Declarations, including, without limitation, any applicable Supplemental Declaration, the Articles, the By-Laws, Rules and Regulations, or architectural or design guidelines or costs incurred as a consequence of the conduct of the Owner or occupant of the Unit, their lessees, licensees, invitees, or guest; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing before levying an Individual Assessment under this Section; and

(d) to cover insurance costs which the Board determines are appropriate pursuant to Article VII herein.

**Section 8: Uniform Rate of Assessment:** Both annual and special assessments must be fixed at a uniform rate for all Units, on a per Unit basis, and may be collected on a monthly, quarterly or annual basis as determined by the Board of Directors. In the event boat slips and Class C memberships are established, assessments need not be uniform as to Class C memberships.

**Section 9: Quorum for an Action Authorized under Sections 3 and 4:** At a meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth in Sections 3 and 4 and the required quorum at any such

subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 10: Payment of Annual Assessments:** The annual assessments provided for herein shall be paid in advance in monthly, quarterly or annual installments as determined by the Board of Directors. Assessments shall be prorated for any partial month.

Notwithstanding the foregoing, upon completion of any dock/pier(s) and/or boat slips, the Association shall prepare an annual estimated budget for the costs of any repair, maintenance, insurance, utilities and use expenses for the dock/pier(s) and/or boat slips at the Property. Upon the creation of any Class C memberships by Declarant or its designee, the Class C Members shall be responsible for sixty percent (60%) of the budgeted expenses (as well as for that same percentage of any overages) associated with the dock/pier(s) and/or boat slips at the Property. Such assessments shall be a lien against the boat slip(s) owned by the individual Class C Members until such time as they are paid by the Member.

**Section 11: Effect of Nonpayment of Assessments: Remedies of the Association:** Any assessments or portion thereof which are not paid when due shall be delinquent. If the assessment or any portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum. The Association may bring an action against the owner personally obligated to pay the same, or foreclose the lien against the Property, and, in either event, interest, costs and reasonable attorney's fees incurred in the prosecution of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Areas or abandonment of the Unit.

**Section 12: Subordination of the Lien to Mortgages and Ad Valorem Taxes:** The lien of the assessments provided for herein on any Unit shall be subordinate to the lien of any first mortgage and ad valorem taxes on such Unit. The sale or transfer of any Unit shall not affect the assessment lien; however, the sale or transfer of any Unit pursuant to such 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 Unit from liability for any assessments thereafter becoming due or from the lien thereof.

## **ARTICLE VI**

### **Maintenance and Landscaping**

The Association shall contract for the landscaping, irrigation and maintenance of all common areas located within Tidal Walk, including any alleyways located within the property. The expense of providing such services shall be deemed a common expense and shall be shared equally by all Unit owners as provided in ARTICLE V above.

Each Owner shall be responsible for the exterior maintenance of each dwelling, as well as all landscaping, irrigation and maintenance of any areas surrounding the Unit owner's dwelling up and to the community roadway adjoining the Unit owner's property and agrees to maintain the dwelling and the Lots in a good and acceptable manner. In addition, each Owner of a Unit containing a landscape buffer shall be required to maintain the landscape buffer area or abutting area in accordance with the standards set forth by the Architectural Control Committee as may be amended from time to time.

If, in the opinion of the Association, any owner shall fail to maintain any dwelling or Lot owned by him in a manner which is reasonably neat and orderly or shall fail to keep improvements constructed thereon in a state of repair so as not to be unsightly, or comply with the landscaping requirements set forth above or as may be adopted by the Architectural Control Committee as hereafter set forth, all in the sole opinion of the Association, the Association in its discretion, by the affirmative vote of two-thirds (2/3) of the members of the Board of Directors, and following ten (10) days written notice by the Owners, may enter upon and make or cause to be made repairs to such improvements and perform such maintenance on the Lot and Unit as the removal of trash, cutting of grass, pruning of shrubbery, weeding and items of erosion control. The Association shall have an easement onto and over each Lot and Unit for the purpose of accomplishing the foregoing. The reasonable cost incurred by the Association in rendering all such services, plus a service charge of fifteen percent (15%) of such cost, shall be added to and become a part of the assessment to which such Unit is subject.

Notwithstanding the foregoing, the Association shall be the entity responsible for the exterior maintenance, repair and replacement of the structural improvements initially constructed on the

Townhome Units by Declarant, including the roofs of such structures (provided, however, that such obligation to maintain, repair and replace shall exclude any responsibility for exterior glass and HVAC facilities).

The Architectural Control Committee may, with the written approval of Declarant or its designee, set forth different landscape and architectural guidelines throughout the TidalWalk premises, provided such differing guidelines and landscape architecture do not violate any of the provisions hereof or of the Bylaws of the Association, and the various areas of development remain in harmony with the development, as a whole.

The Association encourages the planting of shrubs and trees. However, all landscaping throughout the TidalWalk premises, whether provided and maintained by the Association, Declarant, their respective agents, or by any Unit owner, shall be installed such that there is little or no impact on the grounds and the waters in and neighboring TidalWalk.

## **ARTICLE VII**

### **Insurance and Casualty Losses**

The Association shall maintain adequate and appropriate insurance coverage on all Common Areas, as provided in the By-Laws of the Association and as required by the Planned Community Act. The Association shall also provide insurance on the Townhome Units as contemplated herein.

The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available.

(a) Commercial general liability insurance on the Common Area, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. Insurance premiums for the insurance coverage obtained by the Board pursuant to this Section and as necessary to pay the cost of deductibles shall be Common Expenses to be paid by all Members by regular Insurance Assessments as provided in Article V Section 6 herein; and

(b) Property Insurance for all structural improvements initially constructed by



Declarant, or Approved Builder, upon the Townhome Units within the Reserve in accordance with this Section:

- (1) Such insurance shall be in an amount (after application of any deductions) equal to the full replacement value without deduction for depreciation.
- (2) The Board is authorized to obtain appraisals periodically for the purpose of establishing said replacement costs of the insurable improvements, and the cost of such appraisals shall be a Common Expense. The Board shall be authorized to maintain any reasonable deductible on such insurance policies as it, in its sole, discretion deems advisable. The policy deductible shall be paid or applied by the Association as a Common Expense.
- (3) Such insurance shall afford protection against all risks of direct physical loss commonly insured against.
- (4) As long as Declarant or Approved Builder owns any Townhome Unit, Declarant and/or Approved Builder shall be protected by all such policies in the same manner as any other Owner of a Townhome Unit. The coverage provided to Declarant and/or Approved Builder under the insurance policies obtained in compliance with this section shall not be deemed to protect or be for the benefit of any general contractor engaged by Declarant and/or Approved Builder, nor shall such coverage be deemed to protect Declarant and/or Approved Builder for (or waive any rights with respect to) warranty claims against Declarant, or as the case may be Approved Builder, as the developer of the Unit.
- (5) Depending on the portion of the townhome improvements damaged or destroyed and covered by an insurance claim submitted on behalf of the Association, the deductible amount, if any, on any insurance policy purchased by the Board may be treated as a Common Expense payable from Insurance Assessments or Individual Assessments allocable to only some of the Townhome Units, if the claims or damages arise from the negligence of

particular Townhome Unit Owners, or if the repairs benefit only particular Townhome Unit Owners, or as an item to be paid from working capital reserves established by the Board. The Association may enforce payment of any amount due from an individual Townhome Unit Owner toward the deductible.

(6) Except as otherwise provided in these Declarations, insurance premiums for the insurance coverage obtained by the Board pursuant to this section and as necessary to pay the cost of deductibles shall be Common Expenses to be paid by regular Insurance Assessments as provided in Article V herein. In accordance with these Declarations, the Board shall make appropriate allocations of the cost of any insurance carried by the Association for the benefit of a particular Townhome Unit Owner.

(7) The Association shall make diligent efforts to assure that said insurance policies provide for the following:

- (i) A waiver of subrogation by the insurer as to any claims against other Townhome Unit Owners, the Association, the Master Association, any officer, director, agent or employee of the Association, the Townhome Unit Owner and their employees, agents, tenants, invitees, guests, occupants, users and invitees.
- (ii) A waiver by the insurer of its right to repair and reconstruct instead of paying cash.
- (iii) Coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to the named insured, all mortgagees and the Association.
- (iv) Coverage will not be prejudiced by act or neglect of the Townhome Unit Owners when said act or neglect is not within the control of the Association, or by any failure of the

Association to comply with any warranty or condition regarding any portion of any Townhome Unit over which the Association has no control.

- (v) No policy on the Townhome Units can be canceled, invalidated or suspended on account of the conduct of any one or more other individual Townhome Unit Owners.
  - (vi) No policy on the Townhome Units can be canceled, invalidated or suspended on account of the conduct of any officer or employee of the Board without prior demand in writing that the Board cure the defect, and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Townhome Unit Owner or any mortgagee.
  - (vii) The name of the insured shall be substantially as follows: "Trustees for The Tidal Walk Home Owners Association, Inc." for the use and benefit of the individual Townhome Unit Owners and lien holders as their interest may appear.
  - (viii) Insurance proceeds shall be paid to the Trustee designated in the policy suffering a loss for that purpose, and in the absence of such designation to the Association, in either case to be held in trust for each Townhome Unit Owner and Townhome Unit Owner's mortgagee.
- (c) Any other insurance coverage which is contemplated in these Declarations and deemed necessary by the Association, or required to be maintained by the Association, under the Planned Community Act.

## **ARTICLE VII**

### **Use Restrictions**

**Section 1: Rules and Regulations:** The Board of Directors of the Association shall each have the power to formulate, amend, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the yards of each Lot and common area. Any rules and regulations formulated by the Association, along with all policy resolutions and policy actions taken by the Board of Directors of the Association, shall be recorded in a Book of Resolutions which shall be maintained in a place convenient to the owners and available to them for inspection during normal business hours.

**Section 2: Use of Property:** Each Lot, building, the home thereon and the Common Areas shall be for the following uses and subject to the following restrictions, and, in addition, to those set forth in the By-Laws:

a. All Lots, Buildings and the Common Areas shall be used for single family residential purposes, and within the Townhome buildings multifamily residential purposes, and for purposes incidental or accessory thereto, including any common recreation and meeting areas, as approved by Declarant.

b. No Lot may be subdivided without prior written approval of the Declarant.

c. Declarant may use up to five (5) homes at any given time for offices and/or for sales or display purposes.

d. Nothing shall be kept and no activity shall be carried on in any building or home or on the Common Areas which will increase the rate of insurance, applicable to residential use, for the surrounding Property or the contents thereof.

e. No owner shall do or keep anything, or cause or allow anything to be done or kept, in his home or in the Common Areas which will result in the cancellation of insurance on any portion of the Property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation.

f. No waste shall be committed on any portion of the Common Areas.

g. All garbage receptacles, containers and enclosures shall be located so as not to be unsightly and said locations shall be as originally designated or constructed by Declarant or as approved by the Architectural Control Committee promptly removed from street after pickup day. All refuse collection shall be by a carrier or provider designated by the Declarant.

h. No immoral, improper, offensive or unlawful use shall be made of the Property, or any part thereof, and all valid laws, ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed.

i. Nothing shall be done in or to any home or garage or in, to or upon any of the common area which will impair the structural integrity of any building, home, garage or portion of the Common Areas or which would impair or alter the exterior of any building or portion thereof, except in the manner provided in this Declaration.

j. Subject to the provisions of subparagraph a and c above, no industry, business, trade, occupation or profession of any kind, whether commercial or otherwise, shall be conducted, maintained or permitted on any part of the Property. The foregoing shall not preclude the use of a portion of a resident for "home office" use so long as such use does not allow the physical presence of customers, clients, agents, employees, contractors, subcontractors, suppliers or any other persons associated with such activity.

k. Except as may be required by municipal ordinance, no owner shall display, or cause to allow to be displayed to public view any sign, placard, poster, billboard or identifying name or number upon any home, building or any portion of the Common Areas, except as may be approved by the Architectural Control Committee or the Declarant. This shall include prohibition on the display of all real estate sale, lease, or rental signs and signs of a political nature, among others, without said approval.

l. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Areas except at the direction of and with the express written consent of the Association.

m. The Common Areas shall be used only for the purposes for which they are intended and reasonably suited and which are incidental to the use and occupancy of the homes, subject to any rules or regulations that may be adopted by the Association pursuant to its By-Laws.

n. Minimum square footage requirements shall be established for different portions of the Property as determined by the Architectural Control Committee. Notwithstanding the foregoing, the requirements shall not contain a minimum square footage requirement of less than 1600 square feet of heated living area, exclusive of porches, decks and garages.

o. All dwellings shall satisfy the architectural guidelines promulgated by the Architectural Control Committee. Upon receipt of a request for approval to build a dwelling on any Lot by a Unit owner, the Architectural Control Committee shall have thirty (30) days to issue its confirmation that the planned dwelling meets the required architectural guidelines, otherwise approve the planned dwelling, or issue a report as to why the proposal does meet the necessary criteria. If any proposal redrafts are required, upon receipt of the redrafted proposal the Architectural Control Committee shall respond within fifteen (15) days, or the proposal shall be deemed to be approved. Until such time as eighty (80%) of the Units at the Property are sold, Declarant shall act as the Architectural Control Committee.

p. No owner may install any boat dock within the Property or the adjoining waters unless so approved by the Association and the Declarant, or its assignee, and Declarant, its assignee or agent, shall have the exclusive right otherwise to install boat docks and/or boat slips at the Property.

q. All mailboxes at the Property shall conform to those approved in the architectural guidelines promulgated by the Architectural Control Committee.

r. All fencing must be located as approved by the Architectural Control Committee of a type included within the architectural guidelines promulgated by the Architectural Control Committee, and must, on any Lot line being shared with another owner or TidalWalk's Common Areas, be completely buffered (except that one gate shall be allowed on either side of the dwelling) by landscaping, again as approved by the Architectural Control Committee. No chain link, split rail or welded wire fences shall be allowed on any Lot. Prior to installing any fencing, any Unit owner must submit a written request, including detailed plans and specifications, to the Architectural Control Committee for approval. Notwithstanding the foregoing to the contrary, the Association

shall be solely responsible for the maintenance of any fencing which has been placed by Declarant or the Association on or near the perimeter of TidalWalk.

s. Construction on any home, Common Area, or amenity within TidalWalk shall take place solely from Monday through Saturday between the hours of 8:00am and 6:00pm. No construction vehicle may be parked on any Lot, road or Common Area overnight, and no construction equipment, related trailers or other commercial equipment and related materials may be located in driveways, streets or other Common Areas.

t. No yard sales may be conducted on any Lot or within the Common Areas at any time.

u. No outdoor clotheslines or similar equipment shall be erected or located on any Lot.

v. No outside burning (not to include outdoor grills or approved outdoor chimneys) shall be permitted except as may be approved by the Association in advance (provided that in no such event shall burning be permitted except in compliance with all applicable governmental regulations).

**Section 3: Landscaping:** Prior to commencement of construction of any improvement upon any Lot, the Owner must submit a landscaping plan to The Architectural Control Committee for review and approval. The Architectural Control Committee shall establish standards and guidelines for the quality and quantity of the plans to be submitted as well as general guidelines relating to landscaping of each Lot which may include required and permitted sod as well as certain species which may or may not be used in connection with the landscaping. Upon approval of the landscaping plan, the Lot shall be landscaped as approved and shall thereafter be maintained by the Owner in strict accordance with the approved plans.

Without limiting the foregoing, the following specific requirements shall apply to all Units:

a. No tree or vegetation four inches or larger at ground level may be removed without written approval of The Architectural Control Committee and only upon such terms and conditions as are satisfactory to the Committee.

b. Wetlands must remain in a pristine condition and Owner shall take no action which materially impairs or impacts any wetland.

c. No grass or vegetation may be planted in any wetland area or within ten (10) feet of any wetland or the high water mark of any navigable water without first obtaining the written approval of the Architectural Control Committee.

d. Trees within fifty (50) feet of any wetland on the high water mark of any navigable water may be trimmed but not cut without the prior written consent of The Architectural Control Committee.

Section 4: **Animals.** No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are kept in the home of the owner or in such other area as is approved by the Architectural Control Committee. The Association may establish reasonable rules and regulations regarding the control and disposal of animal waste.

Section 5: **Lease of Homes:** Unless by written consent of the Declarant, or the Association after period of Declarant control has ended, no home shall be leased for transient or hotel purposes, nor may any owner lease less than the entire unit, nor shall any such lease be for any period of less than six (6) months. Any lease must be in writing and provide that the terms of the lease and occupancy of the unit shall be subject in all respect to the provisions of the Declaration of Covenants, Conditions and Restrictions and By-Laws of the Association and any failure by a lessee to comply with the terms of such documents shall be a default under the lease.

## **ARTICLE VIII**

### **Easements**

Section 1: **Walks, Drives, Parking Areas and Utilities:** All of the Property, including Lots, Units and Common Areas, shall be subject to a perpetual non-exclusive easement or easements in favor of all owners of Units for their use and the use of their immediate families, guests, invitees, tenants or lessees for all proper and normal purposes and for ingress, egress and regress in and to such easements for private streets, driveways, alleyways, walkways, sidewalks, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines and other public utilities as shall be established prior to subjecting the



Property to this Declaration by the Declarant or its predecessors in title. The Association shall have the power and authority to grant and to establish in, over, upon and across the Common Areas conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property.

**Section 2: Reservation to Declarant:** Every Lot and Unit shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed twenty-four (24) months following conveyance of a Unit to an owner for the purpose of correcting any problems that may arise regarding grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Further, Declarant reserves the right to subject the Property to a contract with Progress Energy or any other public utility providing electrical or gas service (the "Utility Provider") 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 continuing monthly payment to the Utility Provider by the owner of each Unit.

**Section 3: Emergencies:** Every Lot and home shall be subject to an easement for entry by the Association for the purpose of correcting, repairing or alleviating any emergency condition which arises upon any Lot or within any home and which endangers any building or portion of the Common Areas.

**Section 4: Utility Easements:** A utility easement is reserved above, under, within, over and across an area ten feet (10') in width and running parallel with the right of way line of each street or alleyway in the Property, and as depicted on the Map, and any annexation Map recorded subsequent to this Declaration. An easement is hereby established over all Lots and Common Areas for the benefit of applicable governmental agencies for the setting, removing and reading of water, gas and electric meters, maintaining and replacing water, drainage and drainage facilities, maintaining and replacing gas and electric facilities, fire fighting, law enforcement, garbage collection and the delivering of mail.

**Section 5: Developers Access Easement:** An exclusive easement is hereby established in favor of Declarant over all common areas for access to adjacent properties for the purposes of future development and the installation of streets and public utilities.

**Section 6: Landscaping and Maintenance Easement:** An easement is hereby established in favor of the Declarant and the Association, their agents and assigns over all Lots for the purpose of providing and maintaining landscaping, including any landscaping buffers, for installation and maintenance of irrigation lines and facilities and for other activities reasonably relating to the maintenance of the Common Areas and other premises, including ponds and bulkheads.

**Section 7: Appurtenance Easements:** An easement is hereby established in favor of the Declarant and the owner of any Lot for the existence and maintenance for any appurtenance extending from a dwelling which may encroach upon an adjoining Lot, including but not limited to roofs, steps and heating and air conditioning units. That easement provided in Section 5 hereof shall be applicable to the maintenance or reconstruction of such appurtenances.

**Section 8: Owner's Easement for Repair and Reconstruction:** If any dwelling is located closer than five (5) feet from its Lot line, the owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repairs, maintenance or reconstruction of his dwelling. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as near the same condition as that which prevailed prior to the commencement of work as is reasonably practicable.

**Section 9: Easement for Neighboring Properties.** Declarant reserves the right to create an easement in favor of the lots neighboring TidalWalk to the south, not to exceed thirty feet in width for the purpose of ingress, egress, and regress. Any such easement shall be memorialized in an easement document to be recorded in the New Hanover County Registry, or be located upon any recorded plat of Tidalwalk.

**Section 10: Easement for Encroachments.** In the event that, by reason of the construction, reconstruction, rehabilitation, alteration or improvement of any of the townhome buildings, Units located therein or improvements thereto, any part of the Common Areas now or hereafter encroaches upon any part of any Townhome Unit, or a Townhome Unit encroaches upon any part of the Common Areas, an easement for the continued existence and maintenance of each such

encroachment is hereby declared and granted and shall continue for so long as each such encroachment exists.

## **ARTICLE IX**

### **Rights of Institutional Lenders**

Section 1: The prior written approval of each institutional holder of a first deed of trust on Units in the Property will be required for the following:

- a. The abandonment or termination of the planned unit development except for abandonment or termination as provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;
- b. Any material amendment to the Declaration or to the By-Laws of the Association.

Section 2: Upon written request, any institutional holder of a first deed of trust on a Unit will be entitled to:

- a. Inspect the books and records of the Association during normal business hours;
- b. Receive an annual financial statement of the Association within 90 days following the end of any fiscal year; and,
- c. Written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

Section 3: a. In the event of substantial damage or destruction of any Unit or any part of the Common Areas, the institutional holder of any first mortgage on a Unit will be entitled to timely written notice of any such damage or destruction.

b. If any Lot or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the institutional holder of any first mortgage on a Unit will be entitled to timely written notice of any such proceeding or proposed acquisition.

c. The holder of the first mortgage on any Unit shall be given prompt notice of any default in the Unit mortgagor's obligation hereunder not cured within thirty (30) days of each default, such notice to be directed to such mortgagee at its address shown on the recorded security instrument.

## **ARTICLE X**

### **Employees**

The Association is fully authorized to employ such persons as it, in its sole discretion deems necessary and appropriate to enable it to fulfill its duties set forth herein and as is reasonably necessary to protect and preserve the Property. Without limiting the foregoing, at such time as the Amenity Package is completed and conveyed to the Association by the Declarant, the Association is authorized to employ persons as are reasonably necessary for the operation and management of the Amenity Package and, if it deems such action appropriate, may agree to share the cost with one or more Associations including any Master Association created pursuant to the terms of this Declaration. All costs shall be deemed Common Expenses.

## **ARTICLE XI**

### **Rights Reserved by Declarant**

Pursuant to Section 47F-1-103 of the Act, Declarant hereby reserves for its benefit the following rights:

- a. Completion of any improvements indicated on the Map;
- b. Exercising any and all rights it may have as developer of the Property;
- c. Maintaining sales offices, management offices, signs and advertising TidalWalk, and any model units Declarant wishes to utilize in conjunction with the process;
- d. Using easements through the Common Areas for the purpose of making improvements within TidalWalk or within real property which may be added to TidalWalk;
- e. Making TidalWalk part of a larger Planned Community or group of Planned Communities, as defined in the Act;
- f. Making TidalWalk part of a Master Association, as defined in the Act;

g. Amending this Declaration, without the consent, joinder or approval of any Owner, for the purposes of creating a new class of Members in the Association for Owners of Multifamily units developed on any part of the property described in Exhibit A;

h. Amending this Declaration, in its sole discretion and without the consent, joinder or approval of any Owner, or the Association, for a period of ten (10) years from the date of recording by the recording of an Amendment in the Office of the Register of Deeds of New Hanover County which has been executed by Declarant or assignee or designee; and,

i. Appointing and/or removing any officer(s) or executive Board member of the Association or any Master Association, as defined in the Act, during a time of Declarant control of the Board. In addition, Declarant reserves the right to assign Declarant's rights as provided in G.S. 47F-3-104.

## **ARTICLE XII**

### **Phased Development**

In addition to the rights set forth in Article XI above and without limiting the rights in any fashion, Declarant reserves the right to establish one or more phases or sections of TidalWalk and submit the same, together with common areas, and limited common areas to the terms of this Declaration. All such annexation shall be accomplished by virtue of the execution and recordation of a Supplemental Declaration identifying the property to be annexed and subjecting said property to the terms of this Declaration as it may be amended from time to time. The property described on Exhibit A is the property that is the subject to being annexed. Any Annexed Property may be developed as single family or multifamily lots or units. If Declarant annexes any part of the property described on Exhibit A for multifamily developments, then Declarant further reserves the right to amend this Declaration to create a class of Members for owners of Units and whose voting rights may be the same as, but in no event greater than, those voting rights of Members of single family residential lots. However, nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any additional property in any manner whatsoever.

## ARTICLE XII

### General Provisions

Section 1:     **Enforcement:** The Association or any owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Association or of 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.

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

Section 3:     **Amendment:** The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by the Declarant in its sole discretion and without the consent, joinder or approval of any Owner, or the Association, for a period of ten (10) years from the date of recording by the recording of an Amendment in the Office of the Register of Deeds of New Hanover County which has been executed by Declarant or assignee or designee. Thereafter, this Declaration may be amended only by affirmative vote or written agreement signed by Unit Owners of lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, by the Declarant if necessary for the exercise of any reserved development right.

Section 4:     **Conflict:** In the event of any irreconcilable conflict between the Declaration and the By-Laws of the Association, the provisions of this Declaration shall control. In the event of any irreconcilable conflict between this Declaration or the By-Laws of the Association and the Articles of Incorporation of the Association, the provisions of the Articles of Incorporation shall control.

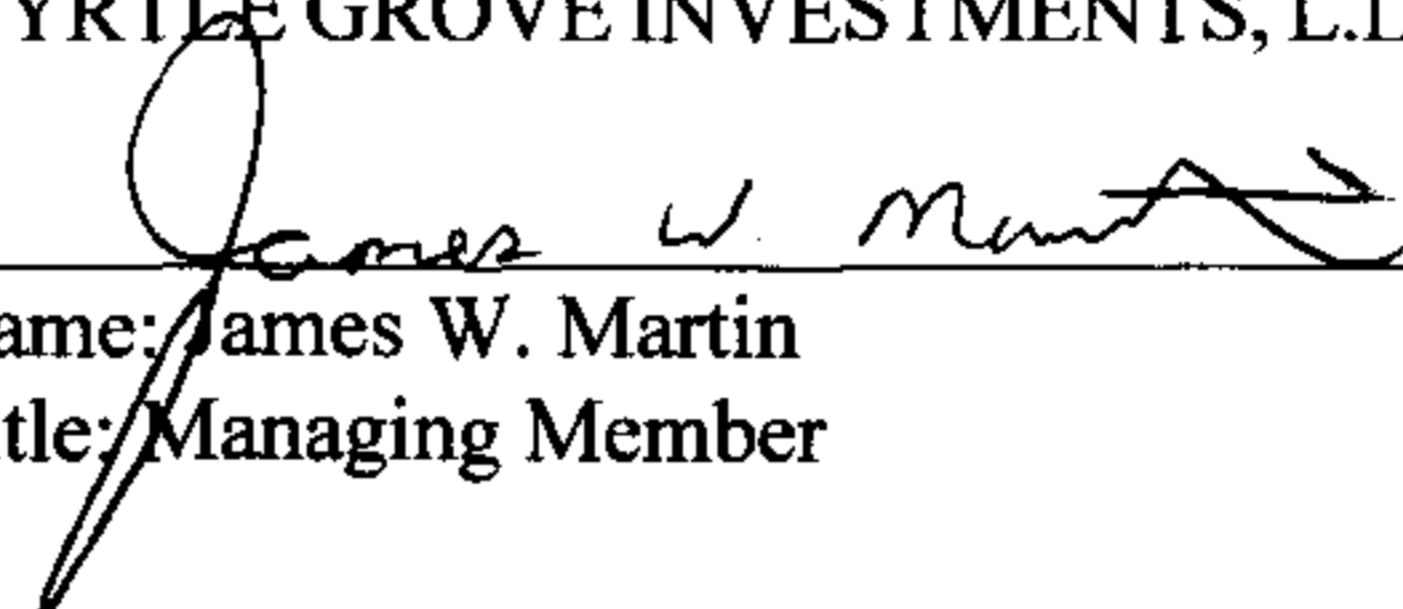
Section 5:     **Future Associations:** Declarant hereby reserves the right to create additional associations to govern (a) other portions of the TidalWalk community, including any boat docks and/or community center, swimming pool or other amenities Declarant, or its agents, decides to install within the community and (b) any future development parcels. Further, at the request of

Declarant, the Association shall merge with any additional association or Master Association, as defined in the Act, to form one uniform association and the Association shall work with Declarant, or its designee, to prepare all such documents necessary for such combination. Declarant, pursuant to its rights under the Act and in accordance with Article XI hereof, hereby reserves the right to require that the Association merge with another planned community association or with any Master Association.

**Section 6: Stormwater Restrictions and Regulations:** The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number **SW8 060223**, as issued by the Division of Water Quality under NCAC 2H.1000. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the storm water 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 storm water may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality. The maximum allowable built upon areas for all Units anticipated in TidalWalk are as set forth on Exhibit "B" which is attached hereto and incorporated herein by reference. These allotted amounts include any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools. This project proposes a curb outlet system. Each designated curb outlet swale shown on the approved plan must be maintained at a minimum of 100' long with 3:1 (H:V) side slopes or flatter, have a longitudinal slope no steeper than 5%, carry the flow from a 10 year storm in a non-erosive manner, and maintain a dense vegetated cover. 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. Each lot will maintain a 30' wide vegetated buffer between impervious areas and surface waters. All roof drains shall terminate at least 30' from the mean high water mark of surface waters. Filling in, piping or altering any designated 3:1 curb outlet swale associated with the development is prohibited by any persons.

**IN WITNESS WHEREOF**, the Declarant has caused this instrument to be executed in its corporate name by its duly authorized officers and its corporate seal affixed hereto, the day and year first above written.

MYRTLE GROVE INVESTMENTS, L.L.C. (SEAL)

  
Name: James W. Martin  
Title: Managing Member



STATE OF NORTH CAROLINA

COUNTY OF New Hanover

I, Nanci B Hollar, a Notary Public of the County of New Hanover State of North Carolina, certify that James W. Martin, personally appeared before me this day and acknowledged that he is Managing Member of Myrtle Grove Investments, L.L.C. and that he, as Managing Member, being authorized to do so, voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein.

I certify that the Signatory personally appeared before me this day, and

- (I have personal knowledge of the identity of the Signatory); or
- (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of: *(check one of the following)*
  - a driver's license; or
  - other (describe: \_\_\_\_\_); or
  - (a credible witness has sworn to the identity of the Signatory).

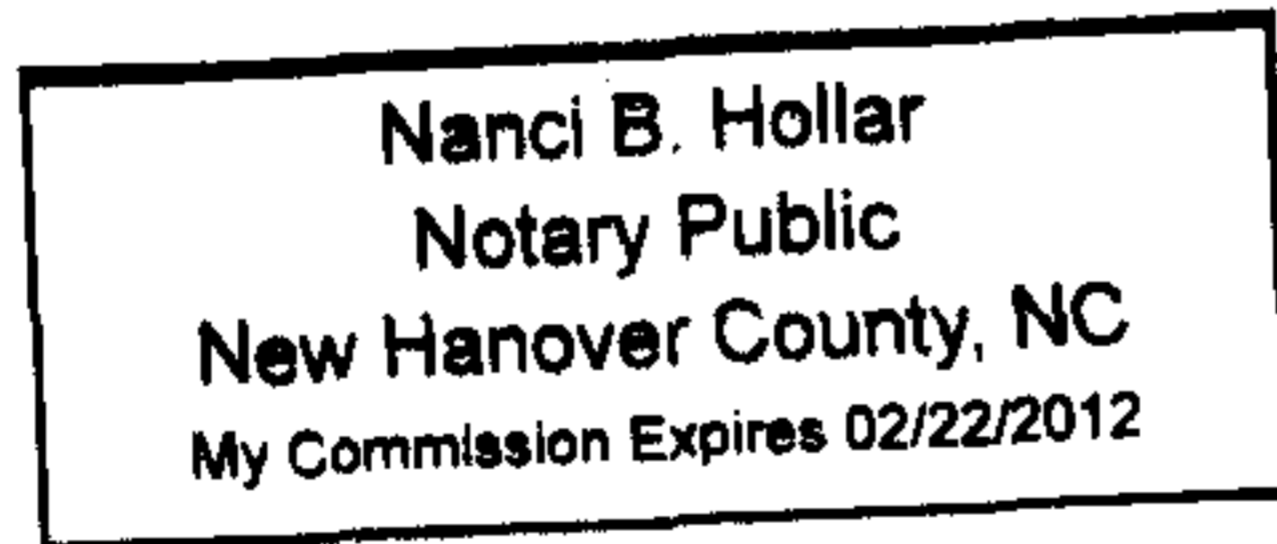
WITNESS my hand and official seal this 8<sup>th</sup> day of October, 2008.

Nanci B Hollar

Notary Public Nanci B Hollar  
*(type or print name)*

My commission expires: 2/22/2012

(SEAL)



CONSENT AND JOINDER OF MORTGAGEE/TRUSTEE

SECURITY SAVINGS BANK, SSB, a North Carolina Bank and the holder of Note secured by a Deed of Trust recorded in the Office of the New Hanover County, North Carolina Register of Deeds, in Book 5188, Page 2674, and KENNETH W. MABE, in his capacity as Trustee under the aforesaid deed of trust, hereby consent to the execution and delivery of the foregoing Declaration of Covenants, Conditions and Restrictions for TidalWalk, with exhibits thereto (the "Declaration"), and to the filing thereof, in the office of the County Recorder of New Hanover County, North Carolina, and further subject and subordinate the above-described deed of trust to the provisions of the foregoing Declaration with attached exhibits (including, without limitation, any easements reserved therein).

IN WITNESS WHEREOF, SECURITY SAVINGS BANK, SSB, by its authorized officer, and KENNETH W. MABE, have caused this Consent to be executed this 10 day of October, 2008.

SECURITY SAVINGS BANK, SSB

By: Henry Edmund  
Name: HENRY EDMUND  
Title: Senior Vice Pres.

TRUSTEE:

Kenneth W. Mabe  
Name: Kenneth W. Mabe  
Trustee under the aforesaid Deed of Trust

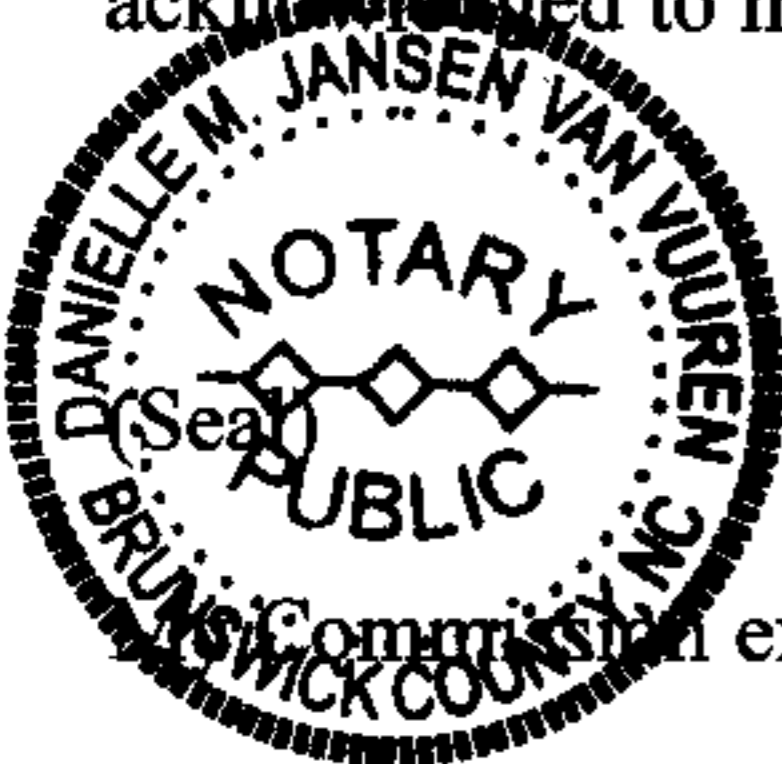
State of North Carolina

County of Brunswick

I, Danielle M. Jansen van Vuuren, a Notary Public of Brunswick County, North Carolina do certify that on this 10 day of October, 2008 before me personally appeared Henry Edmund, Sr. Vice President of SECURITY SAVINGS BANK, SSB

X personally known to me;  
\_\_\_\_\_ proved to me by satisfactory evidence;  
\_\_\_\_\_ proved to me on the oath or affirmation of \_\_\_\_\_ who is personally known to me,

to be the person(s) whose name(s) is/are signed on the preceding or attached record, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.



Danielle M. Jansen van Vuuren,  
Notary Public

My commission expires: 9-13-2010.

\*\*\*\*\*

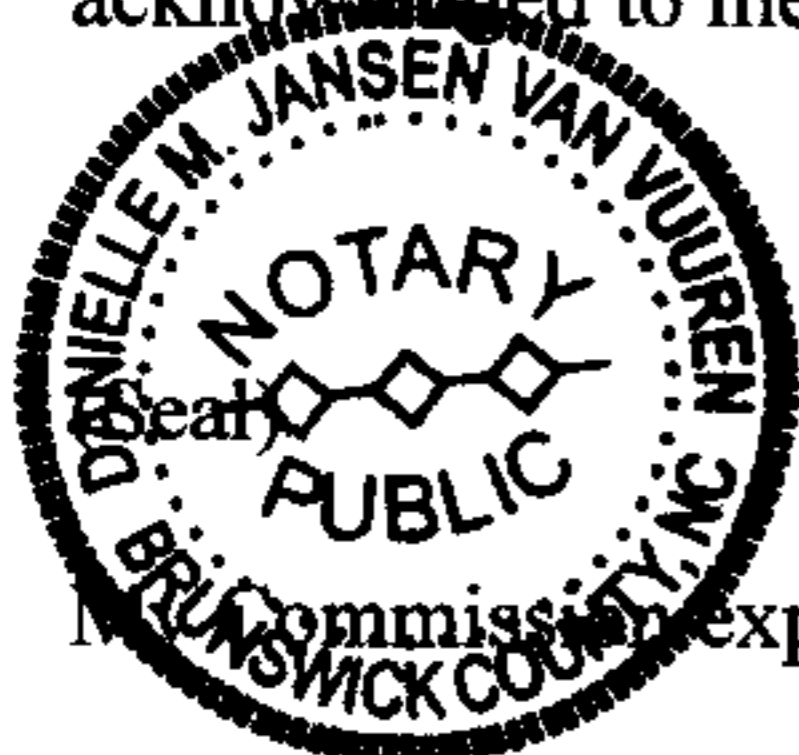
State of North Carolina

County of Brunswick

I, Danielle M. Jansen van Vuuren, a Notary Public of Brunswick County, North Carolina do certify that on this 10 day of October, 2008, before me personally appeared KENNETH W. MABE

X personally known to me;  
\_\_\_\_\_ proved to me by satisfactory evidence;  
\_\_\_\_\_ proved to me on the oath or affirmation of \_\_\_\_\_ who is personally known to me,

to be the person(s) whose name(s) is/are signed on the preceding or attached record, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.



Danielle M. Jansen van Vuuren,  
Notary Public

My commission expires: 9-13-2010.

## EXHIBIT "A"

That certain Tract of land being in Federal Point Township, New Hanover County, North Carolina, said Tract being the Recombination of the Tracts described in Deed Book 2687 Page 239, Deed Book 1872 Page 286, Deed Book 1398 Page 213, deed Book 1363 Page 175, Deed Book 2312 Page 101, Deed Book 1696 Page 1089, Deed Book 1872 Page 286, Deed Book 1384 Page 1369, Deed Book 4922 Pg 763, Deed Book 1567 Page 177, Deed Book 4763 Page 193, Deed Book 994 Page 591 and Deed Book 872 Page 537 of the New Hanover County Register of Deeds and being more fully described as follows:

Commencing from NCGS Monument "Innis", said monument having North Carolina NAD 83 grid coordinates of N. 136262.39 E. 2332810.03, South 03°30'36" East, a distance of 6858.50 feet to NCGS Monument "Jiggs", said monument having North Carolina NAD 83 grid coordinates of N. 129416.75 E. 2333229.94; thence South 27°56'13" East, a distance of 3933.38 feet to an iron rod set on the eastern right of way of Myrtle Grove Road, the **Point of Beginning**.

Thence from the **Point of Beginning**, with the southern line of the Claud Murray Subdivision, said plat is recorded in Map Book 5 Page 88, South 87°56'43" East, a distance of 2049.35 feet to an iron rod found at the southwestern corner of Lot 14; thence with the western line of Lot 14, North 00°35'14" East, a distance of 211.62 feet to an iron rod found, the northwestern corner of Lot 14; thence South 89°24'43" East, a distance of 100.00 feet to a point, the northeastern corner of Lot 14; thence South 00°35'17" West, a distance of 214.18 feet to a point, the southeastern corner of Lot 14; thence South 87°56'43" East, a distance of 1246.78 feet to a point on the high water line of the Intracoastal Waterway; thence along the high water line to a point that is located South 10°43'35" East, a distance of 223.29 feet from the previous point; thence South 88°45'33" East, a distance of 33.73 feet; thence along the high water line to a point that is located South 22°06'33" East, a distance of 225.32 feet from the previous point; thence North 89°12'13" West, a distance of 52.30 feet to a point; thence along the high water line to a concrete monument that is located South 10°01'04" East, a distance of 155.69 feet from the previous point; thence along the high water line to a point that is located South 10°43'12" West, a distance of 707.07 feet from the previous point; thence with the northern line of Old Chimney Subdivision, said plat is recorded in Map Book 19 Page 90, North 88°02'28" West, a distance of 691.99 feet to an iron rod set; thence North 88°20'25" West, a distance of 716.98 feet to an iron rod found; thence North 88°51'10" West, a distance of 737.04 feet to concrete monument found; thence North 88°53'00" West, a distance of 624.10 feet to a concrete monument found; thence leaving the northern line of Old Chimney Subdivision, North 01°53'47" West, a distance of 403.74 feet to an iron rod set; thence North 88°16'22" West, a distance of 673.25 feet to an iron rod set; thence North 24°26'31" East, a distance of 100.00 feet to an iron pipe found; thence North 24°26'31" East, a distance of 204.79 feet to concrete monument found; thence North 88°53'08" West, a distance of 814.08 feet to a concrete monument found on the eastern right of way of Myrtle Grove Road; thence with said right of way, North 44°49'20" East, a distance of 212.79 feet to a point; thence North

---

---

51°56'05" East, a distance of 287.01 feet to a point; thence North 51°10'53" East, a distance of 42.91 feet to a point; thence North 51°10'53" East, a distance of 451.43 feet to the Point of Beginning, containing 106.07 acres, more or less, as shown on a plat prepared by McKim & Creed, PA, entitled "Recombination Survey of 106.07 Acres for Myrtle Grove Investments, LLC" and dated October 27, 2005.

**Exhibit B - Impervious Maximum Sq. Ft. per lot**

<b>Lot #</b>	<b>Impervious Sq. Ft.</b>	<b>Lot #</b>	<b>Impervious Sq. Ft.</b>
1	2200	92	3300
2	2200	93	3300
3	2200	94	3300
4	2200	95	3300
5	2200	96	3300
6	2200	97	3300
7	2200	98	3300
8	2200	99	3300
9	2200	100	3300
10	2200	101	3300
11	2200	102	3300
12	2200	103	2543
13	2200	104	2543
14	2200	105	2543
15	2200	106	2543
16	2200	107	2543
17	2200	108	2543
18	2200	109	2543
19	2200	110	2543
20	2200	111	2800
21	2200	112	3200
22	2200	113	3200
23	2200	114	3200
24	2200	115	3200
25	2200	116	3200
26	2200	117	3200
27	2500	118	3600
28	2500	119	3600
29	2500	120	3600
30	2500	121	3600
31	2500	122	3600
32	2500	123	3600
33	2500	124	3600
34	2500	125	3600
35	2500	126	3600
36	2500	127	3600
37	2500	128	3600
38	2500	129	3600
39	2500	130	3600
40	2500	131	3600
41	2500	132	3600
42	2500	133	3600
43	2500	134	3600
44	2500	135	3600

45	2500	136	3600
46	1700	137	3600
47	1700	138	3892
48	1700	139	3600
49	1700	140	3600
50	1700	141	3600
51	1700	142	3600
52	1700	143	3600
53	1700	144	3600
54	1700	145	3600
55	1700	146	3600
56	1700	147	3600
57	1700	148	3600
58	1700	149	3600
59	1700	150	3600
60	1700	151	3600
61	1700	152	3900
62	3000	153	3600
63	3000	154	3600
64	3000	155	3600
65	3000	156	3600
66	3600	157	3600
67	3600	158	4192
68	3600	159	3600
69	3600	160	3200
70	3600	161	3200
71	3600	162	3200
72	3600	163	3300
73	3600	164	3300
74	2900	165	3200
75	2900	166	3200
76	2900	167	3000
77	2900	168	3600
78	2900	169	3600
79	2900	170	3600
80	2900	171	3600
81	2900	172	3600
82	2900	173	3600
83	2900	174	3600
84	2900	175	3600
85	2900	176	3600
86	2900	177	3600
87	2900	178	3600
88	3300	179	5000
89	3300	180	5000
90	3300	181	5000
91	3300		

Townhome Section      24000

Notwithstanding the foregoing, the Association shall be responsible for the maintenance of all storm water facilities in accordance with the terms of Stormwater Permit **SW8 060223** and all regulations related thereto as the same may be amended from time to time. In the event stormwater requirements are modified and amended after installation by the Declarant, all costs associated with bringing the stormwater system in compliance with new amendments and regulations shall be borne by the Association. Declarant reserves the right to amend the stormwater lot allocation per lot as long as Declarant does not exceed the maximum allowable buildable area as defined under the guidelines and requirements of State Stormwater Permit **SW8 060223**.





REBECCA P. SMITH  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

\*\*\*\*\*

**Filed For Registration:** 10/10/2008 04:21:29 PM  
**Book:** RE 5352 Page: 1309-1349  
**Document No.:** 2008040316  
DECL 41 PGS \$131.00  
**Recorder:** JOHNSON, CAROLYN

State of North Carolina, County of New Hanover

**YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.  
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.**

**\*2008040316\***

2008040316



④  
23



FOR REGISTRATION REGISTER OF DEEDS  
JENNIFER H. MACNEISH  
NEW HANOVER COUNTY, NC  
2009 MAY 13 01:26:29 PM  
BK: 5405 PG: 1669-1673 FEE: \$23.00

INSTRUMENT # 2009017150

Prepared by:  
Block, Crouch, Keeter, Behm & Sayed  
310 North Front Street, Suite 200  
Wilmington, North Carolina 28401

**SUPPLEMENTAL DECLARATION  
TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR TIDALWALK  
(TO ADD ADDITIONAL PROPERTY AS PHASE 2)**

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, MYRTLE GROVE INVESTMENTS, LLC., a North Carolina Limited Liability Company (the "Declarant") heretofore executed and recorded that certain Declaration of Covenants, Conditions and Restrictions for TidalWalk, Phase 1 recorded in Book 5352, Page 1309 of the New Hanover County Registry (referred to as the "Declaration"); and,

WHEREAS, in accordance with ARTICLE XII of the Declaration, the DECLARANT has the right from time to time, to subject certain additional real property within the residential community of TidalWalk to the provisions of the Declaration, thereby subjecting such additional property to the coverage and operation of the Declaration and the restrictions therein contained;

WHEREAS, the real property described herein is within the residential community of Tidalwalk and DECLARANT desires to exercise its rights under ARTICLE XII of the Declaration to cause such real property to be annexed into the TidalWalk development and subjected to the Declaration as TidalWalk, Phase 2; and

WHEREAS, DECLARANT also has the absolute right to further amend the Declaration as set forth in ARTICLE XII, Section 3, and DECLARANT desires to amend the Declaration to redefine certain terms contained in ARTICLE I of said Declaration; and

WHEREAS, capitalized terms not otherwise defined herein shall have the meanings provided to such terms in the Declaration.

NOW, THEREFORE, in accordance with its rights under ARTICLE XII of the Declaration, the DECLARANT, as the fee simple owner of such real property, does hereby amend the Declaration to annex the property described on Exhibit A attached hereto and

**RETURN TO:  
BLOCK, CROUCH, KEETER**

incorporated herein by reference (the "Annexed Property"). Such Annexed Property shall henceforth be deemed part of the Properties and is hereby subjected to the lien and encumbrance of said Declaration.

FURTHER, Declarant, pursuant to ARTICLE XII, Section 3, of the Declaration, does hereby amend the Declaration as follows:

The terms in ARTICLE 1 of the Declaration which are also identified below shall have the meaning given herein, and to the extent inconsistent with the definition given to those terms in the Declaration, the definitions below shall control:

"Section 10: "Common Areas" shall mean and refer to all land within the Property owned by the Association, along with facilities and improvements erected or constructed thereon, for the use and enjoyment of the members of the Association as shown on the map of TidalWalk, Phase 1, recorded in Map Book 53 at Page 214 of the New Hanover County Registry, TidalWalk, Phase 2, recorded in Map Book 54 at Page 87 of the New Hanover County Registry, and in any subsequent annexation maps recorded by Declarant, its successors and assigns, in the New Hanover County Registry which incorporate additional lands into TidalWalk development. In addition, all private streets, water lines located outside public rights-of-way and individual Lots, all sewer lines located outside public rights-of-way, public sanitary sewer easements and within the boundaries of individual Lots, which water or sewer lines serve the Property are declared to be common area. Declarant reserves the right to alter and amend the recorded Map to amend, delete or relocate common areas and facilities as Declarant, in its sole discretion, deems appropriate."

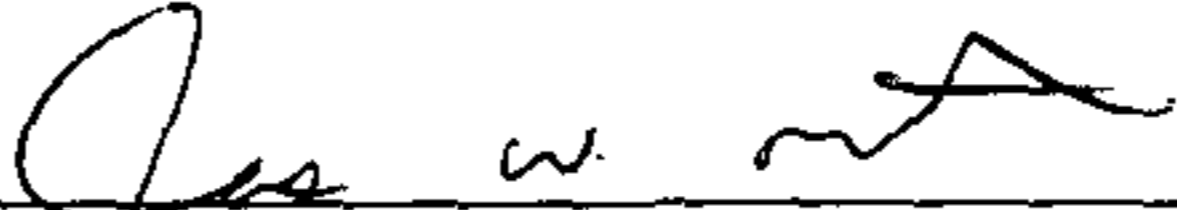
"Section 16: "Map" shall mean that map recorded in Map Book 53 at Page 214 of the New Hanover County Registry, Map Book 54 at Page 87 of the New Hanover County Registry, and any subsequent annexation maps recorded in the New Hanover County Registry by the Declarant, its successors and assigns, which incorporates additional lands into TidalWalk development."

The Declaration erroneously identified the last ARTICLE of that document as ARTICLE XII although the penultimate ARTICLE in the Declaration had already been assigned that ARTICLE designation. Therefore, the last ARTICLE of the Declaration, containing General Provisions, is hereby renumbered as ARTICLE XIII.

Subject to the amendments and supplements contained herein, the aforesaid Declaration shall be and remain in full force and effect.

This the 13<sup>th</sup> day of May, 2009.

**MYRTLE GROVE INVESTMENTS, LLC**

By:   
James W. Martin, Manager

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, Elizabeth P. Evans, a Notary Public of New Hanover County, North Carolina do certify that on this 13<sup>th</sup> day of May, 2009, before me personally appeared **JAMES W. MARTIN, MANAGER of MYRTLE GROVE INVESTMENTS, LLC, a North Carolina Limited Liability Company**

personally known to me;  
 proved to me by satisfactory evidence;  
 proved to me on the oath or affirmation of \_\_\_\_\_ who is personally known to me,

to be the person(s) whose name(s) is/are signed on the preceding or attached record, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.

Elizabeth P. Evans  
Notary Public Elizabeth P. Evans

(Seal)

My Commission expires: June 30, 2009.

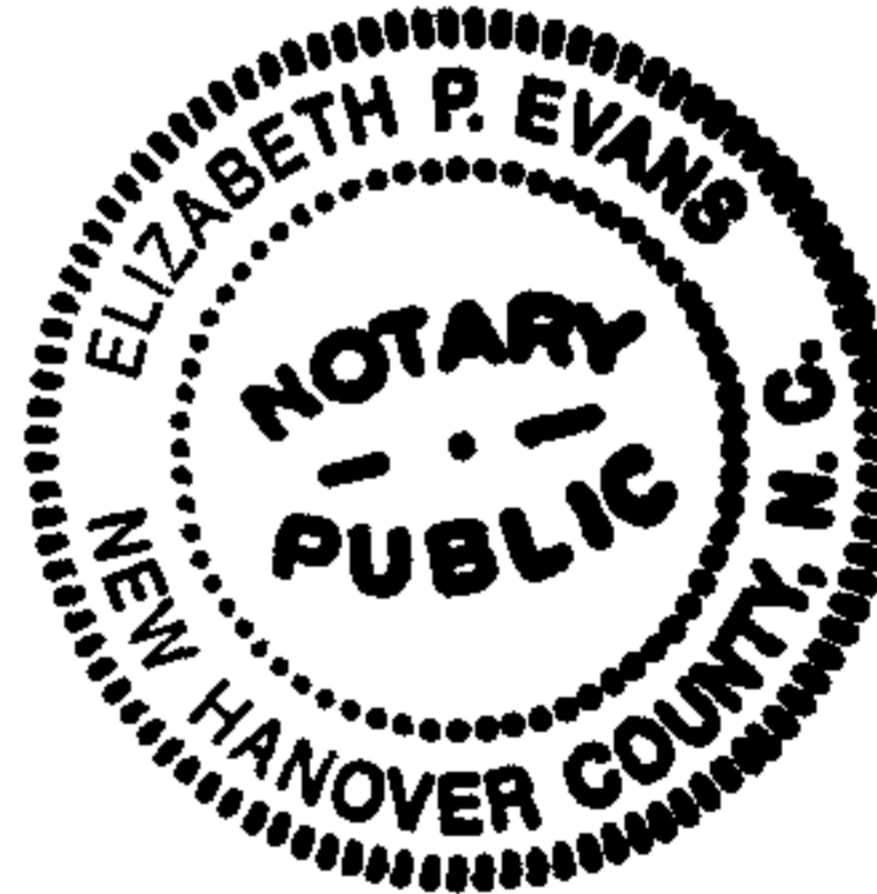


EXHIBIT A  
Description of the Properties

BEING all of Lots 38, 71, 72, 72 & 137 of TidalWalk Subdivision, Phase 2, as shown upon that map of TidalWalk, Phase 2 prepared by Arnold W. Carson, RLS and recorded in Map Book 59 at Page 87 of the New Hanover County Registry.



JENNIFER H. MACNEISH  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

\*\*\*\*\*

**Filed For Registration:** 05/13/2009 01:26:29 PM  
**Book:** RE 5405 **Page:** 1669-1673  
**Document No.:** 2009017150  
5 PGS \$23.00  
**Recorder:** JOHNSON, CAROLYN

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

**\*2009017150\***

2009017150





5  
26



FOR REGISTRATION REGISTER OF DEED  
JENNIFER H. MACNEISH  
NEW HANOVER COUNTY, NC  
2011 AUG 03 02 26 31 PM  
BK 5578 PG 1237-1242 FEE \$26 00

INSTRUMENT # 2011021040

Prepared by: J. Hayden Harrell

**FIRST AMENDMENT TO DECLARATION**  
**OF COVENANTS, CONDITIONS AND**  
**RESTRICTIONS FOR TIDALWALK, PHASE I**

RETURN TO  MT 06

FIRST AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR TIDALWALK, PHASE I

This First Amendment to Declarations of Covenants, Conditions and Restrictions for TidalWalk, Phase I (the "Amendment") is entered into this 29<sup>th</sup> day of July, 2011 by MREC-TIDAL WALK, LLC, a Delaware limited liability company ("Declarant"), successor in interest to Myrtle Grove Investments, L L C , a North Carolina limited liability company ("MGI")

RECITALS

WHEREAS, MGI commenced the development of that real property containing approximately 106 07 acres located in the City of Wilmington, New Hanover County adjacent to Myrtle Grove Road more particularly described therein (the "Property"), and

WHEREAS, in connection therewith, MGI recorded that certain Declaration of Covenants, Conditions and Restrictions for TidalWalk, Phase I, dated October 10, 2008 in Book 5352 at Page 1309 of the New Hanover County Public Registry, as amended by that certain Supplemental Declaration To Declaration of Covenants, Conditions and Restrictions for TidalWalk dated May 13, 2009 and recorded in Book 5405 at Page 1669 of the New Hanover County Registry (collectively, and as may be hereinafter further amended the "Declarations"), and

WHEREAS, Declarant acquired all the remaining Property owned by MGI by that certain Substitute Trustee's Deed dated December 30, 2010 and recorded in Book 5537 at Page 577 of the New Hanover County Registry, including but not limited to all of MGI's rights as "Declarant" under the Declaration and all other rights, obligations and easements of MGI set forth therein, and

WHEREAS, pursuant to Article XII, Section 3, Declarant has the right to amend the Declarations without the consent of any Owner, or the Association (each as defined therein) for a ten (10) year period from the date of the original recording

NOW THEREFORE, for a valuable consideration, the receipt of which is hereby acknowledged, Declarant hereby amends the Declarations as follows

1       The following shall be added as a new subsection section under Article V,  
Section 3

(f) **One Time Reserve Assessment** In addition to the Annual and Special Assessments provided for herein, the Declarant and/or Association shall assess a one-time fee (which shall initially be in the amount of \$500 00 per Unit, but shall be subject to amendment by the Board of Directors) upon the sale of a Lot or Unit to an Approved Builder, however, the payment shall not be due until such time as the Lot or Unit is conveyed to an a third party Owner (other than an Approved Builder) The

Declarant or Association shall deposit said funds in its reserve accounts being held and disbursed for the maintenance of the Common Area, including but not limited to private streets and rights of way

2 Exhibit B, setting forth the maximum allowable impervious area requirements for each Lot, is hereby deleted in its entirety and the Exhibit B attached hereto is substituted therefore

3 Except as amended hereby, the Declaration and all of its terms, conditions and restrictions shall remain and be in full force and effect

4 The words used in this Amendment shall have the same meaning as set forth in the Declaration unless the context shall otherwise prohibit

[Balance of Page is Intentionally Left Blank]

IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed by its duly authorized signatory as the act and deed of Declarant as of the day and year first above written

MREC-TIDAL WALK, LLC

By: Kevin Mast  
Name: KEVIN J. MAST  
Title: EVP/CFO

STATE OF North Carolina )  
COUNTY OF Mecklenburg )

I, Rachel M. Berg, a Notary Public within and for said County and State, do hereby certify that Kevin Mast personally came before me this day and acknowledged that s/he is the EVP/CFO of MREC-TIDAL WALK, LLC, a Delaware limited liability company, and that s/he as such officer, being authorized to do so, executed the foregoing on behalf of said limited liability company.

WITNESS my hand and official seal, this 2 day of August, 2011.

Rachel M. Berg  
Notary Public

Printed Name. Rachel M. Berg

My Commission Expires 02/13/2016

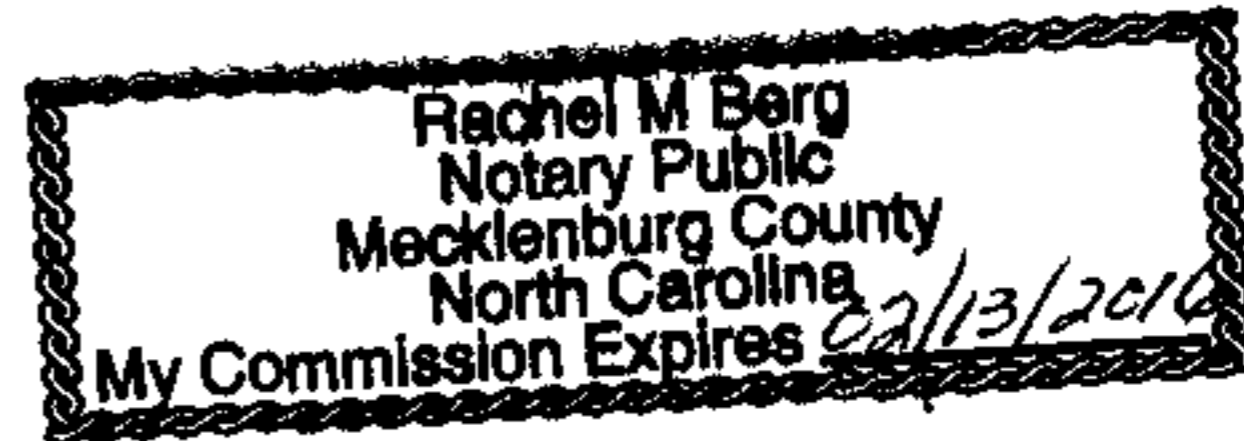


EXHIBIT B

Impervious Allocation Calculation Sheet

Lot Numbering	Impervious Allocation (sf)	Number of Lots	Total (sf)
201-212, 221-234, 240	3,494	27	94,338
213-220, 235-239, 241-284	3,250	57	185,250
301-329	3,600	29	104,400
330-344	3,300	15	49,500
401, 402	3,650	2	7,300
403, 404, 409	3,200	3	9,600
405, 413, 414	3,600	3	10,800
406-408	3,050	3	9,150
410	4,050	1	4,050
411	3,850	1	3,850
412	3,750	1	3,750
415-418, 420-431	3,300	16	52,800
419	5,000	1	5,000
501-512	2,160	12	25,920
513-526	1,860	14	26,040
Lots Already Recorded and Sold			
38	2,500	1	2,500
73	3,600	1	3,600
112-117	3,200	6	19,200
137	3,600	1	3,600
138	3,892	1	3,892
156	3,600	1	3,600
158	4,192	1	4,192
Total		197	632,332



JENNIFER H MACNEISH  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

\*\*\*\*\*

Filed For Registration: 08/03/2011 02:26 31 PM  
Book: RE 5578 Page 1237-1242  
Document No.: 2011021040  
6 PGS \$26.00  
Recorder: JOHNSON, CAROLYN

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

**\*2011021040\***

2011021040



5/20



FOR REGISTRATION REGISTER OF DEEDS  
JENNIFER H MACNEISH  
NEW HANOVER COUNTY, NC  
2012 MAR 30 12 08 14 PM  
BK 5629 PG 1745-1750 FEE \$26 00  
INSTRUMENT # 2012010352

**SECOND SUPPLEMENTAL DECLARATION**  
**TO DECLARATION OF COVENANTS, CONDITIONS**  
**AND RESTRICTIONS**  
**FOR**  
**TIDALWALK**

Prepared by and  
Return to:

J Hayden Harrell, Esq  
Katten Muchin Rosenman LLP  
550 South Tryon Street  
Suite 2900  
Charlotte, North Carolina 28202-4213

Return to MTG



SECOND SUPPLEMENTAL DECLARATION TO DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR TIDALWALK

This Second Supplemental Declaration to Declaration of Covenants, Conditions and Restrictions for TidalWalk (the "Amendment") is entered into this 29 day of March, 2012 by MREC-TIDAL WALK, LLC, a Delaware limited liability company ("Declarant"), successor in interest to Myrtle Grove Investments, L.L.C., a North Carolina limited liability company ("MGI") and D. R. HORTON, INC., a Delaware corporation ("DRHorton")

RECITALS:

WHEREAS, MGI commenced the development of that certain real property containing approximately 106.07 acres located in the City of Wilmington, New Hanover County adjacent to Myrtle Grove Road and more particularly described herein as (the "Property"), and

WHEREAS, in connection with the development of the Property, MGI recorded that certain Declaration of Covenants, Conditions and Restrictions for Tidal Walk, Phase I, dated October 10, 2008 in Book 5352 at Page 1309 of the New Hanover County Public Registry, as amended by that certain Supplemental Declaration To Declaration of Covenants, Conditions and Restrictions for Tidal Walk dated May 13, 2009 and recorded in Book 5405 at Page 1669 of the New Hanover County Registry and as further amended by Declarant by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk, Phase I, dated July 29, 2011 and recorded in Book 5578, Page 1237 of the New Hanover County Public Registry (collectively, and as may be hereinafter further amended the "Declarations"); and

WHEREAS, Declarant has caused to be recorded those certain plats entitled (i) "TidalWalk Subdivision – Phase III (and Replatting of Phase I) Subdivision of Areas within TidalWalk Subdivision (MB 53/375) (A Performance Development)" recorded in Map Book 56, Pages 104-107 of the New Hanover County Public Registry; and (ii) "Correction Plat TidalWalk Subdivision – Phase III (and Replatting of Phase I) Subdivision of Areas within TidalWalk Subdivision (MB 53/375) (A Performance Development)" recorded in Map Book 56, Pages 137-140 of the New Hanover County Public Registry (collectively, the "Phase III Property"), and

WHEREAS, subsequent to the recording of the above-referenced plats, Declarant conveyed to DRHorton various lots within the Phase III Property; and

WHEREAS, pursuant to Article XII of the Declaration, Declarant reserved the right to establish one or more phases or sections of TidalWalk and submit the same, together with common areas, and limited common areas to the terms of the Declaration; and

WHEREAS, pursuant to Article XII, Section 3, and Article XI Section (1), Declarant has the right to amend the Declarations without the consent of any Owner, or the Association (each as defined therein) for a ten (10) year period from the date of the original recording; and

WHEREAS, DRHorton, as an owner of lots within the Phase III Property, joins in this supplement for the sole purpose of consenting to the annexation of the Phase III Property to the Declaration.

NOW THEREFORE, for a valuable consideration, the receipt of which is hereby acknowledged, Declarant hereby supplements the Declaration by submitting and annexing the Phase III Property to the terms and conditions of the Declaration.

In addition to the supplement contained herein, the Declaration and all of its terms, conditions and restrictions shall remain and in full force and effect.

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Declarant has caused this Second Supplemental Declaration to Declaration of Covenants, Conditions and Restrictions for TidalWalk to be executed by its duly authorized signatory as the act and deed of Declarant as of the day and year first above written

MREC-TIDAL WALK, LLC

By: [Signature]  
Title VICE PRESIDENT

STATE OF North Carolina,  
COUNTY OF Mecklenburg )

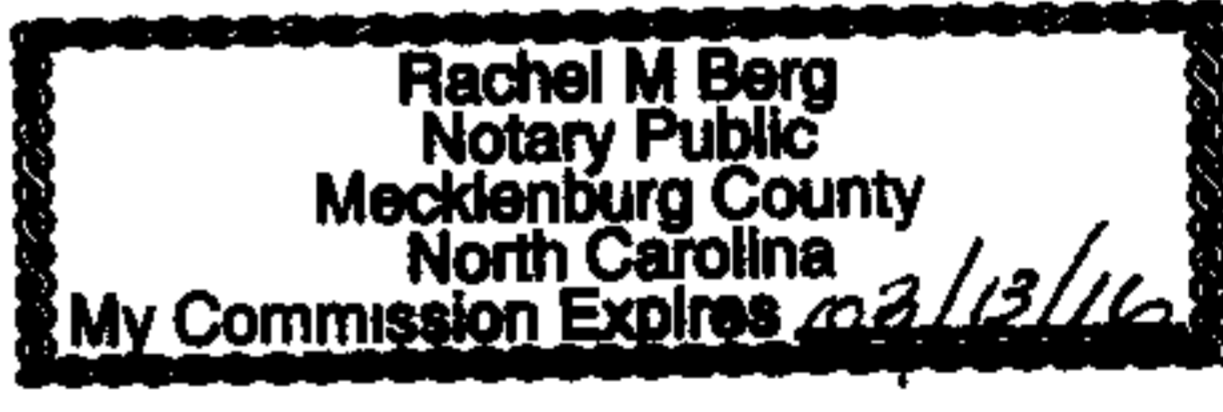
I, Rachel M Berg, a Notary Public within and for said County and State, do hereby certify that Scott Lawrence personally came before me this day and acknowledged that s/he is the Vice President of MREC-TIDAL WALK, LLC, a Delaware limited liability company, and that s/he as such officer, being authorized to do so, executed the foregoing on behalf of said limited liability company.

WITNESS my hand and official seal, this 29 day of March, 2012

[Signature]  
Notary Public

Printed Name: Rachel M Berg

My Commission Expires: 02/13/16



D. R. HORTON, INC., a Delaware limited liability company, has caused this Second Supplemental Declaration to Declaration of Covenants, Conditions and Restrictions for TidalWalk to be executed by its duly authorized signatory for the sole purpose of consenting to the annexation of the Phase III Property to the terms and conditions of the Declaration

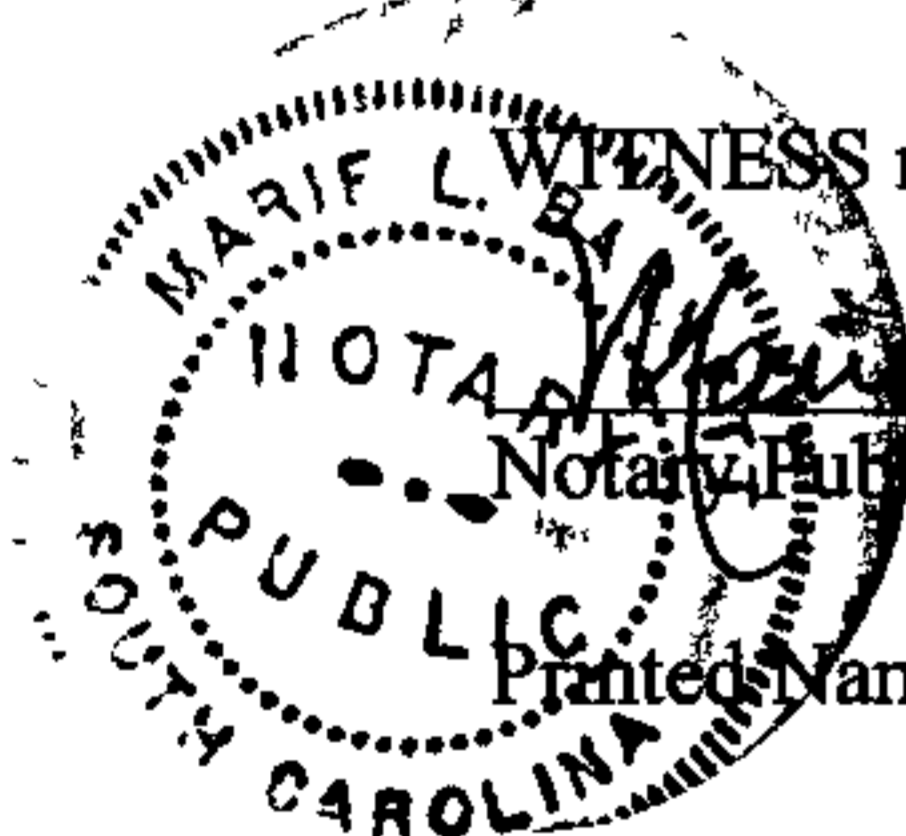
D. R. HORTON, INC., a Delaware corporation

By: Allison Roberts  
Name: Allison Roberts  
Title: Asst Secretary

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

I, Marie L. Barnett, a Notary Public within and for said County and State, do hereby certify that Allison Roberts personally came before me this day and acknowledged that s/he is the Asst. Sec. of D. R. HORTON, INC., a Delaware corporation, and that s/he as such officer, being authorized to do so, executed the foregoing on behalf of said corporation.

WITNESS my hand and official seal, this 29<sup>th</sup> day of March 2012



Marie L. Barnett  
Notary Public  
Printed Name: Marie L. Barnett

My Commission Expires: 9/29/15



JENNIFER H MACNEISH  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

\*\*\*\*\*  
Filed For Registration: 03/30/2012 12:08:14 PM  
Book: RE 5629 Page: 1745-1750  
Document No.: 2012010352  
6 PGS \$26.00

Recorder: CRESWELL, ANDREA

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

**\*2012010352\***

2012010352



16  
26



2012019327

FOR REGISTRATION REGISTER OF DEEDS  
JENNIFER H MACNEISH  
NEW HANOVER COUNTY, NC  
2012 JUN 11 12 49 04 PM  
BK 5646 PG 2955-2961 FEE \$26 00

INSTRUMENT # 2012019327

**SECOND AMENDMENT TO**  
**DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS**  
**FOR TIDALWALK**  
**DATED JUNE 8, 2012**

Return to MTG

SECOND AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR TIDALWALK

This Second Amendment to Declarations of Covenants, Conditions and Restrictions for TidalWalk (the "Amendment") is entered into this 8<sup>th</sup> day of June, 2012 by MREC-TIDAL WALK, LLC, a Delaware limited liability company ("Declarant"), successor in interest to Myrtle Grove Investments, L.L.C., a North Carolina limited liability company ("MGI")

RECITALS:

WHEREAS, MGI commenced the development of that real property containing approximately 106.07 acres located in the City of Wilmington, New Hanover County adjacent to Myrtle Grove Road more particularly described therein (the "Property"); and

WHEREAS, in connection therewith, MGI recorded that certain Declaration of Covenants, Conditions and Restrictions for TidalWalk, Phase I, dated October 10, 2008 in Book 5352 at Page 1309, as amended by that certain First Amendment to Declarations of Covenants, Conditions and Restrictions for Tidalwalk dated July 29, 2011 and recorded in Book 5578 at Page 1237 and also amended by those certain Supplemental Declaration To Declaration of Covenants, Conditions and Restrictions for TidalWalk dated May 13, 2009 and recorded in Book 5405 at Page 1669 and dated March 29, 2012 recorded in Book 5629 at Page 1745, all of the New Hanover County Registry (collectively, and as may be hereinafter further amended the "Declarations"), and

WHEREAS, Declarant acquired all the remaining Property owned by MGI by that certain Substitute Trustee's Deed dated December 30, 2010 and recorded in Book 5537 at Page 577 of the New Hanover County Registry, including but not limited to all of MGI's rights as "Declarant" under the Declaration and all other rights, obligations and easements of MGI set forth therein; and

WHEREAS, pursuant to Article XII, Section 3, Declarant has the right to amend the Declarations without the consent of any Owner, or the Association (each as defined therein) for a ten (10) year period from the date of the original recording

NOW THEREFORE, for a valuable consideration, the receipt of which is hereby acknowledged, Declarant hereby amends the Declarations as follows:

1       The following shall be added to ARTICLE I.

Section 24.   "**Architectural Control Committee**" shall mean a board appointed by the Declarant for purposes of reviewing and approving all elevations, floor plans, landscaping plans, modifications to existing buildings, modifications to any common area buildings, modifications to any common area spaces, signage and all material that may be constructed on properties within the TidalWalk community. The Declarant reserves



the right to create, amend or supplement architectural guidelines for the benefit of the community

3. Article I, Section 10 shall be deleted in its entirety and the following shall be substituted therefor:

Section 10. "**Common Areas**" shall mean and refer to all land within the Property owned by the Association, or otherwise designated on a Map (hereafter defined) as "Common Area", "Common Space" or other similar description, along with facilities and improvements erected or constructed thereon, including but not limited to all private streets and other utility easements shown thereon, including any water and/or sanitary sewer lines located within said easements. Declarant reserves the right to alter and amend the recorded Map to amend, add, delete or relocate common areas and facilities as Declarant, in its sole discretion, deems appropriate, including common areas as shown on future plats to be recorded.

4. Article I, Section 16 shall be deleted in its entirety and the following shall be substituted therefor:

Section 16 "**Map**" shall mean those maps recorded in Map Book 53 at Pages 214-216; Map Book 53 at Pages 375-377; Map Book 54 at Page 87 and Map Book 54 at Page 373, Map Book 56 at Pages 104-107, Map Book 56 at Pages 137-140, Map Book 56 at Page 291, and Map Book 56 at Pages 353-355, all of the New Hanover County Registry, and all other properly recorded subdivision plats of the Property now or hereafter recorded by Declarant, all as the same may be modified or supplemented from time to time.

5 Article II, Section 3 (d) shall be deleted in its entirety.

6. The following subsection (e) shall be added to Article V, Section 3:

e **Builder Assessment** Approved Builders who purchase a Lot(s) with the intention of selling to a third party in the TidalWalk community will be billed at a rate of \$25.00 per Lot per month for Association fees until such time a home is built, completed and sold to a third party. After which time, the Members will be responsible for annual assessments per Section 3(b)

7 Article V, Section 1 shall be amended by deleting the following sentence therefrom (the second sentence in second paragraph);

“The working capital assessment shall be equal to three (3) months of annual assessments and shall be payable by the purchaser of any Units from the Declarant at the time of closing on such Units”.

8. Article VIII entitled “Easements” shall be amended by adding the following Section:

Section 11 Sidewalk Construction and Maintenance Easement. An easement is hereby established in favor of Declarant and Association, their agents and assigns over all Lots to construct sidewalks within fifteen (15) feet from the margin of any street right of way as may be shown on any Map. Additionally, this easement in favor of Declarant and Association shall extend an additional one (1) foot beyond any sidewalk, as the same may be actually located, for the purposes of allowing pedestrian access and maintenance, including but not limited to clearing and mowing.

9 Article XII entitled “Phased Development” shall be amended by adding the following language at the end of the Article.

“Notwithstanding anything herein to the contrary, all of the Property (as defined herein), which includes and is the same as the property described on Exhibit A attached hereto, is subject to and shall be bound by this Declaration, without the necessity of recording any “Supplemental Declaration”. Declarant may develop the Property in one or more phases by recoding additional plats or Maps, but the recordation of a “Supplemental Declaration” in connection therewith is not required to evidence that the Lots shown on said Map are bound by this Declaration.

10 Article XII entitled “General Provisions” shall be amended by adding the following as Sections

“Section 7. Restriction on the Extraction of Subsurface Minerals The owner of any Lot within the Property shall not undertake to extract or convey to another the right to extract “Subsurface Minerals” from any such Lot within the Property. Such restriction is established by this provision and is effective with respect to all Lots, whether or not the deed signed by Declarant with respect to such Lot specifically refers to this provision or otherwise refers to mineral rights. This restriction is also applicable to all Common Areas. “Subsurface Minerals” means all metals, gas, oil and other minerals of every nature whatsoever, and the extraction of water and other subsurface materials in connection therewith. This restriction shall apply to all means of subsurface extraction procedures

Section 8. Restriction on Reservation of Mineral or Mining Rights by Transferees from Declarant. No person or entity conveying any interest in

a Lot, unless approved by Declarant in a recorded instrument, shall reserve or otherwise separate in any manner from the fee simple title to the Lot, any ownership or other rights in any minerals, metals, oil, gas, water or any substances lying on or under a lot, or any right to enter any Lot for the purpose of engaging in any mining or extraction activities with regard to any minerals, metals, oil, gas, water or any substances lying on or under a lot

Section 9 Limitation on Amendment of Sections. Section 7 and Section 8 of this Article XII shall not be amended except by the Declarant or by the affirmative vote of ninety percent of the total number of the Owners, after the end of the Declarant Control Period.”

11. Article V entitled “Covenant for Assessments” shall be amended by adding the following Section:

Section 13: Declarant Assessment Obligation Notwithstanding anything herein to the contrary, so long as there is a Class B membership, the Declarant’s obligations for assessments herein on unsold Lots or Units will be limited to the difference between the actual operating costs of the Association and the assessments levied on the existing Owners other than Declarant

12. Except as amended hereby, the Declaration and all of its terms, conditions and restrictions shall remain and be in full force and effect.

13 The words used in this Amendment shall have the same meaning as set forth in the Declaration unless the context shall otherwise prohibit

[Balance of Page Intentionally Left Blank

IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed by its duly authorized signatory as the act and deed of Declarant as of the day and year first above written.

MREC-TIDAL WALK, LLC

By: [Signature]  
Title VP

STATE OF North Carolina  
COUNTY OF Mecklenburg

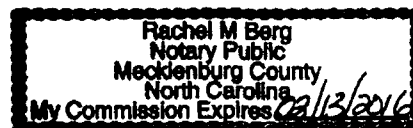
I, Rachel M Berg, a Notary Public within and for said County and State, do hereby certify that Arthur Nevid personally came before me this day and acknowledged that s/he is the VP of MREC-TIDAL WALK, LLC, a Delaware limited liability company, and that s/he as such officer, being authorized to do so, executed the foregoing on behalf of said limited liability company.

WITNESS my hand and official seal, this 8 day of June, 2012

[Signature]  
Notary Public

Printed Name Rachel M Berg

My Commission Expires: 02/13/2016





JENNIFER H. MACNEISH  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

\*\*\*\*\*  
Filed For Registration: 06/11/2012 12:49:04 PM  
Book: RE 5646 Page: 2955-2961  
Document No.: 2012019327  
7 PGS \$26.00

Recorder: CARTER, CAROLYN

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

**\*2012019327\***

2012019327





2013002258

FOR REGISTRATION REGISTER OF DEEDS  
TAMMY THEUSCH BEASLEY  
NEW HANOVER COUNTY, NC  
2013 JAN 22 10:19:38 AM  
BK:5705 PG:1408-1413 FEE:\$26.00

INSTRUMENT # 2013002258

THIRD AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
TIDALWALK

Prepared by and Return to:

J. Hayden Harrell, Esq.  
Katten Muchin Rosenman LLP  
550 South Tryon Street  
Suite 2900  
Charlotte, North Carolina 28202-4213

THIRD AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR TIDALWALK

This Third Amendment to Declarations of Covenants, Conditions and Restrictions for TidalWalk (the "Amendment") is entered into this \_\_\_ day of January, 2013 by MREC-TIDAL WALK, LLC, a Delaware limited liability company ("Declarant"), successor in interest to Myrtle Grove Investments, L.L.C., a North Carolina limited liability company ("MGI")

RECITALS:

WHEREAS, MGI commenced the development of that real property containing approximately 106.07 acres located in the City of Wilmington, New Hanover County adjacent to Myrtle Grove Road more particularly described therein (the "Property"); and

WHEREAS, in connection therewith, MGI recorded that certain Declaration of Covenants, Conditions and Restrictions for TidalWalk, Phase I, dated October 10, 2008 in Book 5352 at Page 1309 of the New Hanover County Public Registry, as amended by that certain Supplemental Declaration To Declaration of Covenants, Conditions and Restrictions for TidalWalk dated May 13, 2009 and recorded in Book 5405 at Page 1669, as amended by First Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk, Phase I, dated July 29, 2011 and recorded in Book 5578, Page 1237, as amended by Second Supplemental Declaration To Declaration of Covenants, Conditions and Restrictions for TidalWalk dated March 29, 2012 and recorded in Book 5629, Page 1745, and as further amended by Second Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated June 8, 2012 and recorded in Book 5646, Page 2955 of the New Hanover County Registry (collectively, and as may be hereinafter further amended the "Declarations"); and

WHEREAS, Declarant acquired all the remaining Property owned by MGI by that certain Substitute Trustee's Deed dated December 30, 2010 and recorded in Book 5537 at Page 577 of the New Hanover County Registry, including but not limited to all of MGI's rights as "Declarant" under the Declaration and all other rights, obligations and easements of MGI set forth therein; and

WHEREAS, pursuant to Article XII, Section 3, Declarant has the right to amend the Declarations without the consent of any Owner, or the Association (each as defined therein) for a ten (10) year period from the date of the original recording.

NOW THEREFORE, for a valuable consideration, the receipt of which is hereby acknowledged, Declarant hereby amends the Declarations as follows:



1. Exhibit B, setting forth the maximum allowable impervious area requirements for each Lot, is hereby deleted in its entirety and the Exhibit B attached hereto is substituted therefore.

2. Except as amended hereby, the Declaration and all of its terms, conditions and restrictions shall remain and be in full force and effect.

3. The words used in this Amendment shall have the same meaning as set forth in the Declaration unless the context shall otherwise prohibit.

[Balance of Page is Intentionally Left Blank]

IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed by its duly authorized signatory as the act and deed of Declarant as of the day and year first above written.

MREC-TIDAL WALK, LLC

By: [Signature]  
Name: SCOTT LAWRENCE  
Title: VICE PRESIDENT

STATE OF North Carolina  
COUNTY OF Mecklenburg

I, Rachel M Berg, a Notary Public within and for said County and State, do hereby certify that Scott Lawrence personally came before me this day and acknowledged that s/he is the Vice President of MREC-TIDAL WALK, LLC, a Delaware limited liability company, and that s/he as such officer, being authorized to do so, executed the foregoing on behalf of said limited liability company.

WITNESS my hand and official seal, this \_\_\_ day of January, 2013.

[Signature]  
Notary Public

Printed Name: Rachel M Berg

My Commission Expires: 02/13/2016

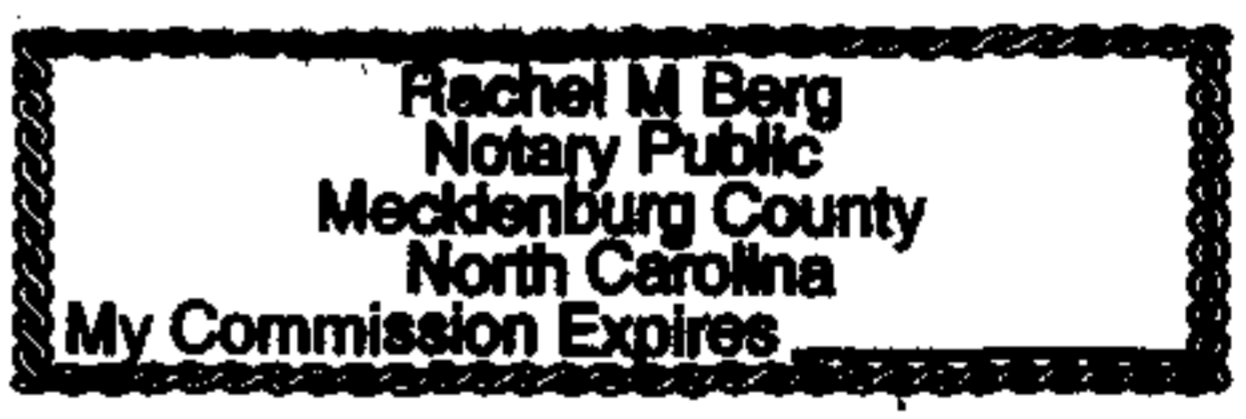


EXHIBIT B

Impervious Allocation Calculation Sheet

Lot Numbering	Impervious Allocation (sf)	Number of Lots	Total (sf)
201-212, 221-224, 226-234, 240	3,494	26	90,844
213-220, 236-239, 241, 242, 245, 246, 248-251, 260-284	3,250	45	146,250
243, 244	3,150	2	6,300
252, 258	3,505	2	7,010
253	2,300	1	2,300
254	2,750	1	2,750
255	2,290	1	2,290
247, 310	2,700	2	5,400
334, 338	3,300	2	6,600
259, 304, 306, 307, 309, 323, 326, 327	3,600	8	28,800
308	3,690	1	3,690
311-322, 340-342	3,400	15	51,000
324	3,500	1	3,500
303, 325, 328-332, 335-337, 339, 343, 344, 401-409, 413, 414	3,450	24	82,800
410	3,800	1	3,800
411, 412	3,570	2	7,140
420, 422	3,480	2	6,960
421	4,200	1	4,200
423-431	3,400	9	30,600
415, 416	3,908	2	7,816
417, 418	4,097	2	8,194
419	4,200	1	4,200
501-512	2,160	12	25,920
513-526	1,860	14	26,040
<b>Lots Already Sold</b>			
38	2,500	1	2,500
73, 137, 156, 301-302, 305	3,600	6	21,600
112-117	3,200	6	19,200
138	3,892	1	3,892
158	4,192	1	4,192
225	3,494	1	3,494
235, 256, 257	3,250	3	9,750
333	3,300	1	3,300
<b>Total</b>		<b>197</b>	<b>632,332</b>



TAMMY THEUSCH BEASLEY  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

\*\*\*\*\*

**Filed For Registration:** 01/22/2013 10:19:38 AM  
**Book:** RE 5705 Page: 1408-1413  
**Document No.:** 2013002258  
6 PGS \$26.00  
**Recorder:** CRESWELL, ANDREA

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

**\*2013002258\***

2013002258



5  
26



FOR REGISTRATION REGISTER OF DEEDS  
TAMMY THEUSCH BEASLEY  
NEW HANOVER COUNTY, NC  
2013 APR 03 01:57:25 PM  
BK:5725 PG:511-516 FEE:\$26.00

INSTRUMENT # 2013011820

**FOURTH AMENDMENT TO DECLARATION**  
**OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR**  
**TIDALWALK**

Prepared by and Return to:

J. Hayden Harrell, Esq.  
Katten Muchin Rosenman LLP  
550 South Tryon Street  
Suite 2900  
Charlotte, North Carolina 28202-4213

RETURN TO Baker & Colby

FOURTH AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR TIDALWALK

This Fourth Amendment to Declarations of Covenants, Conditions and Restrictions for TidalWalk (the "Amendment") is entered into this 26 day of March, 2013 by MREC-TIDAL WALK, LLC, a Delaware limited liability company ("Declarant"), successor in interest to Myrtle Grove Investments, L.L.C., a North Carolina limited liability company ("MGI")

RECITALS:

WHEREAS, MGI commenced the development of that real property containing approximately 106.07 acres located in the City of Wilmington, New Hanover County adjacent to Myrtle Grove Road more particularly described therein (the "Property"); and

WHEREAS, in connection therewith, MGI recorded that certain Declaration of Covenants, Conditions and Restrictions for TidalWalk, Phase I, dated October 10, 2008 in Book 5352 at Page 1309 of the New Hanover County Public Registry, as amended by that certain Supplemental Declaration To Declaration of Covenants, Conditions and Restrictions for TidalWalk dated May 13, 2009 and recorded in Book 5405 at Page 1669, as amended by First Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk, Phase I, dated July 29, 2011 and recorded in Book 5578, Page 1237, as amended by Second Supplemental Declaration To Declaration of Covenants, Conditions and Restrictions for TidalWalk dated March 29, 2012 and recorded in Book 5629, Page 1745, as amended by Second Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated June 8, 2012 and recorded in Book 5646, Page 2955, and further amended by Third Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated January, 2013, recorded in Book 5705, Page 1408 of the New Hanover County Registry (collectively, and as may be hereinafter further amended the "Declarations"); and

WHEREAS, Declarant acquired all the remaining Property owned by MGI by that certain Substitute Trustee's Deed dated December 30, 2010 and recorded in Book 5537 at Page 577 of the New Hanover County Registry, including but not limited to all of MGI's rights as "Declarant" under the Declaration and all other rights, obligations and easements of MGI set forth therein; and

WHEREAS, pursuant to Article XII, Section 3, Declarant has the right to amend the Declarations without the consent of any Owner, or the Association (each as defined therein) for a ten (10) year period from the date of the original recording; and

WHEREAS, Declarant wishes to revise the maximum allowable impervious area allocation for each Lot, and wishes to provide a procedure in which Owners may gain approval to construct Permeable Pavement, hereafter defined, which shall not (either totally or partially) be counted against the maximum impervious area allocation for the Lot in question (hereinafter "BUA Credit").

NOW THEREFORE, for a valuable consideration, the receipt of which is hereby acknowledged, Declarant hereby amends the Declarations as follows:

1. Exhibit B, setting forth the maximum allowable impervious area requirements for each Lot, is hereby deleted in its entirety and the Exhibit B attached hereto is substituted therefore.

2. The following paragraph is added to Article XII, Section 6:

If an Owner desires to construct Permeable Pavement on its Lot, which shall receive BUA Credit, and therefore not be counted the maximum impervious allocation for the particular Lot.

a. The Owner must submit an application for the BUA Credit for the Permeable Pavement along with supporting documentation, to the appropriate parties within the North Carolina Department of Environmental and Natural Resources – Division of Water Quality ("NCDENR-DWQ") and receive approval of the application prior to the commencement of construction of any Permeable Pavement;

b. All Permeable Pavement designs to gain BUA Credit shall conform to then most recent DWQ Best Management Practices Manual;

c. All Owners gaining BUA Credit for the Permeable Pavement shall assume the responsibility of maintaining the Permeable Pavement in accordance with any DWQ requirements and this obligation of Owner to maintain the Permeable Pavement shall run with the land and be binding on all Owner's successors and assigns.

d. As used herein, "Permeable Pavement" shall mean an alternative to conventional paving materials (concrete and asphalt) that allows stormwater to infiltrate through void spaces for temporary storage and subsequently infiltrated into the soil or detained and released.

3. Except as amended hereby, the Declaration and all of its terms, conditions and restrictions shall remain and be in full force and effect.

4. The words used in this Amendment shall have the same meaning as set forth in the Declaration unless the context shall otherwise prohibit.



[Balance of Page is Intentionally Left Blank]

IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed by its duly authorized signatory as the act and deed of Declarant as of the day and year first above written.

MREC-TIDAL WALK, LLC

By: [Signature]  
Name: ROBERT DAVENPORT  
Title: VICE PRESIDENT

STATE OF North Carolina )  
COUNTY OF Mecklenburg )

I, Rachel M. Berg, a Notary Public within and for said County and State, do hereby certify that Robert Davenport personally came before me this day and acknowledged that s/he is the Vice President of MREC-TIDAL WALK, LLC, a Delaware limited liability company, and that s/he as such officer, being authorized to do so, executed the foregoing on behalf of said limited liability company.

WITNESS my hand and official seal, this 26 day of March, 2013.

[Signature]  
Notary Public

Printed Name: Rachel M. Berg

My Commission Expires: 02/13/2016

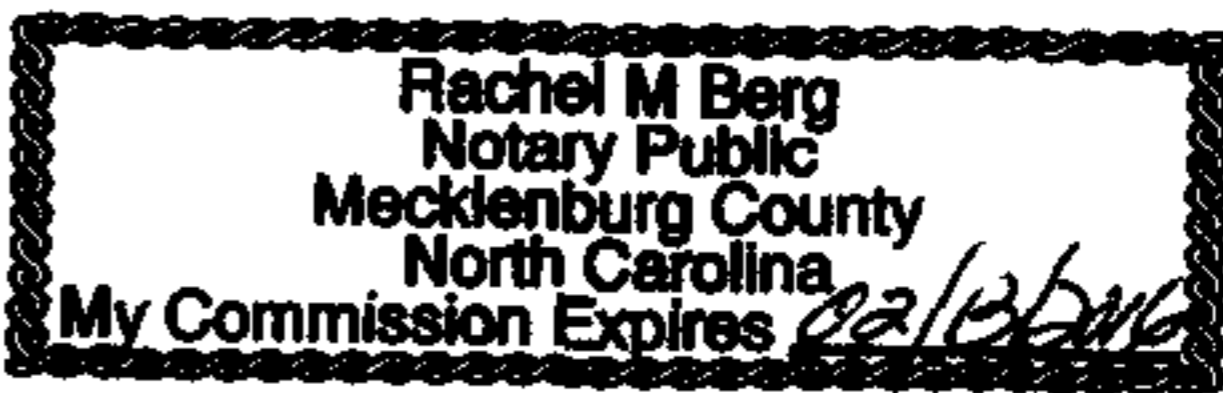


EXHIBIT B

Impervious Allocation Calculation Sheet

Lot Numbering	Impervious Allocation (sf)	Number of Lots	Total (sf)
201-212, 221-224, 226-234, 240	3,494	26	90,844
213, 214, 218, 220, 237-239, 241, 242, 245, 246, 248-251, 260-284	3,250	40	130,000
243, 244	3,150	2	6,300
252, 258	3,505	2	7,010
253	2,300	1	2,300
254	2,750	1	2,750
255	2,290	1	2,290
247, 310	2,700	2	5,400
334, 338	3,300	2	6,600
259, 304, 306, 307, 309, 323, 326, 327	3,600	8	28,800
308	3,690	1	3,690
311-322, 340-342	3,400	15	51,000
324	3,500	1	3,500
303, 325, 328, 330-332, 335-337, 339, 343, 344, 401-409, 413, 414	3,450	23	79,350
329	3,600	1	3,600
410	3,800	1	3,800
411, 412	3,570	2	7,140
420, 422	3,480	2	6,960
421	4,200	1	4,200
423-431	3,400	9	30,600
415, 416	3,908	2	7,816
417, 418	4,097	2	8,194
419	4,200	1	4,200
501-512	2,160	12	25,920
513-526	1,860	14	26,040
<b>Lots Already Sold</b>			
38	2,500	1	2,500
73, 137, 156, 301-302, 305	3,600	6	21,600
112-117	3,200	6	19,200
138	3,742	1	3,742
158	4,192	1	4,192
236	3,050	1	3,050
216	3,450	1	3,450
225	3,494	1	3,494
215, 217, 219, 235, 256, 257	3,250	6	19,500
333	3,300	1	3,300
<b>Total</b>		<b>197</b>	<b>632,332</b>



TAMMY THEUSCH BEASLEY  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

\*\*\*\*\*

Filed For Registration: 04/03/2013 01:57:25 PM  
Book: RE 5725 Page: 511-516  
Document No.: 2013011820  
6 PGS \$26.00  
Recorder: CRESWELL, ANDREA

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

**\*2013011820\***

2013011820



26



FOR REGISTRATION REGISTER OF DEEDS  
TAMMY THEUSCH BEASLEY  
NEW HANOVER COUNTY, NC  
2013 JUL 12 10:09 38 AM  
BK 5753 PG 1141-1147 FEE \$26 00

INSTRUMENT # 2013025412

**FIFTH AMENDMENT TO DECLARATION**  
**OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR**  
**TIDALWALK**

Prepared by and Return to:

J. Hayden Harrell, Esq  
Katten Muchin Rosenman LLP  
550 South Tryon Street  
Suite 2900  
Charlotte, North Carolina 28202-4213

FIFTH AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR TIDALWALK

This Fifth Amendment to Declarations of Covenants, Conditions and Restrictions for TidalWalk (the "Amendment") is entered into this 28<sup>th</sup> day of JUNE, 2013 by MREC-TIDAL WALK, LLC, a Delaware limited liability company ("Declarant"), successor in interest to Myrtle Grove Investments, L.L.C., a North Carolina limited liability company ("MGI")

RECITALS:

WHEREAS, MGI commenced the development of that real property containing approximately 106.07 acres located in the City of Wilmington, New Hanover County adjacent to Myrtle Grove Road more particularly described therein (the "Property"); and

WHEREAS, in connection therewith, MGI recorded that certain Declaration of Covenants, Conditions and Restrictions for TidalWalk, Phase I, dated October 10, 2008 in Book 5352 at Page 1309 of the New Hanover County Public Registry, as amended by that certain Supplemental Declaration To Declaration of Covenants, Conditions and Restrictions for TidalWalk dated May 13, 2009 and recorded in Book 5405 at Page 1669, as amended by First Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk, Phase I, dated July 29, 2011 and recorded in Book 5578, Page 1237, as amended by Second Supplemental Declaration To Declaration of Covenants, Conditions and Restrictions for TidalWalk dated March 29, 2012 and recorded in Book 5629, Page 1745, as amended by Second Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated June 8, 2012 and recorded in Book 5646, Page 2955, as amended by Third Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated January, 2013, recorded in Book 5705, Page 1408, and further amended by Fourth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated March 26, 2013, recorded in Book 5725, Page 511 of the New Hanover County Registry (collectively, and as may be hereinafter further amended the "Declarations"); and

WHEREAS, Declarant acquired all the remaining Property owned by MGI by that certain Substitute Trustee's Deed dated December 30, 2010 and recorded in Book 5537 at Page 577 of the New Hanover County Registry, including but not limited to all of MGI's rights as "Declarant" under the Declaration and all other rights, obligations and easements of MGI set forth therein, and

---

WHEREAS, pursuant to Article XII, Section 3, Declarant has the right to amend the Declarations without the consent of any Owner, or the Association (each as defined therein) for a ten (10) year period from the date of the original recording; and

NOW THEREFORE, for a valuable consideration, the receipt of which is hereby acknowledged, Declarant hereby amends the Declarations as follows:

1. Article V, Section 3 (f) shall be deleted in its entirety and the following shall be substituted therefore:

(c) **One Time Reserve Assessment:** In addition to the Annual and Special Assessments provided for herein, the Declarant and/or Association shall assess a one-time fee (which shall initially be in the amount of \$500.00 per Unit, but shall be subject to amendment by the Board of Directors) upon the sale of a Lot or Unit, provided, however, upon the sale of a Lot or Unit to an Approved Builder, the payment shall not be due until such time as the Lot or Unit is conveyed by the Approved Builder to a third party Owner (other than an Approved Builder). The Declarant or Association shall deposit said funds in its reserve accounts being held and disbursed for the maintenance of the Common Area, including but not limited to private streets and rights of way.

2 Exhibit B, setting forth the maximum allowable impervious area requirements for each Lot, is hereby deleted in its entirety and the Exhibit B attached hereto is substituted therefore.

3. Except as amended hereby, the Declaration and all of its terms, conditions and restrictions shall remain and be in full force and effect.

4. The words used in this Amendment shall have the same meaning as set forth in the Declaration unless the context shall otherwise prohibit.

[Balance of Page is Intentionally Left Blank]

---





ACKNOWLEDGMENT

D. R. Horton, Inc., a Delaware corporation, the owner of Lots 215, 221, 253, 255, 270, 273, 277 and 304 ("Lots"), joins in the execution of this Amendment for the sole purpose of acknowledging the revised impervious allocation to the aforementioned Lots as described in Exhibit B attached hereto

D R. HORTON, INC., a Delaware corporation

By Bradford C. Brundage  
Name: Bradford C. Brundage  
Title: City Manager - Myrtle Beach Wilmington

STATE OF SC )  
                                  )  
COUNTY OF Horry )

I, Pamela J Jarvis, a Notary Public within and for said County and State, do hereby certify that Bradford C. Brundage personally came before me this day and acknowledged that s/he is the City Manager of D.R. HORTON, INC., a Delaware corporation, and that s/he as such officer, being authorized to do so, executed the foregoing on behalf of said corporation.

WITNESS my hand and official seal, this 23<sup>rd</sup> day of June, 2013.

Pamela J Jarvis  
Notary Public



**Pamela J Jarvis**  
**NOTARY PUBLIC**  
State of South Carolina  
My Commission Expires 7/18/2021

Commission Expires: \_\_\_\_\_

EXHIBIT B

Impervious Allocation Calculation Sheet

Lot Numbering	Impervious Allocation (sf)	Number of Lots	Total (sf)
201-212, 222, 233, 234	3,494	15	52,410
213, 237-239, 248, 249, 268, 278, 283, 284	3,250	10	32,500
259	3,600	1	3,600
311-322, 340-342	3,400	15	51,000
303, 328, 331, 335-337, 339, 343, 344, 401-409	3,450	18	62,100
420, 422	3,480	2	6,960
423-431	3,400	9	30,600
38	2,500	1	2,500
73, 137, 156, 301, 302, 305-307, 309, 323, 326, 327, 329	3,600	13	46,800
112-117	3,200	6	19,200
138	3,742	1	3,742
158	4,192	1	4,192
215	3,541	1	3,541
216, 325, 330, 332, 413, 414	3,450	6	20,700
223-232, 240	3,494	11	38,434
214, 217-220, 235, 241, 242, 245, 246, 250, 251, 256, 257, 260-267, 269, 271, 272, 274 - 276, 279 - 282	3,250	32	104,000
236	3,050	1	3,050
243, 244	3,150	2	6,300
221	3,203	1	3,203
252, 258	3,505	2	7,010
253	2,266	1	2,266
254	2,750	1	2,750
255	3,133	1	3,133
247, 310	2,700	2	5,400
270	3,284	1	3,284
273	3,350	1	3,350
277	3,150	1	3,150
304	2,757	1	2,757
308	3,690	1	3,690
324	3,500	1	3,500
333, 334, 338	3,300	3	9,900
410	3,800	1	3,800
411, 412	3,570	2	7,140
415, 416	3,908	2	7,816
417, 418	4,097	2	8,194
419, 421	4,200	2	8,400
501-512	2,160	12	25,920
513-526	1,860	14	26,040
	<b>Total</b>	<b>197</b>	<b>632,332</b>



TAMMY THEUSCH BEASLEY  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

\*\*\*\*\*

**Filed For Registration:** 07/12/2013 10:09:38 AM  
**Book:** RE 5753 **Page:** 1141-1147  
**Document No.:** 2013025412  
7 PGS \$26.00  
**Recorder:** HUGHLEY, CAROL

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

**\*2013025412\***

2013025412



①  
26



FOR REGISTRATION REGISTER OF DEEDS  
TAMMY THEUSCH BEASLEY  
NEW HANOVER COUNTY, NC  
2014 APR 10 10:16:00 AM  
BK 5807 PG 1498-1505 FEE \$26 00

INSTRUMENT # 2014008562

**SIXTH AMENDMENT TO DECLARATION**  
**OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR**  
**TIDALWALK**

Prepared by and Return to

J. Hayden Harrell, Esq  
Katten Muchin Rosenman LLP  
550 South Tryon Street  
Suite 2900  
Charlotte, North Carolina 28202-4213

SIXTH AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR TIDALWALK

This Sixth Amendment to Declarations of Covenants, Conditions and Restrictions for TidalWalk (the "Amendment") is entered into this 6th day of January, 2014 by MREC-TIDAL WALK, LLC, a Delaware limited liability company ("Declarant"), successor in interest to Myrtle Grove Investments, L.L.C., a North Carolina limited liability company ("MGI")

RECITALS

WHEREAS, MGI commenced the development of that real property containing approximately 106 07 acres located in the City of Wilmington, New Hanover County adjacent to Myrtle Grove Road more particularly described therein (the "Property"), and

WHEREAS, in connection therewith, MGI recorded that certain Declaration of Covenants, Conditions and Restrictions for TidalWalk, Phase I, dated October 10, 2008 in Book 5352 at Page 1309 of the New Hanover County Public Registry, as amended by that certain Supplemental Declaration To Declaration of Covenants, Conditions and Restrictions for TidalWalk dated May 13, 2009 and recorded in Book 5405 at Page 1669, as amended by First Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk, Phase I, dated July 29, 2011 and recorded in Book 5578, Page 1237, as amended by Second Supplemental Declaration To Declaration of Covenants, Conditions and Restrictions for TidalWalk dated March 29, 2012 and recorded in Book 5629, Page 1745, as amended by Second Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated June 8, 2012 and recorded in Book 5646, Page 2955, as amended by Third Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated January, 2013, recorded in Book 5705, Page 1408, as amended by Fourth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated March 26, 2013, recorded in Book 5725, Page 511, and as further amended by Fifth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated June 28, 2013, recorded in Book 5753, Page 1141 of the New Hanover County Registry (collectively, and as may be hereinafter further amended the "Declarations"); and

WHEREAS, Declarant acquired all the remaining Property owned by MGI by that certain Substitute Trustee's Deed dated December 30, 2010 and recorded in Book 5537 at Page 577 of the New Hanover County Registry, including but not limited to all of MGI's rights as "Declarant" under the Declaration and all other rights, obligations and easements of MGI set forth therein, and

WHEREAS, pursuant to Article XII, Section 3, Declarant has the right to amend the Declarations without the consent of any Owner, or the Association (each as defined therein) for a ten (10) year period from the date of the original recording; and

NOW THEREFORE, for a valuable consideration, the receipt of which is hereby acknowledged, Declarant hereby amends the Declarations as follows:

1 Exhibit B, setting forth the maximum allowable impervious area requirements for each Lot, is hereby deleted in its entirety and the Exhibit B attached hereto is substituted therefore

2. Except as amended hereby, the Declaration and all of its terms, conditions and restrictions shall remain and be in full force and effect

3 The words used in this Amendment shall have the same meaning as set forth in the Declaration unless the context shall otherwise prohibit.

[Balance of Page is Intentionally Left Blank]

IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed by its duly authorized signatory as the act and deed of Declarant as of the day and year first above written.

MREC-TIDAL WALK, LLC

By [Signature] 1-6-14  
Name: SCOTT LAWRENCE  
Title VICE PRESIDENT

STATE OF NORTH CAROLINA )  
  )  
COUNTY OF MECKLENBURG )

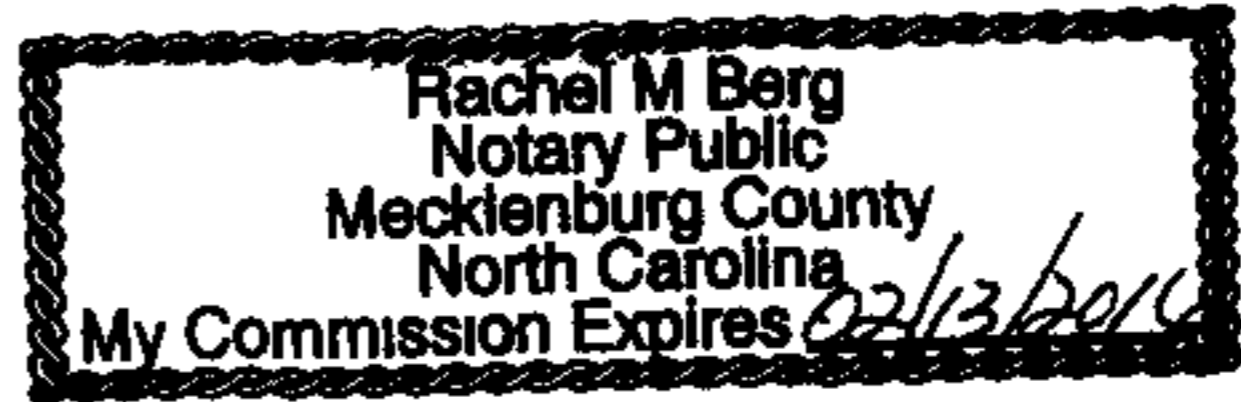
I, Rachel M Berg, a Notary Public within and for said County and State, do hereby certify that Scott Lawrence personally came before me this day and acknowledged that he is the Vice President of MREC-TIDAL WALK, LLC, a Delaware limited liability company, and that he as such officer, being authorized to do so, executed the foregoing on behalf of said limited liability company.

WITNESS my hand and official seal, this 6 day of January, 2014

[Signature]  
Notary Public

Printed Name Rachel M Berg

My Commission Expires 02/13/2016





ACKNOWLEDGMENT

D R Horton, Inc , a Delaware corporation, the owner of Lots 214, 236 and 260 ("Lots"), joins in the execution of this Amendment for the sole purpose of acknowledging the revised impervious allocation to the aforementioned Lots as described in Exhibit B attached hereto

D R. HORTON, INC., a Delaware corporation

By: [Signature]  
Name DAVID G. LEE  
Title Vice President

STATE OF North Carolina )  
 )  
COUNTY OF New Hanover )

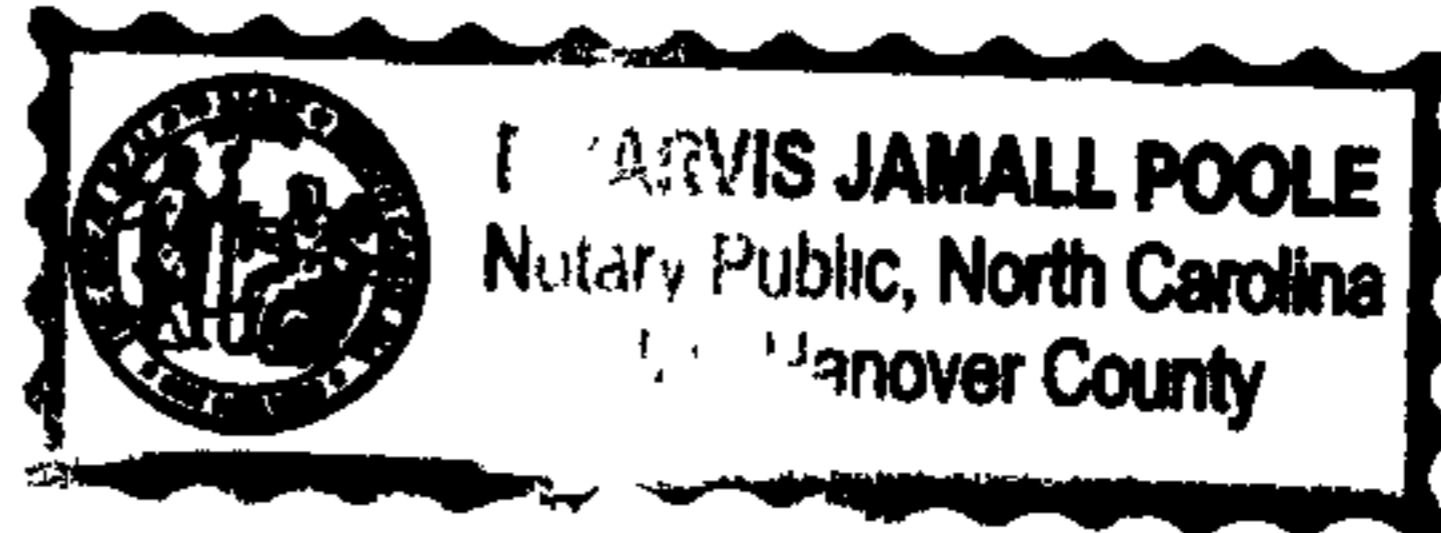
I, DJarvis Jamall Poole, a Notary Public within and for said County and State, do hereby certify that David Griffith Lee personally came before me this day and acknowledged that s/he is the \_\_\_\_\_ of D.R. HORTON, INC , a Delaware corporation, and that s/he as such officer, being authorized to do so, executed the foregoing on behalf of said corporation

WITNESS my hand and official seal, this 8 day of January, 2014

[Signature]  
Notary Public

Printed Name: DJarvis Jamall Poole

My Commission Expires June 20, 2018



ACKNOWLEDGMENT

DAVID R MILLER and wife, THERESA J MILLER, the owners of Lot 281, join in the execution of this Amendment for the sole purpose of acknowledging the revised impervious allocation to the aforementioned Lot 281 as described in Exhibit B attached hereto

*[Handwritten signature of David R Miller]*

DAVID R MILLER

*[Handwritten signature of Theresa J Miller]*

THERESA J MILLER

STATE OF NC )

COUNTY OF New Hanover )

I, Paula R. Bradford, a Notary Public within and for said County and State, do hereby certify that DAVID R MILLER and THERESA J MILLER personally came before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed

WITNESS my hand and official seal, this 21 day of <sup>February</sup>~~January~~, 2014

*[Handwritten signature of Paula R. Bradford]*  
Notary Public

Printed Name Paula R. Bradford

My Commission Expires 12-18-17

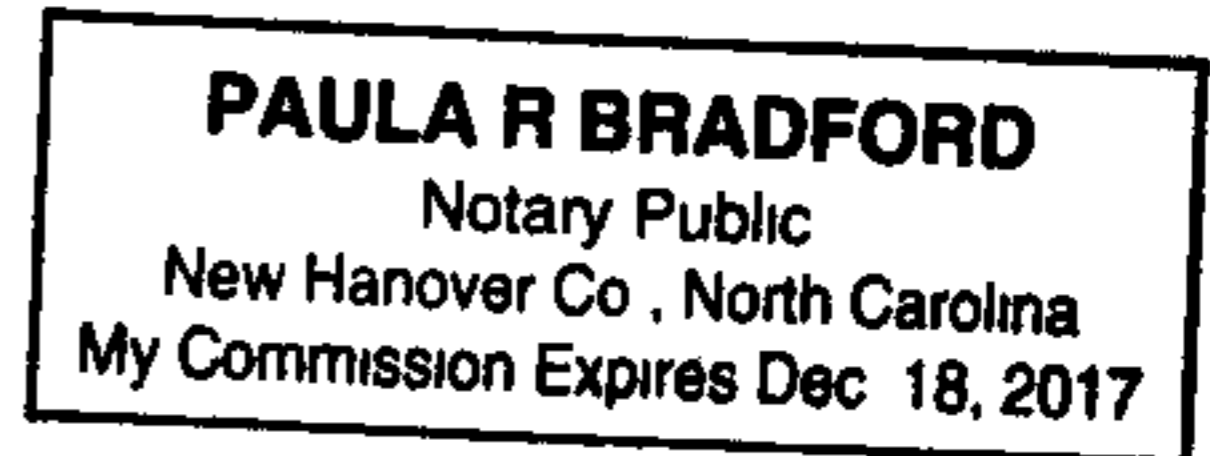


EXHIBIT B

Impervious Allocation Calculation Sheet (11/22/13)

<b>Lot Numbering</b>	<b>Impervious Allocation (sf)</b>	<b>Number of Lots</b>	<b>Total (sf)</b>
513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526	1,860	14	26,040
501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512	2,160	12	25,920
253	2,266	1	2,266
38	2,500	1	2,500
247, 310	2,700	2	5,400
254	2,750	1	2,750
304	2,757	1	2,757
260	3,091	1	3,091
236	3,129	1	3,129
255	3,133	1	3,133
243, 244, 277	3,150	3	9,450
214	3,171	1	3,171
112, 113, 114, 115, 116, 117	3,200	6	19,200
213, 217, 218, 219, 220, 235, 237, 238, 239, 241, 242, 245, 246, 248, 249, 250, 251, 256, 257, 261, 262, 263, 264, 265, 266, 267, 268, 269, 271, 272, 274, 275, 276, 278, 279, 280, 282, 283, 284	3,250	39	126,750
270	3,284	1	3,284
221	3,203	1	3,203
333, 334, 338	3,300	3	9,900
273	3,350	1	3,350
311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 340, 341, 342, 423, 424, 425, 426, 427, 428, 429, 430, 431	3,400	24	81,600
281	3,409	1	3,409
216, 303, 325, 328, 330, 331, 332, 335, 336, 337, 339, 343, 344, 401, 402, 403, 404, 405, 406, 407, 408, 409, 413, 414	3,450	24	82,800
420, 422	3,480	2	6,960
201, 202, 203, 204, 205, 206, 207, 232, 208, 209, 210, 211, 212, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 233, 234, 240	3,494	26	90,844
324	3,500	1	3,500
252, 258	3,505	2	7,010
215	3,541	1	3,541
411, 412	3,570	2	7,140
73, 137, 156, 259, 301, 302, 305, 306, 307, 309, 323, 326, 327, 329	3,600	14	50,400
308	3,690	1	3,690
138	3,742	1	3,742
410	3,800	1	3,800
415, 416	3,908	2	7,816
417, 418	4,097	2	8,194
158	4,192	1	4,192
419, 421	4,200	2	8,400
<b>Total</b>		<b>197</b>	<b>632,332</b>



TAMMY THEUSCH BEASLEY  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

\*\*\*\*\*

**Filed For Registration: 04/10/2014 10:16:00 AM**

**Book: RE 5807 Page: 1498-1505**

**Document No : 2014008562**

**8 PGS \$26.00**

**Recorder: HUGHLEY, CAROL**

**State of North Carolina, County of New Hanover**

**PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.**

**\*2014008562\***

**2014008562**



21  
50



FOR REGISTRATION REGISTER OF DEEDS  
TAMMY THEUSCH BEASLEY  
NEW HANOVER COUNTY, NC  
2015 JUN 18 01 44 54 PM  
BK 5897 PG 1441-1462 FEE \$50 00

INSTRUMENT # 2015018118

**SEVENTH AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR TIDALWALK**

**NORTH CAROLINA**

**NEW HANOVER COUNTY**

This SEVENTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TIDALWALK ("Amendment") is made this 17<sup>th</sup> day of June 2015, by **MREC-TIDAL WALK, LLC**, a Delaware limited liability company ("Declarant"), successor in interest to Myrtle Grove Investments, L.L.C., a North Carolina limited liability company ("MGI").

WITNESSETH:

WHEREAS, MGI, as the original developer of that real property containing approximately 106 07 acres located in the City of Wilmington, New Hanover County adjacent to Myrtle Grove Road, heretofore executed that certain Declaration of Covenants, Conditions and Restrictions for TidalWalk, Phase I, dated October 10, 2008 and caused the same to be recorded in **Book 5352, Page 1309**, as amended by that First Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated July 29, 2011 and recorded in Book 5578, Page 1237; as amended by that Second Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated June 8, 2012 and recorded in Book 5646, Page 2955, as amended by that Third Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated January, 2013 and recorded in Book 5705, Page 1408; as amended by that Fourth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated March 26, 2013 and recorded in Book 5725, Page 511; as amended by that Fifth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated June 28, 2013 and recorded in Book 5753, Page 1141, as amended by that Sixth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated January 6, 2014 and recorded in Book 5807, Page 1498; and also supplemented by those certain Supplemental Declarations to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated May

13, 2009 and recorded in Book 5405, Page 1699, dated March 29, 2012 and recorded in Book 5629, Page 1745, all of the New Hanover County Registry (as heretofore or hereafter amended and/or supplemented, the "Declaration"), and

WHEREAS, capitalized terms used herein shall have the same meanings ascribed to such terms in the Declaration unless otherwise defined herein, and

WHEREAS, Declarant acquired all the remaining property owned by MGI by that certain Substitute Trustee's Deed dated December 30, 2010 and recorded in Book 5537, Page 577 of the New Hanover County Registry, including but not limited to all of MGI's rights as "Declarant" under the Declaration and all other rights, as rights, obligations and easements of MGI set forth therein, and

WHEREAS, pursuant to Article IV, Section 2 of the Declaration, Declarant has the right to create an additional class of Association membership to be composed of the owners of boat slips within TidalWalk, and

WHEREAS, pursuant to Article XII, Section 3 of the Declaration, the Declarant has the right to amend the Declaration without the consent of any Owner for a ten (10) year period from the date of the original recording, and

NOW, THEREFORE, in accordance with its rights under Article IV, Section 2 and Article XII, Section 3 of the Declaration and for valuable consideration, the receipt of which is hereby acknowledged, Declarant hereby amends the Declaration as follows

1 **Article IV shall be amended by adding a new Section 3 as follows:**

"Section 3: Class C Memberships. Declarant hereby creates a third class of membership in the Association to be known as the Class C Membership. The Class C members shall consist of the all Boat Slip Owners; provided that those Boat Slip Owners shall not lose their status as Class A Members (or Class B Member, as applicable) by virtue of also holding one or more Class C memberships Only Class C Members, along with the Declarant so long as the Class B membership exists, shall be entitled to vote on budgets and assessments for Limited Common Expenses applicable to the Limited Common Area Boat Slips "

2. **Article VII, Section 2 shall be amended by adding the following.**

(x) No piers or docks shall be allowed to extend from any Lots which adjoin the waters or marshes of the Atlantic Intracoastal Waterway. The only pier or dock permitted in TidalWalk is the pier and dock that is described in Article XIV of this Declaration.

(y) Use of all Boat Slips, Dock Facilities and the Community Waterfront Area (as said terms are described in Article XIV) shall be subject to and restricted by the terms of that certain Major CAMA Permit #56-07, as amended, a copy of which shall be maintained by the Association at its business offices, the terms of which are incorporated herein by reference, and all applicable State and Federal laws, statutes, regulations and rules "

3      A new Article XIV is hereby added as follows and to the extent any provision in the new Article XIV conflicts with existing provisions of the Declaration, Article XIV shall control:

#### Article XIV

#### TIDALWALK COMMUNITY BOATING FACILITY

##### Section 1:    **Definitions:**

(a) **“Boat Slip”** will mean a space in and above the water adjacent to the Atlantic Intracoastal Waterway, New Hanover County, North Carolina, for the docking of a boat, as more particularly shown on the map attached hereto as Exhibit A and incorporated herein by reference. A total of ten (10) Boat Slips have been constructed at TidalWalk and are subject to continuing governmental approval therefor. One (1) of the Boat Slips shall be a “Common Area Boat Slip” which will be made available for the non-exclusive use (day docking only) of the Owners as provided herein. Nine (9) of the Boat Slips shall be “Limited Common Area Boat Slips,” each of which is or will be assigned to a specific Lot in TidalWalk, and shall thereupon become appurtenant to and shall run with title to that Lot and be for the exclusive use and benefit of the Owner of the Lot, subject to the transfer rights described herein.

(b) **“Boat Slip Owner”** will mean and refer to the Lot Owner, whether one or more persons or entities, whose Lot has been assigned the exclusive use and benefit of a Limited Common Area Boat Slip, whether by original assignment from the Declarant or by subsequent transfer from a predecessor Boat Slip Owner as provided in Article XIV, Section 5(b).

(c) **“Common Area Boat Slip”** will mean that one (1) Boat Slip (identified as Boat Slip #10 on the map attached hereto as Exhibit A) that is intended for the general use and enjoyment of the Owners of Lots in TidalWalk as a Common Area, and shall be made available for the non-exclusive use (restricted day docking only) of the Owners pursuant to such rules and regulations as the Declarant may determine. The use of the Common Area Boat Slip shall be limited to a first come-first serve basis with no unattended docking permitted.

(d) **“Community Waterfront Area”** will mean and refer to those portions of the TidalWalk Community Boating Facility that are intended for and dedicated to the common use and enjoyment of the Owners. The Community Waterfront Area shall include that (i) riparian tract of land shown as “Common Area – Beach” on that map recorded in Map Book 54, Page 373 of the New Hanover County Registry with associated access and utility easements (as a portion thereof is revised in Map Book 60, Page 253 and as subject to the reservations and revisions described in Article XIV, Section 2(c) herein); (ii) the Common Area Boat Slip and the Dock Facilities immediately adjacent to and serving such Common Area Boat Slip; and (iii) the pier extending into the Waterway for approximately 150 feet and the fixed two story gazebo situated on the Intracoastal Waterway. The Community Waterfront Area will be deemed to include only the upland Property and adjacent pier to the pier head and gazebo at the terminus of



the pier, but shall not include any Limited Common Area Boat Slips or Dock Facilities immediately adjacent or attached thereto

(e) **“Dock Facilities”** means all of that system of piers and docks adjacent to which the Boat Slips exist and consisting of floating docks, bulkheads, finger piers, pilings, gangways, gangplanks and ramps providing access to Boat Slips. The Dock Facilities may also include boat lifts, cleats, cables, pipes, dock boxes, meters, hoses, electrical and water systems and other equipment and facilities serving a Boat Slip and located on the Dock Facilities, excluding those installed and owned by Boat Slip Owners. Dock Facilities will also be deemed to include non-exclusive easements of ingress, egress and access over and across the Dock Facilities in favor of the Boat Slip Owners in the exercise of access to the Boat Slips

(f) **“Limited Common Area”** will mean and refer to those portions of the Common Area set aside for the exclusive use of some, but not all Owners of Lots, including, but not limited to, the Limited Common Area Boat Slips and any Dock Facilities adjacent thereto, any associated paths, boardwalks, parking areas, dock boxes and any other real or personal property designated for use by the Boat Slip Owners. This definition shall replace and supersede the definition of Limited Common Area in Article I, Section 14 of the Declaration.

(g) **“Limited Common Area Boat Slip”** or **“LCA Boat Slip”** will mean and refer to those nine (9) Boat Slips identified on Exhibit A which Boat Slips are intended for the exclusive use and benefit of the Owner of the Lot to which the Limited Common Area Boat Slip is assigned as provided herein. A Limited Common Area Boat Slip will be deemed to include Dock Facilities (and boat lift, if any) immediately adjacent thereto. Once a Limited Common Area Boat Slip is assigned to a Lot by the Declarant as provided in Article XIV, Section 5(a), that Limited Common Area Boat Slip shall be considered an appurtenance to such Lot and, unless the Boat Slip is transferred to another Owner of a TidalWalk Lot in accordance with the terms of Article XIV, Section 5(b), the exclusive right to use such Limited Common Area Boat Slip shall remain an appurtenance to and shall run with the title to the land of the Lot to which it was originally assigned. The Limited Common Area Boat Slips shall sometimes be referred to as “Boat Slip #1”, “Boat Slip #2”, “Boat Slip #3”, “Boat Slip #4”, “Boat Slip #5”, “Boat Slip #6”, “Boat Slip #7”, “Boat Slip 8”, and “Boat Slip #9 ”

(h) **“Limited Common Expenses”** will mean and refer to Common Expenses of the Association attributable to Limited Common Area Boat Slips for the exclusive use and benefit of the Boat Slip Owners and incurred by the Association pursuant to the terms and conditions hereof. Limited Common Expenses attributable to the Limited Common Area Boat Slips will be payable through Specific Assessment levied against each Boat Slip Owner’s Lot in an equal amount per Limited Common Area Boat Slip

(i) **“TidalWalk Community Boating Facility”** will collectively mean all of the Boat Slips, Dock Facilities and the Community Waterfront Area, as those terms are defined herein

**Section 2: Construction, Use and Alteration of TidalWalk Community Boating Facility:**

(a) Construction of TidalWalk Community Boating Facility/Dock Permits The Declarant has constructed the TidalWalk Community Boating Facility with fixed and floating docks, finger piers, lifts and pilings for the mooring of vessels. To the best of the Declarant's knowledge, all governmental permits and approvals necessary for the construction, operation and use of the TidalWalk Community Boating Facility (including, without limitation, applicable permits issued by agencies of the United States of America and the State of North Carolina) (collectively, the "Dock Permits") have been issued and are presently in full force and effect. Notwithstanding the foregoing, the TidalWalk Community Boating Facility exists solely in accordance with and subject to the terms and conditions of such Dock Permits. The Declarant currently holds the Permits and on or before the termination of the Class B membership, the Declarant shall transfer and assign all Dock Permits to the Association, and the Association shall assume all rights and obligations thereof in connection with all Dock Permits. Each Owner, by his, her or its acceptance of a deed to the Property and/or the use of the TidalWalk Community Boating Facility, acknowledges these disclosures and agrees to accept his, her or its ownership and/or use subject thereto.

(b) Rules and Regulations. Use of the TidalWalk Community Boating Facility by Owners shall be subject to such Rules and Regulations as shall be adopted therefor by the Declarant during the Declarant Control period, and thereafter by the Board of Directors. Any such Rules and Regulations cannot violate the terms and conditions of the Dock Permits, as they may be amended from time to time, or the terms and conditions of any special use permit issued by New Hanover County, as it may be amended from time to time. The initial Rules and Regulations for use of the TidalWalk Community Boating Facility are attached hereto as **Exhibit B** and incorporated herein by reference (the "Community Boating Facility Rules"), as they may be amended by the Board of Directors of the Association in its reasonable discretion.

In addition to the Community Boating Facility Rules rules, the use of the Common Area-Beach portion of the Community Waterfront Area shall be subject to the Rules and Regulations attached hereto as **Exhibit C** and incorporated herein by reference (the "Beach Rules"), which may be amended by the Board of Directors of the Association in its reasonable discretion.

(c) Alteration of TidalWalk Community Boating Facility. Except for alterations or modifications made by the Declarant during the period of Declarant Control, any alterations of the plans and specifications or of the completed structure must also be submitted to the Architectural Control Committee in writing by the Board of Directors or by a majority of the Class C Members, and the Architectural Control Committee's approval in writing must be similarly secured prior to construction, the Architectural Control Committee being granted the same rights to disapprove alterations as it retains for disapproving the original structures. Further, all alterations or modifications of any portion of the TidalWalk Community Boating Facility must comply in full with any applicable governmental regulations and all required governmental approvals and permits for any such alteration or modification shall have been obtained. In addition to the foregoing and notwithstanding the location of the "20' Private

Pedestrian and Utility Easement” shown on that map recorded in Map Book 54, Page 373 of the New Hanover County Registry, Owners are put on notice that Declarant, pursuant to the authority granted in the Declaration to alter, amend or relocate common areas, has revised and relocated such easement to the location shown on that plat entitled “Tidalwalk Subdivision – Phase 9” which plat is recorded in Map Book 60, Page 253 of the New Hanover County Registry. The revised and relocated Private Pedestrian and Private Utility Easement as shown on Map Book 60, Page 253 is now 15’ in width, 7 5’ of which is located along the northern property line of Lot 419, Phase 9 and 7.5’ of which is located along the southern property line of Lot 418, Phase 9.

(d) Docks Into Intracoastal Waterway Encroaching Upon View. There is no implied easement of view by any Owner of a Lot. No Owner or occupant of a Lot shall have any view easement over and across the adjacent waters of the Atlantic Intracoastal Waterway.

### **Section 3 Maintenance, Repairs and Insurance.**

(a) Maintenance of TidalWalk Community Boating Facility The Association shall keep all of the TidalWalk Community Boating Facility and all of its properties (including, without limitation, the lands, piers, docks, pilings, basin, channels, watercourses, breakwaters, bulkheads, jetties, walkways, electrical huts, gangways, utility service lines connecting to docks, other services and/or dock facilities owned or operated by the Association for the benefit of the Owners and all Limited Common Area Boat Slips regardless of ownership) in good repair and condition and shall arrange for any needed maintenance dredging of the submerged portions of the TidalWalk Community Boating Facility. The costs of such maintenance shall be allocated as follows

(i) Cost of Maintenance of Community Waterfront Area The Community Waterfront Area shall be improved, maintained, repaired and preserved as Common Area pursuant to Article II of the Declaration, and the costs and expenses thereof shall be assessed to all of the Owners as a Common Expense. All charges for such maintenance shall be added to and become part of the total Annual Assessment for which the Owners are liable pursuant to the Declaration, and shall be a charge on the land and shall be a continuing lien upon the respective Unit against which the Annual Assessments are made in accordance with Article V of the Declaration.

(ii) Costs of Maintenance of Limited Common Area Boat Slips The Limited Common Area Boat Slips (including the Dock Facilities and boat lifts (if any) immediately adjacent thereto) shall be maintained by the Association and the costs and expenses therefor shall be a Limited Common Expense, assessed through Specific Assessments pursuant to Article XIV, Section 4 and levied against each Boat Slip Owner’s Lot in an equal amount per Limited Common Area Boat Slip. This includes the major repair of any damaged portion thereof whose existence threatens the structural integrity of the Dock Facilities or poses a danger to persons or property (following actual notice thereof being given by an Owner), and also for the replacement thereof following major damage or destruction

(b) Insurance. The Association shall be responsible for insuring all of the TidalWalk Community Boating Facility to the extent such insurance is reasonably available. To the extent possible, the costs of insurance shall be allocated where the costs of insuring the Community Waterfront Area will be a Common Expense assessed equally to all of the Owners and the costs of insuring the Limited Common Area Boat Slips (including the Dock Facilities and boat lifts (if any) immediately adjacent thereto) shall be a Limited Common Expense assessed through Specific Assessments pursuant to Article XIV, Section 4 and levied against each Boat Slip Owner's Lot in an equal amount per Limited Common Area Boat Slip

**Section 4: Specific Assessments.**

(a) Any expenses incurred by the Association or the Declarant because of the actions of one or more Owners or occupants of a dwelling unit, or because of their failure to act, and with respect to which such expenses are chargeable thereto and recoverable therefrom pursuant to any provision of this Declaration, and any fines as may be imposed against an Owner in accordance with this Declaration or the Bylaws will be specially assessed as a Specific Assessment against each such Owner and the Owner's Lot

(b) Expenses incurred by the Association as Limited Common Expenses for maintenance, repair, replacement, and management of Limited Common Area Boat Slips shall be assessed through Specific Assessments and levied against each Boat Slip Owner's Lot in an equal amount per Limited Common Area Boat Slip Such Specific Assessments shall be invoiced against each such Owner periodically as established by the Board Such Specific Assessments may be made in advance of incurring such expenses, at the discretion of the Board These Specific Assessments, together with interest, costs, late fees and any attorneys' fees reasonably incurred shall be a charge on the land and shall be a continuing lien upon the respective Lot against which the Assessments are made in accordance with Article V of the Declaration.

**Section 5: Initial Assignments, Subsequent Transfers and Leases of Limited Common Area Boat Slips.**

(a) Initial Assignment by Declarant. The Declarant has the sole right and authority to make the initial assignment of each Limited Common Area Boat Slip to a specific Lot. The initial assignment of a Limited Common Area Boat Slip to a Lot shall be accomplished by the execution and recordation of the TidalWalk Boat Slip Assignment form attached hereto as **Exhibit D** and incorporated herein by reference (the "Initial Assignment Document") Declarant shall have the right to assign the Limited Common Area Boat Slips by one or more Initial Assignment Documents filed of record, at any time until all of the Limited Common Area Boat Slips have been assigned and regardless of whether the Supplemental Declaration(s) is/are filed within the ten (10) year time period authorized in Article XII, Section 3 and regardless of whether Declarant has conveyed title to the TidalWalk Community Waterfront Area (or any portion thereof) to the Association. Once a Limited Common Area Boat Slip is assigned to a Lot by the Declarant as provided in this Article XIV, Section 5(a), that Limited Common Area Boat Slip shall be considered an appurtenance to such Lot and, unless the Boat Slip is transferred to another Owner of a TidalWalk Lot in accordance with the terms of Article XIV, Section 5(b), the exclusive right to use such Limited Common Area Boat Slip shall remain an appurtenance to and shall run with the title to the land of the Lot to which it was originally assigned

(b) Transfers After the initial assignment by Declarant to a specific Lot, no Limited Common Area Boat Slip may be transferred, conveyed or assigned except in strict accordance with the provisions hereof. So long as a Boat Slip Owner is not delinquent in the payment of any Assessments, such Boat Slip Owner (the "Selling Owner") may transfer the said Limited Common Area Boat Slip to the Owner of another Lot in TidalWalk (the "Buying Owner") upon compliance with the requirements set forth herein. The Selling Owner and Buying Owner shall, at their expense, cause to be prepared a TidalWalk Boat Slip Transfer in the form attached hereto as Exhibit E and incorporated herein by reference (the "Transfer Document"), with language of conveyance, which specifically sets forth that the Limited Common Area Boat Slip has been transferred, identifies the Lot which is relinquishing and terminating its appurtenant rights to such Limited Common Area Boat Slip and identifies the Lot unto which those appurtenant rights to the particular Limited Common Area Boat Slip is assigned and transferred. Such Transfer Document shall specifically state in unequivocal terms that all rights in and to the Limited Common Area Boat Slip of the Selling Owner and the Selling Owner's Lot are severed and extinguished. Further, to be effective, such Transfer Document must be signed by duly authorized officers of the Association and the parties to the transfer of the Limited Common Area Boat Slip, whose signatures shall be notarized and the Transfer Document shall be recorded in the Office of the Register of Deeds for New Hanover County (the "Transfer Procedure"). *No attempted or purported assignment or transfer of any rights to a Limited Common Area Boat Slip shall be effective until the recording of said Transfer Document.* In the event the above procedure is not complied with, then the Limited Common Area Boat Slip shall remain appurtenant to the Selling Owner's Lot and shall run with the title of the land unless and until the Transfer Procedure is completed.

(c) Lease or Rental of Limited Common Area Boat Slips- Limited Common Area Boat Slips shall not be leased or rented by Owners. However, the Declarant may lease or rent one or more Limited Common Area Boat Slips to an Owner(s) of a Lot prior to the Declarant's initial assignment of such Limited Common Area Boat Slip to a Lot as set forth in Article XIV, Section 5(a) above.

EXCEPT AS AMENDED AND SUPPLEMENTED HEREIN, the Declaration shall be and remain in full force and effect

MREC-TIDAL WALK, LLC

By: [Signature]  
Name: SCOTT LAWRENCE  
Its. VICE PRESIDENT

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

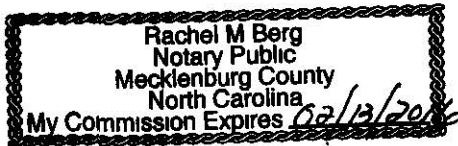
I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: Scott Lawrence

[Name of person signing]

Today's Date June 17, 2015

[Signature]  
[Notary's signature as name appears on seal]

Rachel M Berg  
[Notary's printed name as name appears on seal]



My commission expires 02/13, 2016



**EXHIBIT B**  
**RULES AND REGULATIONS**  
**OF**  
**TIDALWALK COMMUNITY BOATING FACILITY**

**TIDALWALK COMMUNITY BOATING FACILITY**

1. **DOCKWAYS**: The TidalWalk Community Boating Facility is to be kept clear at all times. Lockers, chests, cabinets, or similar structures shall not be, constructed or placed on docks or finger piers, without written approval of the Association. Storage of loose material, supplies, debris, or gear is not permitted. Hoses, lines and shore power cords should not cross piers. Charcoal fires will not be permitted on the docks. Repairs to and maintenance of gear and equipment shall not be permitted on the docks or finger piers.
2. **LIMITED COMMON AREA BOAT SLIP CONDITION**. The Boat Slip Owner shall keep and maintain that Owner's Boat Slip in a clean, attractive, safe, and sanitary condition at all times. The Owner shall not install fixtures upon or make modification to the slip, dock area, or utility services without the prior written consent of the Association. No Owner shall cause, create, or allow any condition at or upon his slip which in appearance, sound, smell or otherwise might constitute a nuisance to the Association and/or the other Owners.
3. **FINGER PIERS AND PRIVATE GANGWAYS**. The finger pier between Boat Slips is for the use of boats on each side. Location of private gangways should be governed accordingly. In no case will a single gangway be allowed to block access to another vessel.
4. **ALTERATIONS**. No part of the docks, utility posts or any other permanent attachment to the docks may be altered in any way except as otherwise permitted in the Declaration. The names of boats shall be displayed only on the boats.
5. **STORAGE**: No Owner shall store any trailer or other vehicle at or on the Association's property without the Association's consent. Supplies, materials, accessories or gear of all kinds shall not be stored at or on the Association's property except in approved dock boxes or lockers. All materials and equipment must be kept clear of the docks. No fuel or other combustibles shall be placed on or within any dock box.
6. **DOCK BOXES**. No more than one (1) dock box shall be permitted for each Boat Slip. No dock box shall exceed a maximum size of six feet (6') long by two feet (2') wide by two feet (2') high. The style, location and placement of every dock box must be approved by the Board of Directors. Any removal, alteration, or change in the style, location, size, or construction of any dock box shall require the prior written consent of the Board of Directors.

**RIGHT TO USE OF TIDALWALK COMMUNITY BOATING FACILITY**

7. **LIVE-ABOARDS**: No full-time or permanent live-aboards shall be allowed in any boat or vessel docked at the TidalWalk Community Boating Facility without the prior written consent of the



Board of Directors Any permitted live-aboards shall comply fully with all of the terms, conditions, and provisions hereof, including but not limited to those pertaining to sewage disposal and environmental matters.

8. GUESTS. All Owners shall be responsible to see that their guests fully comply with these Rules and Regulations while occupying, using, or visiting the TidalWalk Community Boating Facility. Further, each Owner shall be fully responsible to the Association for any violation by that Owner's guests. No Owner may invite any guest to use or enjoy any of the property or facilities of the Association in that Owners' absence, except by virtue of an assignment of the use of the ownership made pursuant to the Declaration and Bylaws. The number of guests invited at any one time by any Owner shall be in keeping with the rights of other Owners to have and enjoy the use of the Association's facilities. No Owner shall invite guests to the facilities and property of the Association in unreasonable numbers or on unreasonable occasions or for unreasonable times.

9 CHILDREN: Children under twelve (12) years of age are not permitted on docks without the immediate presence of a parent or other responsible adult. Parents shall not allow children to run and play on the dockways. Only competent swimmers are allowed on the docks without the presence of another competent swimmer

### HEALTH

10 SEWAGE DISPOSAL. TidalWalk is a "Closed Head" boating facility. All permanently-installed sewage systems on vessels must be either approved Type I or Type II Marine Sanitation Devices or must be locked off while the vessel is docked at the Facility.

#### 11. TRASH DISPOSAL:

(a) Newspapers, magazines and other similar items should be placed in a solid waste container. Garbage and other perishable items shall be placed in a plastic bag secured at the top and placed in the solid waste container. Loose garbage shall not be deposited anywhere. NO TRASH OR EMPTY BOXES OF ANY KIND SHALL BE LEFT ON THE DOCKWAYS.

(b) No Owner, guest or tenant shall throw, discharge, pump or deposit from any boat or float any refuse, oil, spirits, and flammable liquid or polluting matter into water or onto land. All such matter shall be deposited in appropriately marked and approved oil disposal facilities. Waste material such as paper, beer or drink cans, cigarette stubs, trash, etc., must not be thrown from the boats or dock areas. Tossing food or garbage out for birds or other wildlife produces unsanitary conditions around the dock area and shall not be permitted.

#### 12 ENVIRONMENTAL MATTERS:

(a) Each Owner shall, in and around the TidalWalk Community Boating Facility, comply with all laws, rules and regulations concerning the protection of the environment and pay the Association for any damage, expense or liability incurred by the Association due to the Owner's failure to comply with such laws and regulations or due to any pollution created by, caused by, or contributed to by the Owner. The Owner shall not release or permit to be released, by action or inaction, any hazardous waste or environmentally objectionable substances, including oil, gasoline or untreated sewage ("Hazardous Substances") into the water or land of the TidalWalk Community Boating Facility. The costs for which the Owner may be responsible include, but are not limited to,

the costs of booms, absorbent pads, disposal of Hazardous Substances, clean up oversight by governmental agencies and the Association's personnel and any legal fees incurred in defense of any violations. The Owner shall be responsible for reporting and cleaning up any such release. The Owner shall report any release to the Association and shall keep the Association informed on a daily basis of the Owner's actions with respect to any clean up. If the Association is not satisfied, in the Association's sole discretion, with the Owner's actions in reporting and cleaning up a release, the Association may take any action it deems appropriate regarding the release, at the Owner's expense. This provision is in addition to, and not in lieu of, the indemnity provision set forth herein.

(b) The Owners shall not discharge oil, water or raw or untreated sewage into the water. All hazardous chemicals, including waste oil, engine coolant, hydraulic fluid, gasoline, diesel, paint and mineral spirits may only be disposed of in an approved manner off site from the marina. All spills of gas, diesel fuel, oil or other hazardous materials must be reported immediately to the Association and the US Coast Guard. Violators may be subject to heavy fines. The Declarant and the Association are committed to the preservation of the local water, land and air quality and complies with the requirements of the Coastal Area Management Practices for Marina Facilities. Sound environmental practices require all Owners to obey such rules.

### **VESSEL OPERATION AND CARE**

13. **NAVIGATION AND SPEED:** The "rules of the road" and the navigation laws of the United States and the State of North Carolina apply to all vessels in or approaching the berthing areas of the TidalWalk Community Boating Facility. All Owners and their families and guests shall comply with all applicable laws and regulations concerning the operation of vessels in and around the TidalWalk Community Boating Facility. The speed limit within and around the TidalWalk Community Boating Facility shall be dead slow or wakeless speed, whichever is slower. The Owner is responsible for all damage caused by the wake of that Owner's boat. All owners and their vessel operators acknowledge that notwithstanding anything to the contrary herein they are solely responsible for safe operation of their vessels, and further acknowledge that at mean low water the available water depth for operation of vessels in an around the TidalWalk Community Boating Facility is limited, and although current depths are shown on **Exhibit A**, such depths will change over time due to currents, weather conditions and other causes.

14. **MOORING** All boats shall be moored in a safe manner on cleats with adequate dock lines. Dock lines which are, in the opinion of the Board, not adequate, shall be replaced at the owner's expense if the owner cannot be notified to make the change himself. No part of any boat shall extend over the main walkway. No boat or vessel docked at the TidalWalk Community Boating Facility shall exceed the length of the particular Boat Slip in which it is docked. No vessels, including jet skis or wave runners, may be moored or anchored anywhere in the TidalWalk Community Boating Facility other than those vessels permitted to moor or anchor in the Boat Slips.

15. **OPERATION OF ENGINES** Unnecessary operation of engines in slips is not permitted. Engines may not be operated in gear while boats are secured to the dock.

16. **CONDITION OF VESSEL:** Each Owner's boat must be presented for dockage and maintained throughout free of hazards that may cause danger or expense to the Association or to others. The boat shall be maintained in an operable and seaworthy condition and appearance at all times. The Owner authorizes the Association to make repairs necessary to keep the boat in an

operable condition, which repairs will be charged to the Owner, upon Owner's failure to do so, provided that the Association is not obligated or required to make such repairs

17. BOAT REPAIRS No major repairs or complete overhauls shall be made on boats moored or docked at the TidalWalk Community Boating Facility. Normal and customary maintenance or repair work above the rail or in the interior of the boat may be performed, but only if such maintenance or work presents no hazard and creates no nuisance.

18. VESSEL RESTRICTIONS: No vessel with a length exceeding 26 feet, a breadth in excess of 10 feet and a weight in excess of 10,000 pounds shall be presented for dockage, moored or docked at the TidalWalk Community Boating Facility

### UTILITIES

19. WATER SERVICE Water service to the Boat Slips may be provided by way of a well system or potable water provided by Cape Fear Public Utility Authority as set forth hereafter. All charges for electricity, water and other costs of providing such services shall be divided equally among the Owners. At such time water from Cape Fear Public Works or other water provider becomes available to the TidalWalk Community Boating Facility, water service will most likely be billed to the Association in a single statement. In that event, all charges for such water service shall be divided equally among all of the Owners. Each Owner shall make payment of such amount to the Association immediately upon notice. Such payment shall be deemed delinquent ten (10) days after such notice.

### SAFETY

20. SAFETY AND COMPLIANCE WITH LAW: All persons using the TidalWalk Community Boating Facility shall do so lawfully and in such fashion as to maintain and preserve the property of the Association. Each person shall be responsible for his/her own conduct and safety. No high-heeled, spiked, or corrugated shoes shall be worn on any pier or dock of the Association. All persons shall comply with all applicable laws, statutes, ordinances, rules, and regulations

21. STORM PRECAUTIONS: To prevent damage from weather or storms, dock lines should be properly secured, and all outside property of any Owner or guest shall be battened down, secured, or placed inside the boat which should be closed and locked when the Owner leaves his Boat Slip. Owners planning to be absent from their Boat Slips for a prolonged period should remove all furniture, plants and objects from their boats and notify the Association of their plans before leaving. Also, all movable items should be removed from each boat if storm weather is threatening.

In the event that (a) the National Weather Service or other appropriate governmental agency shall issue a hurricane or tropical storm watch covering the location of the TidalWalk Community Boating Facility or (b) some other occurrence or threatened occurrence shall raise concern about the safety of the TidalWalk Community Boating Facility, the Board of Directors of the Association shall have the power and authority to require that all vessels be removed from the TidalWalk Community Boating Facility within twenty (24) hours of notice to the Owners. In the event that the Owner shall fail or refuse to so remove that Owner's vessel within such time, the Association shall have the right to remove such vessel and charge all costs thereof, including transportation and storage, to the Owner, provided, however, undertaking to move or evacuate vessels shall not be deemed an

assumption of responsibility for the safety, security, and care of any vessel by the Association, nor shall the Association be deemed a bailee of any Owner

The owner(s) of each boat in or at the TidalWalk Community Boating Facility are deemed to have appointed the Association as his/their agent with authority to take all actions reasonably necessary to preserve and maintain the Association's property and such boat, in that order.

In the event any lawful authority orders the evacuation of persons from the Association's property, each Owner and his assignee shall immediately comply with such orders including, if necessary, leaving the Association's facilities and causing his vessel, or the vessel docked at the TidalWalk Community Boating Facility at his instance, to be removed from the TidalWalk Community Boating Facility. Any damage caused by such persons or vessels wrongfully remaining or left at the TidalWalk Community Boating Facility shall be repaired at the sole expense of such persons and vessels.

22 FISHING, SWIMMING, ETC.: Fishing from the Association's finger piers, floats or gangways is not allowed. Further, no swimming, diving or spinnaker flying is permitted either from the docks or finger piers or in waters at or adjoining the TidalWalk Community Boating Facility.

#### COMMERCIAL ACTIVITIES

23. COMMERCIAL PURPOSES Commercial usage (including, but not limited to, sales, servicing, and advertising of boats and vessels) shall not be permitted at the TidalWalk Community Boating Facility. All commercial uses are prohibited. No business or professional services or activities may be conducted aboard any vessels, upon any decks, or at any other location at the TidalWalk Community Boating Facility

24 SIGNS. No "FOR SALE" signs are permitted on any boats All advertising, business, and promotional signs are prohibited

#### QUALITY PRESERVATION

25. NOISE: Noise should be kept to a minimum at all times All Owners and their guests shall refrain from playing stereo, television or musical instruments loudly after 10:00 p m and before 8 00 a m Everyone shall respect the rights of other persons lawfully on the premises Parents shall not allow children to run and play on the docks and other facilities. Before 8:00 a.m and after 10:00 p.m. quiet, orderly behavior is expected of all Owners and their guests Children should be under the direction of their parents at all times Discretion in operating engines, generating plants, radios, televisions, other sound producing devices, and other power equipment should be used so as not to create a nuisance or disturbance **The Board reserves the right, in its sole discretion to limit or prohibit altogether use of the Community Boating Facility after 10:00 pm each night and before 8:00am each day.**

26. ANIMALS: Animals shall be leashed at all times when on the Association's premises. No animals shall be tied to any part of the dock, including finger piers or dock boxes Animals shall be physically kept on board at all times and shall not be permitted to be loose on the docks. The owner of an animal on the Association's premises will be responsible for cleaning up after such animal, including all pet feces "Animal" as used herein shall refer to domesticated pets, which shall be the only animals permitted on the Association's property

27. FISH CLEANING. Fish cleaning of any kind will not be permitted at the TidalWalk Community Boating Facility, boats tied to docks or parking areas except at a place or places designated by the Board of Directors.

28. LAUNDRY Laundering and/or drying of clothes or laundry (including, but not limited to, clothing, towels, and linens) on any docks, finger piers, decks, or rigging of vessels is prohibited.

#### MISCELLANEOUS

29 LIABILITY INSURANCE: All boats and crafts docked in any Boat Slip or on any pier or wharf of the TidalWalk Community Boating Facility shall be covered at all times by adequate liability insurance with limits of no less than \$300,000 per occurrence or greater as determined from time to time by the Board of Directors. Such insurance shall name the Association as an additional Insured, with waiver of subrogation in favor of the Association, and proof of such insurance shall be provided by the Owner to the Association or such agent, property manager, or dock master as it shall appoint. All such policies of Insurance shall require thirty (30) days advance notice by the insurance company to the Association of any amendment or cancellation

30 DAMAGE Each Owner is and shall be fully liable and responsible for all damage caused by that Owner, his employees, agents, guests and/or vessels to any other person and/or property, specifically including the TidalWalk Community Boating Facility and any other property of the Association.

**EXHIBIT C**  
**RULES AND REGULATIONS**  
**OF**  
**TIDALWALK COMMON AREA-BEACH**

- 1 Notwithstanding the area shown as "Common Area-Beach" on that map recorded in Map Book 54, Page 373 of the New Hanover County Registry, Owners are put on notice that portions of said "Common Area-Beach" are environmentally sensitive coastal marshlands and thus, Owners may only use the sandy beach portions of the Common Area-Beach that are (a) located to the east of Lots 417, 418 and 419 and (b) that are also not shown as Coastal Marsh on the map recorded in Map Book 60, Page 253. Access to the Common-Area Beach shall be gained only through the 15' Private Pedestrian & Utility Easement shown on the map recorded in Map Book 60, Page 253 (7.5' of which is located along the northern property line of Lot 419, Phase 9 and 7.5' of which is located along the southern property line of Lot 418, Phase 9) or through the Common Area pier.
2. Guests must be escorted by Owners at all times. All Owners shall be responsible to see that their guests fully comply with these Rules and Regulations while occupying, using, or visiting the TidalWalk Common Area-Beach. Further, each Owner shall be fully responsible to the Association for any violation by that Owner's guests.
3. All Owners or Guests using the Common Area-Beach must be competent swimmers or supervised by a competent swimmer.
4. Fishing and swimming from the Common Area-Beach is not allowed.
5. No structures, temporary or permanent, may be erected on the Common Area-Beach, including but not limited to tables, chairs, umbrellas, etc. No beach fires, fire pits or barbecues will be allowed on the Common Area-Beach.
6. No litter and no glass containers allowed on the Common Area-Beach.
7. No excessive noise at any time on the Common Area-Beach.
8. No use of the Common Area-Beach allowed in between 10:00 pm and 8:00 am. No overnight camping is permitted on the Common Area-Beach.
9. No fireworks allowed on or from the Common Area-Beach.
10. Animals should be on a leash at all times on the Common Area-Beach. The owner of an animal on the Common Area-Beach will be responsible for cleaning up after such animal, including all pet feces.
11. No parties or large group gatherings are allowed on the Common Area-Beach.
12. No alcohol beverages shall be brought onto or consumed on the Common Area-Beach. Cigarette, cigar or pipe smoking is not permitted at the Common Area-Beach at any time.

**EXHIBIT D**

**Form - Initial assignment of Limited Common Area Boat Slips by Declarant**

**TIDALWALK  
BOAT SLIP ASSIGNMENT**

**NORTH CAROLINA**

**NEW HANOVER COUNTY**

This TIDALWALK BOAT SLIP ASSIGNMENT ("Assignment") is made this \_\_\_ day of \_\_\_\_\_ 20\_\_\_, by **MREC-TIDAL WALK, LLC**, a Delaware limited liability company ("Declarant") and \_\_\_\_\_, with a mailing address of \_\_\_\_\_ (the "Boat Slip Owner").

**WITNESSETH**

WHEREAS, pursuant to that certain Seventh Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated \_\_\_\_\_, 2015 and recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ of the New Hanover County Registry (the "Seventh Amendment"), Declarant reserved the sole right and authority to make the initial assignment of each Limited Common Area Boat Slip to a specific Lot in TidalWalk; and

WHEREAS, capitalized terms used herein shall have the same meanings ascribed to such terms in the Seventh Amendment unless otherwise defined herein, and

NOW, THEREFORE, in accordance with its rights under the Declaration including but not limited to the Seventh Amendment and for valuable consideration, the receipt of which is hereby acknowledged, Declarant hereby declares the following:

Declarant does hereby assign and dedicate the following Limited Common Area Boat Slip(s) (as defined in the Seventh Amendment) for the exclusive use of the respective TidalWalk Lot(s):

<b>TidalWalk – Lot Description</b>	<b>Map of TidalWalk Lot</b>	<b>Assigned Limited Common Area Boat Slip</b>
Lot _____, Phase _____	Map Book _____, Pages _____	Boat Slip # _____
Lot _____, Phase _____	Map Book _____, Pages _____	Boat Slip # _____

As provided in Article XIV, Section 5(a) of the Seventh Amendment, once a Limited Common Area Boat Slip is assigned to a Lot by the Declarant, that Limited Common Area Boat Slip shall be considered an appurtenance to such Lot and, unless the Boat Slip is transferred to another Owner of a TidalWalk Lot in accordance with the terms of Article XIV, Section 5(b) of the Seventh Amendment, the exclusive right to use such Limited Common Area Boat Slip shall remain an appurtenance to and shall run with the title to the land of the Lot to which it was originally assigned.

**IN TESTIMONY WHEREOF**, the said DECLARANT has caused this Assignment to be executed the day and year first above written.

- SIGNATURES AND NOTARIES FOR DECLARANT WILL BE ADDED  
FOR EACH EXECUTION -



**EXHIBIT E**

**Form - Transfer of Limited Common Area Boat Slips between TidalWalk Owners**

**TIDALWALK  
BOAT SLIP TRANSFER**

---

---

**NORTH CAROLINA**

**NEW HANOVER COUNTY**

This TIDALWALK BOAT SLIP TRANSFER ("Transfer Document") is made this \_\_\_ day of \_\_\_\_\_ 20\_\_\_, by \_\_\_\_\_ (the "Selling Owner") and \_\_\_\_\_ (the "Buying Owner"), and consented to by **TIDALWALK HOMEOWNERS ASSOCIATION, INC.** a North Carolina nonprofit corporation (the "Association"),

**WITNESSETH**

WHEREAS, pursuant to that certain Seventh Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated \_\_\_\_\_, 2015 and recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ of the New Hanover County Registry (the "Seventh Amendment"), the Declarant reserved the sole right and authority to make the initial assignment of each Limited Common Area Boat Slip to a specific Lot in TidalWalk; and Declarant also authorized subsequent transfers from the initial Boat Slip Owner to another TidalWalk Lot Owner under certain terms and conditions;

WHEREAS, capitalized terms used herein shall have the same meanings ascribed to such terms in the Seventh Amendment unless otherwise defined herein, and

NOW, THEREFORE, in accordance with the authorizations in the Seventh Amendment and for valuable consideration, the receipt of which is hereby acknowledged, the Selling Owner and the Buyer Owner (with the consent of the Association), hereby agree as follows

1. Transfer of Exclusive Right to Use Limited Common Area Boat Slip As authorized in the Seventh Amendment, the Selling Owner hereby grants, conveys, transfers and assigns unto Buying Owner, its successors and assigns, all of the Assignor's right, title and interest in and to the exclusive use of Limited Common Area Boat Slip# \_\_\_\_\_, as said Limited Common

Area Boat Slip is more particularly described in the Seventh Amendment. Selling Owner is hereby relinquishing and terminating all rights of ownership and rights to use such Limited Common Area Boat Slip, which rights had previously been appurtenant to the Selling Owner's TidalWalk Lot described below. By the recordation of this Transfer Document, the parties hereto identify the Buying Owner's Lot described below and confirm that all rights in and to the Limited Common Area Boat Slip # \_\_\_\_\_ have been assigned and transferred and made appurtenant to the Buying Owner's Lot described below. The Buying Owner hereby accepts said assignment and transfer and hereby agrees to assume all obligations of membership in the Association as specified in the Declaration, as heretofore and hereafter amended, and as provided in the Seventh Amendment.

Selling Owner's TidalWalk Lot Description	Buying Owner's TidalWalk Lot Description	Map of Buying Owner's TidalWalk Lot	Transferred Limited Common Area Boat Slip #
Lot _____	Lot _____	Map Book ____, Pages _____	Boat Slip # _____

All rights of the Selling Owner and the Selling Owner's Lot in connection with the Limited Common Area Boat Slip are hereby severed and extinguished.

**IN TESTIMONY WHEREOF**, the said Selling Owner, Buying Owner and the Association have caused this Transfer to be executed the day and year first above written.

- SIGNATURES AND NOTARIES FOR ASSOCIATION, SELLING OWNER  
AND BUYING OWNER WILL BE ADDED FOR EACH EXECUTION -



TAMMY THEUSCH BEASLEY  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

\*\*\*\*\*  
Filed For Registration. 06/18/2015 01 44:54 PM  
Book: RE 5897 Page 1441-1462  
Document No.: 2015018118  
22 PGS \$50.00  
Recorder: HUGHLEY, CAROL

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

**\*2015018118\***

2015018118

6  
26

BK: RB 5948

PG: 2503-2509

RECORDED:  
02-16-2016

10:25:24 AM

BY: CAROLYN JOHNSON  
DEPUTY



2016004213

NEW HANOVER COUNTY, NC

TAMMY THEUSCH BEASLEY

REGISTER OF DEEDS

NC FEE \$26.00

**EIGHTH AMENDMENT TO DECLARATION**  
**OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR**  
**TIDALWALK**

Prepared by and Return to:  
\* Frank Braxton  
J. Hayden Harrell, Esq.  
Katten Muchin Rosenman LLP  
550 South Tryon Street  
Suite 2900  
Charlotte, North Carolina 28202-4213

\* Coastal Land Design

EIGHTH AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR TIDALWALK

This Eighth Amendment to Declarations of Covenants, Conditions and Restrictions for TidalWalk (the "Amendment") is entered into this \_\_\_ day of February, 2016 by MREC-TIDAL WALK, LLC, a Delaware limited liability company ("Declarant"), successor in interest to Myrtle Grove Investments, L.L.C., a North Carolina limited liability company ("MGI")

RECITALS:

WHEREAS, MGI commenced the development of that real property containing approximately 106.07 acres located in the City of Wilmington, New Hanover County adjacent to Myrtle Grove Road more particularly described therein (the "Property"); and

WHEREAS, in connection therewith, MGI recorded that certain Declaration of Covenants, Conditions and Restrictions for TidalWalk, Phase I, dated October 10, 2008 in Book 5352 at Page 1309 of the New Hanover County Public Registry, as amended by that certain Supplemental Declaration To Declaration of Covenants, Conditions and Restrictions for TidalWalk dated May 13, 2009 and recorded in Book 5405 at Page 1669, as amended by First Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk, Phase I, dated July 29, 2011 and recorded in Book 5578, Page 1237, as amended by Second Supplemental Declaration To Declaration of Covenants, Conditions and Restrictions for TidalWalk dated March 29, 2012 and recorded in Book 5629, Page 1745, as amended by Second Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated June 8, 2012 and recorded in Book 5646, Page 2955, and further amended by Third Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated January, 2013, recorded in Book 5705, Page 1408, as amended by that Fourth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated March 26, 2013 and recorded in Book 5725, Page 511 (the "Fourth Amendment"); as amended by that Fifth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated June 28, 2013 and recorded in Book 5753, Page 1141; as amended by that Sixth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated January 6, 2014 and recorded in Book 5807, Page 1498; as amended by that Seventh Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated June 17, 2015 and recorded in Book 5897, Page 1441; and also supplemented by those certain Supplemental Declarations to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated May 13, 2009 and recorded in Book 5405, Page 1699, dated March 29, 2012 and recorded in Book 5629, Page 1745, all of the

New Hanover County Registry of the New Hanover County Registry (collectively, and as may be hereinafter further amended the "Declarations"); and

WHEREAS, Declarant acquired all the remaining Property owned by MGI by that certain Substitute Trustee's Deed dated December 30, 2010 and recorded in Book 5537 at Page 577 of the New Hanover County Registry, including but not limited to all of MGI's rights as "Declarant" under the Declaration and all other rights, obligations and easements of MGI set forth therein; and

WHEREAS, pursuant to Article XII, Section 3, Declarant has the right to amend the Declarations without the consent of any Owner, or the Association (each as defined therein) for a ten (10) year period from the date of the original recording; and

WHEREAS, Declarant in paragraph 2 of the Fourth Amendment set forth the procedure in which Owners may gain approval to construct Permeable Pavement, as defined therein, which shall not (either totally or partially) be counted against the maximum impervious area allocation for the Lot in question (hereinafter "BUA Credit"), however, the North Carolina Department of Environmental and Natural Resources – Division of Water Quality ("NCDENR-DWQ"), has requested that the procedure be changed; and

WHEREAS, Declarant is hereby amending the Declarations to revise the procedure for the same.

NOW THEREFORE, for a valuable consideration, the receipt of which is hereby acknowledged, Declarant hereby amends the Declarations as follows:

2. The Paragraph 2 of the Fourth Amendment is hereby deleted in its entirety and the following is hereby substituted therefore (and added to Article XII, Section 6):

If an Owner desires to construct Permeable Pavement on its Lot, which shall receive BUA Credit, and therefore not be counted, or shall only be partially counted, toward the maximum impervious allocation for the particular Lot.

a. Prior to the commencement of construction of any Permeable Pavement, the Owner must submit an application for the BUA Credit for the Permeable Pavement to Declarant along with supporting documentation, which application shall be signed and sealed by a "Design Professional" (as that term is defined in DWQ Best Management Practices Manual) certifying that the application complies with the current North Carolina Department of Environmental Quality –Division of Water Quality storm water requirements for Permeable Pavement and conforms to then most recent DWQ Best Management Practices Manual.

b. Declarant and/or the Association, shall maintain records of all Lots approved for Permeable Pavement, and their associated credit allowance.

c. All Owners gaining BUA Credit for the Permeable Pavement shall assume the responsibility of maintaining the Permeable Pavement in accordance with any DWQ requirements and this obligation of Owner to maintain the Permeable Pavement shall run with the land and be binding on all Owner's successors and assigns.

d. As used herein, "Permeable Pavement" shall mean an alternative to conventional paving materials (concrete and asphalt) that allows stormwater to infiltrate through void spaces for temporary storage and subsequently infiltrated into the soil or detained and released.

3. Except as amended hereby, the Declaration and all of its terms, conditions and restrictions shall remain and be in full force and effect.

4. The words used in this Amendment shall have the same meaning as set forth in the Declaration unless the context shall otherwise prohibit.

[Balance of Page is Intentionally Left Blank]

IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed by its duly authorized signatory as the act and deed of Declarant as of the day and year first above written.

MREC-TIDAL WALK, LLC

By: [Signature]  
Name: SCOTT LAWRENCE  
Title: VICE PRESIDENT

STATE OF North Carolina )  
COUNTY OF Mecklenburg )

I, Rachel M Berg, a Notary Public within and for said County and State, do hereby certify that Scott Lawrence personally came before me this day and acknowledged that s/he is the Vice President of MREC-TIDAL WALK, LLC, a Delaware limited liability company, and that s/he as such officer, being authorized to do so, executed the foregoing on behalf of said limited liability company.

WITNESS my hand and official seal, this 10 day of February, 2016.

[Signature]  
Notary Public

Printed Name: Rachel M Berg

My Commission Expires: 02/13/2016





## EXHIBIT B

## Impervious Allocation Calculation Sheet

Lot Numbering	Impervious Allocation (sf)	Number of Lots	Total (sf)
201-212, 221-224, 226-234, 240	3,494	26	90,844
213, 214, 218, 220, 237-239, 241, 242, 245, 246, 248-251, 260-284	3,250	40	130,000
243, 244	3,150	2	6,300
252, 258	3,505	2	7,010
253	2,300	1	2,300
254	2,750	1	2,750
255	2,290	1	2,290
247, 310	2,700	2	5,400
334, 338	3,300	2	6,600
259, 304, 306, 307, 309, 323, 326, 327	3,600	8	28,800
308	3,690	1	3,690
311-322, 340-342	3,400	15	51,000
324	3,500	1	3,500
303, 325, 328, 330-332, 335-337, 339, 343, 344, 401-409, 413, 414	3,450	23	79,350
329	3,600	1	3,600
410	3,800	1	3,800
411, 412	3,570	2	7,140
420, 422	3,480	2	6,960
421	4,200	1	4,200
423-431	3,400	9	30,600
415, 416	3,908	2	7,816
417, 418	4,097	2	8,194
419	4,200	1	4,200
501-512	2,160	12	25,920
513-526	1,860	14	26,040
<b>Lots Already Sold</b>			
38	2,500	1	2,500
73, 137, 156, 301-302, 305	3,600	6	21,600
112-117	3,200	6	19,200
138	3,742	1	3,742
158	4,192	1	4,192
236	3,050	1	3,050
216	3,450	1	3,450
225	3,494	1	3,494
215, 217, 219, 235, 256, 257	3,250	6	19,500
333	3,300	1	3,300
<b>Total</b>		<b>197</b>	<b>632,332</b>

TAMMY THEUSCH  
BEASLEY  
Register of Deeds

# New Hanover County Register of Deeds

216 NORTH SECOND STREET • WILMINGTON, NORTH CAROLINA 28401  
Telephone 910-798-4530 • Fax 910-798-7751



\*\*\*\*\*

State of North Carolina, County of NEW HANOVER  
Filed For Registration: 02/16/2016 10:25:24 AM  
Book: RB 5948 Page: 2503-2509  
7 PGS \$26.00  
Real Property \$26.00  
Recorder: CAROLYN JOHNSON  
Document No: 2016004213

\*\*\*\*\*

**DO NOT REMOVE!**

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



4  
26

BK: RB 5973

PG: 1437-1441

RECORDED:  
05-27-2016

02:35:57 PM

BY: ANDREA CRESWELL  
ASSISTANT

2016016112

NEW HANOVER COUNTY, NC

TAMMY THEUSCH BEASLEY

REGISTER OF DEEDS

NC FEE \$26.00

**NINTH AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR TIDALWALK**

Prepared by: MURCHISON, TAYLOR, & GIBSON, PLLC  
16 North Fifth Avenue, Wilmington, NC 28401

NORTH CAROLINA

NEW HANOVER COUNTY

This NINTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TIDALWALK ("Amendment") is made this 24<sup>th</sup> day of May, 2016, by MREC-TIDAL WALK, LLC, a Delaware limited liability company ("Declarant"), successor in interest to Myrtle Grove Investments, L.L.C., a North Carolina limited liability company ("MGI").

WITNESSETH:

WHEREAS, MGI, as the original developer of that real property containing approximately 106.07 acres located in the City of Wilmington, New Hanover County adjacent to Myrtle Grove Road, heretofore executed that certain Declaration of Covenants, Conditions and Restrictions for TidalWalk, Phase I, dated October 10, 2008 and caused the same to be recorded in **Book 5352, Page 1309**; as amended by that First Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated July 29, 2011 and recorded in Book 5578, Page 1237; as amended by that Second Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated June 8, 2012 and recorded in Book 5646, Page 2955, as amended by that Third Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated January, 2013 and recorded in Book 5705, Page 1408; as amended by that Fourth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated March 26, 2013 and recorded in Book 5725, Page 511; as amended by that Fifth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated June 28, 2013 and recorded in Book 5753, Page 1141; as amended by that Sixth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated January 6, 2014 and recorded in Book 5807, Page 1498; as amended by that Seventh Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated June 17, 2015 and recorded in Book

**RETURN TO MTG**

5897, Page 1441; as amended by that Eighth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated February, 2016 and recorded in Book 5948, Page 2503; and also supplemented by those certain Supplemental Declarations to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated May 13, 2009 and recorded in Book 5405, Page 1699, dated March 29, 2012 and recorded in Book 5629, Page 1745, all of the New Hanover County Registry (as heretofore or hereafter amended and/or supplemented, the "Declaration"); and

WHEREAS, capitalized terms used herein shall have the same meanings ascribed to such terms in the Declaration unless otherwise defined herein; and

WHEREAS, Declarant acquired all the remaining property owned by MGI by that certain Substitute Trustee's Deed dated December 30, 2010 and recorded in Book 5537, Page 577 of the New Hanover County Registry, including but not limited to all of MGI's rights as "Declarant" under the Declaration and all other rights, as rights, obligations and easements of MGI set forth therein; and

WHEREAS, pursuant to Article XII, Section 3 of the Declaration, the Declarant has the right to amend the Declaration without the consent of any Owner for a ten (10) year period from the date of the original recording; and

NOW, THEREFORE, in accordance with its rights under Article XII, Section 3 of the Declaration and for valuable consideration, the receipt of which is hereby acknowledged, Declarant hereby amends the Declaration as follows:

1. **The first sentence of Section 2(s) of Article VII shall be amended by as follows:**

"s. Construction on any home, Common Area, or amenity within TidalWalk shall take place solely on Mondays through Fridays between the hours of 7:00 am and 6:00 pm during eastern standard time and between the hours of 7:00 am to 7:00 pm during daylight saving time or eastern daylight time; and on Saturdays between the hours of 8:00 am and 5:00 pm throughout the year. No construction shall be permitted on Sundays or federally recognized holidays."

2. **The second paragraph of Article XIV, Section 2(b) and Exhibit C of the Declaration are hereby revised as follows:**

"In addition to the Community Boating Facility Rules rules, the use of the Common Area-Beach portion of the Community Waterfront Area shall be subject to the Rules and Regulations attached to this Ninth Amendment as Exhibit C-1 and incorporated herein by reference (the "Beach Rules"), which may be amended by the Board of Directors of the Association in its reasonable discretion. The Beach Rules attached hereto shall supersede and replace the Beach Rules that were attached as Exhibit C to the Seventh Amendment recorded in Book 5897, Page 1441 of the New Hanover County Registry."

EXCEPT AS AMENDED AND SUPPLEMENTED HEREIN, the Declaration shall be and remain in full force and effect.

MREC-TIDAL WALK, LLC

By: [Signature]  
Name: SCOTT LAWRENCE  
Its: VICE PRESIDENT

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: SCOTT LAWRENCE

[Name of person signing]

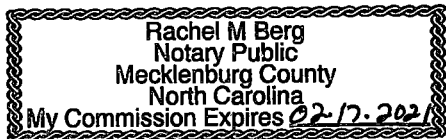
Today's Date: May 24, 2016

[Signature]

[Notary's signature as name appears on seal]

Rachel M Berg

[Notary's printed name as name appears on seal]



My commission expires: 02-17-2021

**EXHIBIT C-1**  
**RULES AND REGULATIONS**  
**OF**  
**TIDALWALK COMMON AREA-BEACH**

The TidalWalk waterfront area is for the peaceful enjoyment of ALL TidalWalk residents and their guests. Our mission is to have a sense of community and value the Fairness, Integrity, Common Sense and Respectful use of these amenities that will enhance our coastal lifestyle and desirable place to call home for years to follow. The rules and covenants seek to allow ALL to benefit and enjoy the beauty and quality of life as well as preserve property value for the greater good of our TidalWalk Community.

1. Notwithstanding the area shown as "Common Area-Beach" on that map recorded in Map Book 54, Page 373 of the New Hanover County Registry, Owners are put on notice that portions of said "Common Area-Beach" are environmentally sensitive coastal marshlands and thus, Owners may only use the sandy beach portions of the Common Area-Beach that are (a) located to the east of Lots 417, 418 and 419 and (b) that are also not shown as Coastal Marsh on the map recorded in Map Book 60, Page 253. Access to the Common-Area Beach shall be gained only through the 15' Private Pedestrian & Utility Easement shown on the map recorded in Map Book 60, Page 253 (7.5' of which is located along the northern property line of Lot 419, Phase 9 and 7.5' of which is located along the southern property line of Lot 418, Phase 9) or through the Common Area pier.
2. Guests must be escorted by Owners at all times. All Owners shall be responsible to see that their guests fully comply with these Rules and Regulations while occupying, using, or visiting the TidalWalk Common Area-Beach. Further, each Owner shall be fully responsible to the Association for any violation by that Owner's guests.
3. All Owners or Guests using the Common Area-Beach must be competent swimmers or supervised by a competent swimmer
4. Fishing is not allowed in an area where swimmers are present.
5. No permanent structures may be erected on the Common Area-Beach. No beach fires, fire pits or barbecues will be allowed on the Common Area-Beach.
6. No litter and no glass containers are allowed on the Common Area-Beach.
7. No excessive noise at any time on the Common Area-Beach, particularly between 10pm and 8am.
8. No overnight camping is permitted on the Common Area-Beach.
9. No fireworks are allowed on or from the Common Area-Beach.
10. Animals should be on a leash at all times on the Common Area-Beach. The owner of an animal on the Common Area-Beach will be responsible for cleaning up after such animal, including all pet feces.

TAMMY THEUSCH  
BEASLEY  
Register of Deeds

# New Hanover County

## Register of Deeds

320 CHESTNUT ST SUITE 102 • WILMINGTON, NORTH CAROLINA 28401  
Telephone 910-798-4530 • Fax 910-798-7751



\*\*\*\*\*

State of North Carolina, County of NEW HANOVER  
Filed For Registration: 05/27/2016 02:35:57 PM  
Book: RB 5973 Page: 1437-1441  
5 PGS \$26.00  
Real Property \$26.00  
Recorder: ANDREA CRESWELL  
Document No: 2016016112

\*\*\*\*\*

**DO NOT REMOVE!**

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





9  
20

BK: RB 6046

PG: 355-364

RECORDED:

03-24-2017

02:51:18 PM

BY: ANDREA CRESWELL  
ASSISTANT

2017009120

NEW HANOVER COUNTY, NC

TAMMY THEUSCH BEASLEY

REGISTER OF DEEDS

NC FEE \$26.00

**TENTH AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR TIDALWALK ANNEXING  
PHASE 10A**

Prepared by and returned to: Marshall, Williams & Gorham, LLP  
14 S. Fifth Avenue, Wilmington, NC 28401

**NORTH CAROLINA  
NEW HANOVER COUNTY**

This **TENTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TIDALWALK ANNEXING PHASE 10A** ("Amendment") is made this 23 day of March, 2017, by **MREC-TIDAL WALK, LLC**, a Delaware limited liability company ("Declarant"), a successor in interest to Myrtle Grove Investments, L.L.C., a North Carolina limited liability company ("MGI").

**WITNESSETH:**

WHEREAS, MGI, as the original developer of that real property containing approximately 106.07 acres located in the City of Wilmington, New Hanover County adjacent to Myrtle Grove Road, heretofore executed that certain Declaration of Covenants, Conditions and Restrictions for TidalWalk, Phase I, dated October 10, 2008 and caused the same to be recorded in Book 5352, Page 1309; as amended by that First Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated July 29, 2011 and recorded in Book 5578, Page 1237; as amended by that Second Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated June 8, 2012 and recorded in Book 5646, Page 2955, as amended by that Third Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated January, 2013 and recorded in Book 5705, Page 1408; as amended by that Fourth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated March 26, 2013 and recorded in Book 5725, Page 511; as amended by that Fifth

Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated June 28, 2013 and recorded in Book 5753, Page 1141; as amended by that Sixth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated January 6, 2014 and recorded in Book 5807, Page 1498; as amended by that Seventh Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated June 17, 2015 and recorded in Book 5897, Page 1441; as amended by that Eighth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated February, 2016 and recorded in Book 5948, Page 2503; also supplemented by those certain Supplemental Declaration to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated May 13, 2009 and recorded in Book 5405, Page 1699, Second Supplemental Declaration to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated March 29, 2012 and recorded in Book 5629, Page 1745, and also amended by that certain Ninth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk, dated May 24, 2016 and recorded in Book 5973, Page 1437, all of the New Hanover County Registry (as heretofore or hereafter amended and/or supplemented, the "Declaration"); and

WHEREAS, capitalized terms used herein shall have the same meanings ascribed to such terms in the Declaration unless otherwise defined herein; and

WHEREAS, Declarant acquired all the remaining property owned by MGI by that certain Substitute Trustee's Deed dated December 30, 2010 and recorded in Book 5537, Page 577 of the New Hanover County Registry, including but not limited to all of MGI's rights as "Declarant" under the Declaration and all other rights, as rights, obligations and easements of MGI set forth therein; and

WHEREAS, pursuant to Article XIII, Section 3 of the Declaration (Note that the Supplemental Declaration recorded in Book 5405, Page 1669, renumbered Article XII, General Provisions to Article XIII), the Declarant has the right to amend the Declaration without the consent of any Owner for a ten (10) year period from the date of the original recording; and

WHEREAS, pursuant to Article XII, "Phased Development", Declarant reserved the right to establish one or more phases or sections of TidalWalk and submit the same to the Declaration; and

WHEREAS, Declarant desires to annex the property described below to the Declaration.

NOW, THEREFORE, in accordance with its rights under Articles XII and XIII of the Declaration, the Declarant, as the fee simple owner of such real property, does hereby amend the Declaration to annex Phase 10A Tidalwalk Subdivision as the same is shown on a map recorded in Map Book 61, Page 285, New Hanover County Registry and the same shall heretofore be deemed part of the Property and is hereby subject to the lien and encumbrance of said Declaration. Lots 501-505 as shown on said map shall be known and described as "The Cottages" and Lots 511-516 as shown on said map shall be known and described as "Townhome Units".

FURTHER, Declarant, pursuant to Article XIII, Section 3 of the Declaration, does hereby amend the Declaration as follows:

1. By amending Article I, Section 10: "Common Areas" to include those Common Areas, if any, as shown or described on the map of TidalWalk, Phase 10A, recorded in Map Book 61, Page 285, New Hanover County Registry.

2. By amending Article I, Section 11: "Common Expenses" by adding the following subparagraphs "i" and "j":

i. Expenses associated with and unique to the Townhome Units, provided that such expenses shall be assessed to and paid by the Owners of the Townhome Units as set forth herein, and

j. Expenses associated with and unique to The Cottages, provided that such expenses shall be assessed to and paid by the Owners of "The Cottages" as set forth herein.

3. By amending Article I, Section 16: "Maps" to include that map recorded in Map Book 61, Page 285, of the New Hanover County Registry.

4. By amending Article I, Section 22, "Townhome Unit" by deleting it in its entirety and substituting in its place the following:

Section 22: "Townhome Unit" shall mean and refer to any free standing dwelling or place of residence constructed upon a Lot or Lots within the Property which is placed and/or built as a single family townhome, including a duplex.

5. By deleting Article II, Section 3, paragraph (d) in its entirety and substituting in its place the following:

(d) In addition to maintenance of the Common Area, the Association shall maintain, repair and replace as a Common Expense the exterior of the Townhome Units as follows:

- (1) Exterior surfaces. Exterior surfaces shall not include any portion of the foundation of the Townhome Units or any exterior surfaces not visible from outside of the Townhome Units.
- (2) Siding.
- (3) Soffits.
- (4) Roofs, roof coverings, roof flashing, roof decks and roof vents.
- (5) Gutters and downspouts, including cleaning as decided by the Board of Directors in its sole discretion.

- (6) Front Doors (but not including locks).
- (7) Omitted
- (8) Power washing of siding.

Notwithstanding anything above that could be construed to the contrary, the Lot Owners (and not the Association) shall have maintenance, repair and replacement responsibility for the following:

- (9) All glass surfaces (window panes, glass doors, etc.).
- (10) Windows and window systems, including screens.
- (11) Back or rear doors.
- (12) Exterior water faucets.
- (13) Driveways, walkways and garage doors.
- (14) Exterior electrical outlets, wires or cables.
- (15) Entry doorbell.
- (14) HVAC.
- (16) Exterior lights and fixtures.
- (17) Any Owner added improvements.
- (18) Patios.
- (19) Any other portion of the Townhome Unit or Lot not specifically required to be maintained, repaired or replaced by the Association.

Every Lot Owner shall maintain, repair, and replace at his/her expense all portions of his Townhome Unit located on the Lot which are not maintained by the Association as set forth in above. The Association shall be authorized to perform, after fifteen (15) days' written notice to a Lot Owner, any maintenance, repair or replacement upon a Lot for which the Owner is responsible and to charge the Owner, with the costs of maintenance, repair or replacement plus fifteen per cent (15%). Each Lot owner shall maintain, repair, and replace, when necessary, all damage to the Townhome Unit and any other permanent structures located on the Lot unless the Association or its insurance coverage is responsible for remedying any such damage. All damages to the Townhome Unit intentionally or negligently caused by a Lot Owner, his family, guests, invitees, agents, lessees, employees, or contractors shall be repaired promptly by such Lot Owner, except to the extent such damage is covered by hazard insurance required to be maintained by the Association, in which case

the Association waives its right of indemnity to the extent of funds received and paid pursuant to said insurance policy. If the Lot Owner defaults in his obligations herein and if any such default is not cured by him/her within fifteen (15) days from written demand by the Association, the same may be cured by the Association and the cost thereof plus fifteen per cent (15%) shall be assessed against the Lot Owner. The Lot Owners shall be responsible to maintain, repair and replace all utilities and services to the Townhome Units.

The Association shall also provide landscape maintenance to the Townhome Units. Landscape maintenance shall be "basic". Basic maintenance shall consist generally of mowing, fertilizing, pruning of shrubbery not in excess of eight (8) feet in height, mulching of beds and shrubbery, edging and blowing walks and driveways, and any other matters reasonably necessary in the sole discretion of the Board, for the normal maintenance of the landscaped yards. The Association shall have no obligation to maintain, repair or replace Owner added landscaping. Natural areas will be allowed to grow and will not be mowed. Any portion of a yard located within any privacy fencing will not receive any maintenance by the Association. Landscape maintenance shall not include replacement of grass, shrubs, plants or trees. All dead or diseased trees shall be pruned or removed by the Lot owner. Irrigation water lines and heads shall be maintained by the Lot Owner. The Lot Owner shall be responsible to adequately irrigate the yard and the Association shall have no obligation to repair or replace any portion of the yard that has not been adequately irrigated.

All costs and expenses, including overhead, administrative costs and reserves, associated with the exterior maintenance, repair and replacement, and landscape maintenance, of the Townhome Units shall be assessed exclusively as an Individual Assessment against the Owners of the Townhome Units as provided in Article V, Section 7.

6. By adding the following paragraph (e) to Article II, Section 3:

In addition to maintenance of the Common Area, the Association shall also provide landscape maintenance to The Cottages. Landscape maintenance shall be "basic". Basic yard maintenance shall consist generally of mowing, fertilizing, pruning of shrubbery not in excess of eight (8) feet in height, mulching of beds and shrubbery, edging and blowing walks and driveways, and any other matters reasonably necessary in the sole discretion of the Board, for the normal maintenance of the landscaped yards. The Association shall have no obligation to maintain, repair or replace Owner added landscaping. Natural areas will be allowed to grow and will not be mowed. Any portion of a yard located within any privacy fencing will not receive any landscape maintenance by the Association. Landscape maintenance shall not include replacement of grass, shrubs, plants or trees. All dead or diseased trees shall be pruned or removed by the Lot Owner. Irrigation water lines and heads shall be maintained by the Lot Owner. The Lot Owner shall be responsible to adequately irrigate the yard and the Association shall have no obligation to repair or replace any portion of the yard that has not been adequately irrigated.

All costs and expenses, including overhead, administrative costs and reserves, associated with the landscape maintenance of The Cottages shall be assessed exclusively as an Individual Assessment against the Owners of The Cottages as provided in Article V, Section 7.

7. By deleting Article IV, Section 1(b)(1) and inserting in lieu thereof the following:

(1) October 10, 2018;

8. By deleting Article V, Section 6 and inserting in lieu thereof the following:

Section 6: **Insurance Assessment:** Insurance premiums for the insurance required by the Association under Article VII, Section 7.1, and the costs to pay any deductibles, shall be Common Expenses to be included in the assessments against all Lot Owners.

9. By adding the following paragraph (e) to Article V, Section 7:

(e) to cover the costs including overhead and administration costs and reserves incurred for the maintenance, repair and replacement associated with the Townhome Units and The Cottages.

10. By adding the following sentence to Article V, Section 8:

Provided, that both annual and special assessments for the Townhome Units shall include the assessments for all Class A members, plus the annual and special assessments for the Townhome Units under Article V, Section 7(e), and the Insurance Assessment under Article V, Section 6. In addition, both annual and special assessments for The Cottages shall include the assessments for all Class A members, plus the annual and special assessments for The Cottages under Article V, Section 7(e). For purposes of the determination of a Special Assessment for maintenance, repair and replacement associated with the Townhome Units or The Cottages, the quorum for action and percentage required shall be the same as set forth in Article V, Sections 5 and 9, except that only the Townhome Unit Owners or The Cottages Owners, as applicable, shall have the right to vote.

11. By deleting the following paragraph from Article VI: "Notwithstanding the foregoing, the Association shall be the entity responsible for the exterior maintenance, repair and replacement of the structural improvements initially constructed on the Townhome Units by Declarant, including the roofs with such structures (provided however, that such obligation to maintain, repair and replace shall exclude any responsibility for exterior glass and HVAC facilities).

12. By deleting Article VII, Insurance and Casualty Losses, in its entirety and inserting in lieu thereof the following:

## ARTICLE VII

### INSURANCE AND CASUALTY LOSS

Section 7.1 **Association Insurance:** The Association shall maintain, to the extent reasonably available:

(a) Property insurance on the Common Areas insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas.

(c) Such additional insurance as the Board of Directors, in the exercise of its business judgment determines advisable including without limitation, directors and officers liability insurance, fidelity insurance, and workers compensation insurance.

(d) If the insurance described in subsection (a) and (b) of this section is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners.

(e) Any portion of the Common Areas for which insurance is required under subdivision (a) of this section which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) the Planned Community is terminated, (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (iii) the Lot Owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of Owners assigned to the Limited Common Areas not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If any portion of the Planned Community is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Areas shall be used to restore the damaged area to a condition compatible with the remainder of the planned community, (ii) the insurance proceeds attributable to Limited Common Areas which are not rebuilt shall be distributed to the Owners of the Lots to which those Limited Common Areas were allocated, or to lienholders, as their interests may appear, and (iii) the remainder of the proceeds shall be distributed to all the Lot Owners or lienholders, as their interests may appear, in proportion to the Common Expense liabilities of all the Lots. Notwithstanding the provisions of this subsection, G.S. 47F-2-118 (termination of the Planned Community) governs the distribution of insurance proceeds if the Planned Community is terminated.

**Section 7.2 Townhome Unit Insurance. THE ASSOCIATION DOES NOT PROVIDE INSURANCE OF ANY KIND ON THE TOWNHOME UNITS.** The Lot Owner shall obtain and keep the Townhome Unit (as defined above) insured against all risks of direct physical loss commonly insured against including fire, wind, hail and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than one hundred percent (100%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date. The Lot Owner shall further obtain liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of



the Townhome Unit. Each Lot Owner shall provide the Board of Directors, upon request, satisfactory proof of the insurance required by this section. If the Lot Owner fails or refuses to keep the Townhome Unit so insured, the Association may obtain such insurance and levy against the Lot Owner the costs of the insurance plus a 15% administrative charge which may be enforced as an Assessment under Article V. Any portion of the Townhome Unit (as defined above) for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the Lot Owner unless (i) the Planned Community is terminated or (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance.

13. By deleting the last sentence of Article VII, Use Restrictions, Section 2: Use of Property, Paragraph "o" in its entirety and inserting in lieu thereof the following:

The Declarant shall act as the Architectural Control Committee until October 10, 2018.

14. By adding Article XV, "Party Walls"

## ARTICLE XV

### Party Walls

(a) Each wall which is built as part of the original construction of the Townhome Units upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rule of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Adjoining Owners shall be responsible for any maintenance of any party wall. The Owners shall share equally the cost of any such maintenance.

(c) If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it; and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Notwithstanding any other provision of this Article, an Owner who by his neglect or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

EXCEPT AS AMENDED AND SUPPLEMENTED HEREIN, the Declaration shall be and remain in full force and effect.

MREC-TIDAL WALK, LLC

By: [Signature]  
Name: SCOTT LAWRENCE  
Its: VICE PRESIDENT

STATE OF NORTH CAROLINA

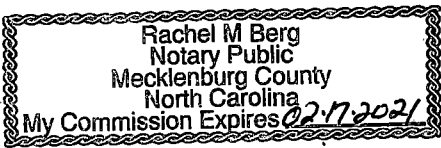
COUNTY OF Mecklenburg

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

Scott Lawrence  
(Name of person signing)

Today's date: March 23, 2017.

[Signature]  
Notary's signature



Rachel m Berg  
Notary's printed name

My commission expires: 02-17-2021

TAMMY THEUSCH  
BEASLEY  
Register of Deeds

# New Hanover County Register of Deeds

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



\*\*\*\*\*

State of North Carolina, County of NEW HANOVER  
Filed For Registration: 03/24/2017 02:51:18 PM  
Book: RB 6046 Page: 355-364  
10 PGS \$26.00  
Real Property \$26.00  
Recorder: ANDREA CRESWELL  
Document No: 2017009120

\*\*\*\*\*

**DO NOT REMOVE!**

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



③  
76

BK: RB 6171  
PG: 1992-1995  
RECORDED:  
10-05-2018  
03:53:07 PM  
BY: STEPHANIE PEREZ  
DEPUTY



2018030518  
NEW HANOVER COUNTY, NC  
TAMMY THEUSCH BEASLEY  
REGISTER OF DEEDS

NC FEE \$26.00

**ELEVENTH AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR TIDALWALK**

Prepared by and returned to: Marshall, Williams & Gorham, LLP  
14 S. Fifth Avenue, Wilmington, NC 28401

**NORTH CAROLINA  
NEW HANOVER COUNTY**

This **ELEVENTH AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR TIDALWALK** ("Amendment") is made this  
4<sup>th</sup> day of OCTOBER, 2018, by **MREC-TIDAL WALK, LLC**, a Delaware limited  
liability company ("Declarant"), a successor in interest to Myrtle Grove Investments, L.L.C., a  
North Carolina limited liability company ("MGI").

**WITNESSETH:**

WHEREAS, MGI, as the original developer of that real property containing approximately 106.07 acres located in the City of Wilmington, New Hanover County adjacent to Myrtle Grove Road, heretofore executed that certain Declaration of Covenants, Conditions and Restrictions for TidalWalk, Phase I, dated October 10, 2008 and caused the same to be recorded in Book 5352, Page 1309; as amended by that First Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated July 29, 2011 and recorded in Book 5578, Page 1237; as amended by that Second Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated June 8, 2012 and recorded in Book 5646, Page 2955, as amended by that Third Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated January, 2013 and recorded in Book 5705, Page 1408; as amended by that Fourth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated March 26, 2013 and recorded in Book 5725, Page 511; as amended by that Fifth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated June

28, 2013 and recorded in Book 5753, Page 1141; as amended by that Sixth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated January 6, 2014 and recorded in Book 5807, Page 1498; as amended by that Seventh Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated June 17, 2015 and recorded in Book 5897, Page 1441; as amended by that Eighth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated February, 2016 and recorded in Book 5948, Page 2503; also supplemented by those certain Supplemental Declaration to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated May 13, 2009 and recorded in Book 5405, Page 1699, Second Supplemental Declaration to Declaration of Covenants, Conditions and Restrictions for TidalWalk dated March 29, 2012 and recorded in Book 5629, Page 1745, and also amended by that certain Ninth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk, dated May 24, 2016 and recorded in Book 5973, Page 1437; as amended by that Tenth Amendment to Declaration of Covenants, Conditions and Restrictions for TidalWalk Annexing Section 10A dated March 23, 2017 and recorded in Book 6046, Page 355, all of the New Hanover County Registry (as heretofore or hereafter amended and/or supplemented, the "Declaration"); and

WHEREAS, capitalized terms used herein shall have the same meanings ascribed to such terms in the Declaration unless otherwise defined herein; and

WHEREAS, Declarant acquired all the remaining property owned by MGI by that certain Substitute Trustee's Deed dated December 30, 2010 and recorded in Book 5537, Page 577 of the New Hanover County Registry, including but not limited to all of MGI's rights as "Declarant" under the Declaration and all other rights, as rights, obligations and easements of MGI set forth therein; and

WHEREAS, pursuant to Article XIII, Section 3 of the Declaration (Note that the Supplemental Declaration recorded in Book 5405, Page 1669, renumbered Article XII, General Provisions to Article XIII), the Declarant has the right to amend the Declaration without the consent of any Owner for a ten (10) year period from the date of the original recording; and

WHEREAS, Declarant desires to amend the Declaration to retain architectural control for new construction until it sells its last Lot in any phase or section of TidalWalk.

NOW, THEREFORE, in accordance with its rights under Article XIII of the Declaration, the Declarant does hereby amend the Declaration as follows:

1. By deleting the last sentence of Article VII, Use Restrictions, Section 2: Use of Property, Paragraph "o" in its entirety and inserting in lieu thereof the following:

The Declarant shall act as the Architectural Control Committee for reviewing proposed new construction until it sells its last Lot in any section or phase of TidalWalk.

EXCEPT AS AMENDED HEREIN, the Declaration shall be and remain in full force and effect.

MREC-TIDAL WALK, LLC

By: [Signature]  
Name: SCOTT LAWRENCE  
Its: VICE PRESIDENT

STATE OF NORTH CAROLINA

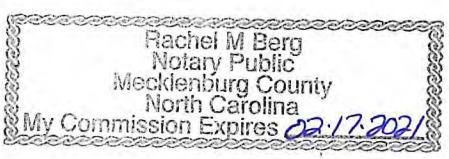
COUNTY OF Mecklenburg

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

Scott Lawrence  
(Name of person signing)

Today's date: October 4, 2018.

[Signature]  
Notary's signature



Rachel M Berg  
Notary's printed name

My commission expires: 02-17-2021

TAMMY THEUSCH  
BEASLEY  
Register of Deeds

# New Hanover County Register of Deeds

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



\*\*\*\*\*

State of North Carolina, County of NEW HANOVER  
Filed For Registration: 10/05/2018 03:53:07 PM  
Book: RB 6171 Page: 1992-1995  
4 PGS \$26.00  
Real Property \$26.00  
Recorder: STEPHANIE PEREZ  
Document No: 2018030518

\*\*\*\*\*

**DO NOT REMOVE!**

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