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NEW HANOVER COUNTY, NC

MORGHAN GETTY COLLINS

REGISTER OF DEEDS

NC FEE \$26.00

Prepared/return to Kenneth M. Kirkman 4431 Cobblestone Aly, New Bern, NC 28562

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

AMENDMENT TO THE
DECLARATION OF PROTECTIVE COVENANTS
FOR HELMSDALE AT LANDFALL
AND
ANNEXATION TO THE MASTER CROSS ACCESS EASEMENT
AND MAINTENANCE AGREEMENT

THIS AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS FOR HELMSDALE AT LANDFALL is dated for reference only this 24th day of July, 2024, and is made by HELMSDALE INVESTORS LLC, a North Carolina Limited Liability Company ("Declarant").

OVERVIEW

Declarant has previously developed phase one of Helmsdale, a residential subdivision located in the community of Landfall, Wilmington, North Carolina. Declarant subjected such property to the terms of a *Declaration of Protective Covenants for Helmsdale at Landfall and Annexation to the Master Cross Access Easement and Maintenance Agreement*, which is recorded in deed book 5795, pages 1714-1744, New Hanover County Registry (the "Covenants").

The Covenants reserve to the Declarant the right, without joinder of any other party, to subject additional properties to the provisions of the Covenants. This Amendment is intended and hereby does subject the properties described below to the terms of the Covenants and to submit such properties to the terms of the Master Cross Easement and Maintenance Agreement more fully described in the Covenants. Declarant further reserved the right

in the Covenants to impose different developmental standards, including without limitation architectural style, setbacks and site restrictions on Phase 2 of Helmsdale. This Amendment contains the specific requirements and limitations effective as to the property described herein. Except as modified by this Amendment or as specified in the Covenants as being applicable to Phase 1 of Helmsdale, the provisions of the Covenants shall be applicable to the property annexed hereby.

1. Encumbered Property. The real estate made subject to the provisions of this Amendment and to the Covenants is all of that property described as Helmsdale at Landfall Phase 2 as shown on the plat recorded in book 75, pages 104, New Hanover County Registry (the "Plat"), which property is referred to as "Phase 2" property in this Amendment. Declarant hereby declares that the Phase 2 property shall be held, sold and conveyed subject to this Amendment and the Covenants. The easements, restrictions, covenants and conditions contained herein shall run with the land and be binding on all parties now or hereafter having any right, title or interest in the Phase 2 property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

2. Phase 2 Building and Site Requirements. The following requirements are applicable to Phase 2:

a. All homes must contain a minimum of 2,400 square feet of heated space. At least 1,600 square feet of heated space must be on the first floor of the home. No structure shall exceed 3 floors of living area.

b. All components of any vertical structure must be kept a minimum of 15 feet from any street.

c. Fences are not required, but are allowed, if built in accordance with uniform standards adopted by the Committee, which shall include height, style and location.

d. Sidewalks are required by the City of Wilmington (the "City") and must be installed on the Lot by the Owner of the Lot or his builder prior to issuance of a final approval of said home by the Committee. The location of the sidewalk, and its materials and building standards, including handicap access requirements as required by law, must be approved by the Committee and the City.

e. Notwithstanding any set-back shown on the Plat, driveways may encroach on such set-backs if allowed by the City and the Committee, but may not be closer than 3 feet to

any adjoining Lot. No structure or driveway shall be allowed within any easement without the approval of the Committee, except that normal driveway access is allowed across any easement (other than a Conservation Resource Setback, designated CRS on the Plat) that is adjacent to the street providing access to a Lot.

f. All homes must provide a garage that will hold a minimum of two standard sized sedans. The garage may be attached or detached, but if detached, it must be consistent with the primary siding used on the primary structure. No other unattached structures are allowed other than pool cabanas or similar accessory use structures approved by the Committee. There is no requirement that the garage be located to the rear of the primary structure.

g. The provisions of Article 8.3 of the Covenants that begins with "Declarant intends for Phase 1..." and includes subparagraphs a through m are NOT applicable to Phase 2, nor are the provisions of the Amendment to Protective Covenants recorded in book 5931, pages 963-967, New Hanover County Registry.

h. The Association must approve any use of any non-public easement as shown on the Plat by any Lot Owner if such use might negatively impact the use thereof by any other Lot Owner or would otherwise negatively impact any other Lot.

3. Assessments. Each Phase 2 Lot shall be required to pay assessments to both the Landfall Council of Associations and the Association on the same basis as paid by Phase 1 Lots. All costs of maintenance of any Common Area or other community expense, such as street lighting, security gates and utilities, shall be included in the annual budget of the Association. Assessments shall be due and payable on each Phase 2 Lot beginning upon recordation of the Phase 2 Plat. In consideration of the payment of Shared Common Expense assessments by owners of Lots made subject to this Amended Declaration, the Council will assume maintenance of roads, streets, bridges, storm drainage easements and storm drainage systems, on the same basis, and subject to the same limitations, as such facilities and improvements are maintained in Landfall Subdivision II as recorded in Book 1871, pages ___ et seq., New Hanover County Registry, Article IV. It is expressly understood that, prior to the Council assuming full maintenance responsibility for improvements with Helmsdale at Landfall phase II, all such improvements must be constructed in accordance with standards imposed by the authority having permitted such improvements, whether the City of Wilmington, the County of New Hanover or the State of North Carolina, and evidence of such construction shall

be provided to the Council. Furthermore, all Lots within Helmsdale at Landfall Phase 2 must be paying Shared Common Expense assessments prior to any requirement of Council maintenance of such improvements.

4. Conveyances. Both Active and Passive Common Areas, as well as the Upland Preservation Area, all as shown on the Plat, shall be conveyed to the Association, except that the portion of the Passive Common Area that is located on Lot 48 shall be a part of said Lot, but shall not be utilized by said Lot Owner for any purpose, but rather shall be maintained in a natural state, except as specified herein. Subject to any applicable permit or deed restriction, the Association may (but shall not be required) remove underbrush and small vegetation as necessary to limit fire or pest threats from any Common Area to the extent allowed by City ordinance. The Association shall have the right to go upon that portion of Lot 48 that is included within the Passive Common Area for such purpose.

All street rights of way (including bridges thereon) as shown on the Plat shall be conveyed to the Helmsdale at Landfall Association. Such conveyance shall be made no later than 90 days following transfer of ownership of all Lots within Phase 2 to third parties.

5. Storm Water Management and Requirements. Declarant has been issued from the City of Wilmington Stormwater Management Permit No. 2014015R1 and from the State of North Carolina Permit No. SW8 070624, which permits require that the following covenants and restrictions be placed on Phase 2 properties:

a. The State of North Carolina and the City are hereby made a beneficiary of the covenants contained in this section 5 to the extent necessary to maintain compliance with the issued permits.

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

c. These covenants may not be altered or rescinded without the express written consent of the State of North Carolina or the City, as to their issued permits.

d. Alteration of the drainage as shown on the approved plans which are incorporated within the permits may not take place without the approval of the party issuing the permit.

e. The maximum built-upon area of any Phase 2 Lot shall be 5,626 square feet. This allotted amount includes any built-upon area construction within the Lot 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, driveways and parking areas, but does not include raised, open wood decking or the water surface of swimming pools.

f. Filling in, piping or altering any designated 5:1 curb outlet swale or vegetated area associated with the development is prohibited.

g. Each designated curb outlet swale or 100 foot vegetated area shown on the approved plan must be maintained at a minimum of 100 feet long, maintain 5:1 (H:V) side slopes or flatter, have a longitudinal slope no steeper than 55, carry the flow from a 10 year storm in a non-erosive manner, maintain a dense vegetated cover and be located in either a dedicated common area or a recorded drainage easement.

6. Wetlands. Without procurement of a permit, any area shown as a "wetland" on the Plat, or any buffer associated therewith that is required by any governmental agency, shall have no vegetation removed or any fill placed therein, except in accordance with a permit issued by the Department of the Army Corps of Engineers. Any Lot Owner may maintain slightly grass vegetation in any buffer shown on the Plat to the extent not prohibited by City ordinance, but such Owner shall create no impervious surface within any such buffer. It is unlikely that any permit will be issued for any fill in any wetland. It is also a fact of nature that the boundaries of wetlands may change periodically; Declarant makes no representation that the wetland boundaries shown on the Plat are permanent, but Declarant does represent that as of the latest delineation of wetlands by the United State Corps of Engineers, the wetlands are accurately depicted on the Plat.

There is shown on the Plat various numbered "Wetland Impacts." Declarant has procured all necessary permits to modify all of those designated areas to allow vehicular traffic thereon. Declarant shall at its expense, prior to conveyance of any Lot which has thereon a Wetland Impact area, cause such crossings to be constructed in accordance with all permit requirements and shall further install bulkheads as it deems necessary to stabilize such crossings. No Lot Owner shall take any action that would violate any permit restriction and each Lot Owner shall be responsible for maintaining the permitted crossings to the extent it is entirely on said Owner's Lot. All crossings installed by Declarant related to construction of Helmsdale Drive shall be maintained by either the Landfall Council of Associations or by the Association, depending upon which owns Helmsdale Drive. Until a convenance to

one of those entities, Declarant shall maintain such crossings, including the portion that extends into a Lot.

In accordance with permit conditions imposed upon all wetlands as shown on the Plat, and except as has been permitted by all regulatory agencies, the additional restrictions set out on Exhibit A attached hereto are hereby imposed upon such wetlands.

7. Effective Date. This Amendment shall be effective upon its recordation in the Office of the Register of Deeds of New Hanover County, following full execution by Declarant and the City of Wilmington.

8. Definitions. Capitalized words or phrases, if not defined in this Amendment, shall have the meaning as set out in the Covenants.

9. Disclaimer. The setbacks, flood zones and zoning boundaries shown on the Plat may be changed from time to time by the City or other regulatory agencies, or may be altered by natural causes. It shall be the responsibility of the Lot Owner to determine all applicable building and insurance restrictions prior to submitting to the Committee any plan for construction of any improvement on any Lot.

In witness whereof, the undersigned have executed this instrument under authority duly given as of the day and year first above written.

HELMSDALE INVESTORS LLC

By: [Signature]
Manager Authorized Agent

STATE OF NORTH CAROLINA

COUNTY OF ~~NEW~~ Wake

I certify that the following person personally appeared before me this day and acknowledged to me that he signed the foregoing document for the purpose stated therein and, in the capacity, indicated:

Date: June 28, 2024

[Signature]
Notary Public

My commission Expires: February 7, 2029

(Affix notary stamp or seal)

Print Name: Julia Rawl

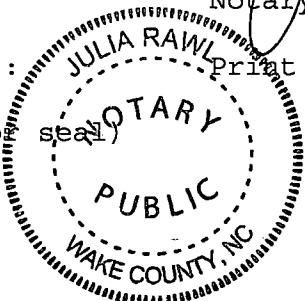


EXHIBIT A

The wetlands as shown on the Plat, with the exception of the numbered Wetland Impact areas, are made subject to the following restrictions.

The areas shall be maintained in perpetuity in their natural condition. No person or entity shall perform any of the following activities on any of the conveyed properties:

- a) Fill, grade, excavate or perform any other land disturbing activities;
- b) Cut, mow, burn, remove or harm any vegetation;
- c) Construct or place any roads, trails, walkways, buildings, mobile homes, signs, utility poles or towers, or any other permanent or temporary structures;
- d) Drain or otherwise disrupt or alter the hydrology or drainage ways on the Property;
- e) Dump or store soil, trash, or other waste; or
- f) Graze or water animals or use for any agricultural or horticultural purpose.

These covenants are intended to ensure continued compliance with the mitigation condition of a Clean Water Act authorization issued by the United States of America, U.S. Army Corps of engineers, Wilmington District, Action ID no. 200501184 (and any extension or modification thereof) and therefore may be enforced by the United States of America. Furthermore, these covenants may be enforced by the State of North Carolina, as the preservation is required by authorization granted by the State under DWQ Project #2006-0197. These covenants shall run with the land and shall be binding on all current and subsequent Lot Owners.

MORGHAN GETTY
COLLINS
Register of Deeds

New Hanover County

Register of Deeds

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