

STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

**AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS**  
**MAGNOLIA COTTAGES TOWNHOUSES**

**THIS AMENDED AND RESTATED DECLARATION, OF COVENANTS AND RESTRICTIONS FOR MAGNOLIA COTTAGES** (“Declaration”) made this the 29 day of September 2020, by Magnolia Cottages Association, Inc. and 33 EAST SHORE INVESTMENTS, LLC, a North Carolina limited liability company (“Declarant”).

**WITNESSETH:**

**WHEREAS**, a Declaration of Covenants and Restrictions for Magnolia Green Townhouses, dated October 23, 2014 was recorded in Book 3579 at Page 212 of the Brunswick County Registry by BRANCH & BRANCH, LLC, a North Carolina limited liability company;

**WHEREAS**, BRANCH & BRANCH, LLC, subsequently assigned all of its development rights to Magnolia Cottages, Inc. which subsequently merged into Magnolia Cottages, LLC. Magnolia Cottages, LLC then conveyed all of the real property comprising Magnolia Greens Townhomes to Avenue East Group, LLC and transferred all Declarant rights to Avenue East Group, LLC, Declarant herein.

**WHEREAS**, Avenue East Group, LLC, subsequently conveyed all of the real property comprising Magnolia Greens Townhomes to 33 EAST SHORE INVESTMENTS, LLC and transferred all Declarant rights to 33 EAST SHORE INVESTMENTS, LLC, Declarant herein.

**WHEREAS**, Declarant herein is the current owner of all of the real property described in Article II of this Declaration and desires to create therein a residential community with Common Properties for the benefit of the said community.

**WHEREAS**, Declarant desires to provide for the preservation of the values in said community and for the maintenance of said open spaces and other Common Properties; and, to this end, desires to subject the real property described in Article II, together with such additions as may hereafter be made thereto, to

the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

**WHEREAS**, Declarant had deemed it desirable for the efficient preservation of the values in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the Common Properties and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

**WHEREAS**, Declarant has incorporated under the laws of the State of North Carolina, as a nonprofit corporation, MAGNOLIA COTTAGES ASSOCIATION, INC. (the "Association"), for the purpose of exercising the functions aforesaid;

**NOW, THEREFORE**, Declarant declares that the real property described in Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

## **ARTICLE I**

### **DEFINITIONS**

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to MAGNOLIA COTTAGES ASSOCIATION, INC.
- (b) "Properties" shall mean and refer to the real property described in Article II made subject to this Declaration.
- (c) "Common Properties" shall mean and refer to those areas of land now or hereafter shown on any recorded subdivision plat of the Properties or hereafter deeded to the Association and intended to be devoted to the common use and enjoyment of the Owners of the Properties, including improvements constructed thereon.
- (d) "Declarant" means 33 EAST SHORE INVESTMENTS, LLC, a North Carolina limited liability company, its successors and assigns.
- (e) "Declarant Rights" shall mean declarant rights are those rights reserved for the benefit of the Declarant as provided for in the Association Documents, and shall include without limitation the following rights: (1) to complete improvements on the Property; (2) to maintain improvements on the Property; (3) to maintain models, management offices, construction offices, sales offices, customer service offices and signs advertising the Property; (4) to use easements over and through the Property for the purpose of making improvements within the Property and the Additional Property; (5) to exercise the rights, votes and veto power of the Class B member of the Association; (6) to add Additional Property; (7) to remove and replace any director appointed by the Class B until the meeting at which the Class A members are entitled to elect a majority of the directors; and (8) to exercise any other rights given to the Declarant by the Association Documents. The Declarant may transfer special declarant rights

created or reserved under the Association Documents to any Person acquiring Lots or Additional Property previously owned by the Declarant by instrument evidencing the transfer recorded in the office of the Register of Deeds of Brunswick County.

- (f) "Declaration" means this document and any and all amendments and supplements hereto.
- (g) "Development Period" means the period ending on the earliest of:
  - 1) The later of five (5) years from the date of the recordation of this Amended and Restated Declaration or two (2) years from the date of recordation of the most recent amendment to the Declaration made by the Declarant adding Additional Property; provided, however, that once the Development Period has expired, the recordation of a subsequent amendment to the Declaration shall not reinstate the Development Period; and provided, further, that if the Declarant is delayed in the improvement and development of the Property as a result of a sewer, water or building permit moratorium or other cause or event beyond the Declarant's control, then the aforesaid period shall be extended for the length of the delay or two (2) years, whichever is less, upon written notice to the Association of such extension.
  - 2) Or the date specified by Declarant in a written notice to the Association that the Development Period is to terminate that date.
- (h) "Limited Common Properties" shall mean that part of the Common Properties to be used and maintained by only the owner of the Lots as designated on the recorded subdivision plat of the Properties.
- (i) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of Common Properties as heretofore defined also sometimes referred as "Unit."
- (j) "Living Unit" shall mean and refer to any portion of a building situated upon the Properties designed and intended for use and occupancy as a residence by a single family, whether as Owner or tenants.
- (k) "Multifamily Structure" shall mean and refer to any building containing two or more Living Units under one roof except when each such Living Unit is situated upon its own individual Lot.
- (l) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit situated upon the Properties but, notwithstanding any applicable theory of the deed of trust, shall not mean or refer to the Trustee or cestui que trust unless and until there has been a transfer of title pursuant to foreclosure of any proceeding in lieu of foreclosure.
- (m) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 1, hereof.

- (n) "Mortgagee" shall include the note holder or cestui que trust secured by a deed of trust.
- (o) "Property" shall mean any and all real property subject to this Declaration now or which may become subject to this Declaration at a later date.

**ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION;  
ADDITIONS THERETO**

Section 1. Properties. The real property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, which property is more particularly described in Exhibit "A" attached hereto.

**ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot or Living Unit or undeveloped and undesignated land which is subject by covenants of record to assessment by the Association shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member.

Section 2. Voting Rights. The Association shall have two classes of voting membership.

Class A. Class A Members shall be all those Owners as defined in Section 1 with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot of Living Unit in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot or Living Unit, all such person shall be members, and the vote for such Lot or Living Unit shall be exercised as they among themselves determine, but in not event shall more than one vote be casted with respect to any such Lot or Living Unit.

Class B. Class B – The Class B Member shall be the Declarant. The Class B Member shall be entitled to (2) two votes for each Lot or Living Unit in which it holds the interest required for membership and, in addition, shall be entitled to appoint a majority of the members of the Executive Board of the Association during the Development Period as specified in the Bylaws. The Class B Member shall have a veto power over all actions of the Executive Board or any committee that may have been appointed by the Executive Board or established by the Bylaws. The Class B Membership shall terminate and become converted to Class A membership upon the earlier of (i) one hundred twenty (120) days after the conveyance of seventy-five percent (75%) of the Lots (including those Lots which may be created pursuant to the Development Plan) to Owners other than a declarant; (ii) five (5) years after Declarant has ceased to offer Lots for sale in the ordinary course of business; (iii) five (5) years following the last exercise of the rights of a Declarant to add Additional Property or (iv) when, in its discretion, the Declarant so determines.

From and after the happening of the earlier to occur of these events, the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Lot or Living Unit in which it holds the interests required for membership under Section 1.

Section 3. Imposition of Additional Covenants. Declarant reserves the right to subject the Properties to the Magnolia Green Master Association. In that event, in addition to being a member of the Magnolia Cottages Association, Inc., each Owner of a Lot or Living Unit in the Properties shall also be a member of The Magnolia Green Master Association and shall abide by the rules of said Master Association and pay the requisite dues to said Association.

#### **ARTICLE IV PROPERTY RIGHTS IN THE COMMON PROPERTIES**

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article IV, every Member shall have a right and easement of enjoyment in and to the Common Properties, including rights of access, ingress and egress to and from public streets and walkways and the right to park a motor vehicle in areas specifically designated for such purposes; such easement shall be appurtenant to and shall pass with the title to every Lot or Living Unit.

Section 2. Title to Common Properties. The Declarant must relinquish the legal title to the Common Properties to the Association prior to the transfer of any Lot or Living Unit included within the Properties. Notwithstanding this fact, Declarant reserves the right, until such time as Declarant's right to annex additional properties expires, to go upon the Common Properties for such purpose of constructing common use amenities thereon, which construction shall be at the expense of Declarant, if Declarant so elects to install such amenities. Nothing contained herein shall obligate Declarant to construct such amenities. Furthermore, Declarant reserves for the benefit of Declarant, and for the benefit of the Association and the owners of all Lots, the right to utilize all drainage ways, retention ponds and similar Common Properties and utilities, if any, for the benefit of all of the property described in Exhibit "B", and other adjacent properties owned by Declarant.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) the right of the Association, in accordance with its Articles of Incorporation and Bylaws to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage the lender's rights thereunder shall be limited to a right, after taking possession of such properties, to charge the admission and other fees as a condition to continued enjoyment of the members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored;
- (b) the right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure;
- (c) the right of the Association, as provided in its Articles of Incorporation and By-Laws, to suspend the voting rights of any member for any period during which any assessment remains unpaid, and or any period not to exceed thirty (30) days for any infraction of its published rules and regulations;

- (d) the right of the Association to charge reasonable admission and other fees for the use of the Common Properties for non-members of the Association;
- (e) the legal right of an Owner of property shown on the same plat to include portions of the Common Properties as may be necessary for said Owner to qualify under governmental requirements such as setback lines, open space, parking other aspects which may be needed for issuance of a building permit to be secured to rebuild a damaged Living Unit; and
- (f) the right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or entity for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast not less than all of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purposes or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken.

Section 4. Use of Recreational Facilities. To the extent that recreational facilities, as more fully described hereinbefore, are constructed upon Common Properties, either by the Declarant or by the Association, the owners of all Lots shall have the right of utilization of such recreational facilities, and all costs associated therewith, for upkeep maintenance and repair, shall be the obligation of the Association, and assessments may be collected therefore as set out in Article V hereinafter. Neither the Declarant nor the Association is obligated to construct such recreational amenities.

## ARTICLE V COVENANTS FOR ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation for Assessments. Declarant, for each Lot or Living Unit owned within the Properties hereby covenants, and each Owner of any Lot or Living Unit within the Properties, by acceptance of a Deed for a Lot or Living Unit, whether or not it shall be so expressed in such Deed, is deemed to covenant to pay to the Association:

- (a) annual assessments or charges;
- (b) special assessments for capital improvements and other purposes stated in this Declaration;
- (c) default assessments (as hereinafter defined) which may be assessed against a lot pursuant to the Declaration and the Articles of Incorporation and Bylaws of the Association (hereinafter referred to as the "Documents") for Owner's failure to perform an obligation under the Documents or because the Association has incurred an expense on behalf of the Owner under the Documents; and
- (d) to the appropriate governing taxing authority or the Association, a pro rata share of ad valorem taxes levied against the Common Areas.
- (e) to any assessments that might be charged by the Magnolia Green Master Association.

All assessments, together with fines, interest, costs, reasonable attorneys' (and legal assistants') fees, and other charges allowed under this Declaration, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is made until paid.

Each such assessment, together with fines, interest, costs, reasonable attorneys' (and legal assistants') fees, and other charges allowed under the Documents will also be the personal and individual obligation of the Owners of such Lot as of the time when the assessments all due, and two or more Owners of a Lot or Living Unit will be jointly and severally liable for such obligations. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. No owner may exempt himself, herself or itself from liability for any assessments by abandonment of his Lot or Living Unit or by waiver of the use or enjoyment of the Common Areas and easements.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in the Properties and in particular for the improvement and maintenance (1) of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and (2) of the Lots and Living Units situated upon the Properties. Without limitation, such uses shall include satisfaction of the Association's obligations regarding the Common Properties to pay liability insurance, to pay for insurance on the buildings, ad valorem taxes, the payment of governmental assessments for public and private capital improvements made to or for the benefit thereof, the repair, replacements and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

Section 3. Determination of Annual Assessments. Notwithstanding any provisions to the contrary contained herein, should the Association's Board of Directors determine that the Annual Assessment for the next succeeding assessment period will exceed the Annual Assessment for the current assessment period by more than ten percent (10%), then, in such event, such increase in the Annual Assessment shall be approved by a vote of two-thirds (2/3) of the Owners voting in person or by proxy at a duly called meeting of the members of the Association, at which a quorum of members is present in person or by proxy, prior to its adoption by the Board of Directors of the Association.

Section 4. Basis for Computing Assessments. The Board of Directors shall categorize the purposes for which it makes assessments so that each purpose will be one which is charged in the same amount to each Owner of a Lot or Living Unit.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by this document, the Association may levy, in an assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Properties including fixtures and personal property related thereto, provided that any such assessment shall have the assent of not less than two-thirds (2/3) of the votes of each class of members who are voting in person or proxy at a meeting duly called for this purpose.

Section 6. Change in Basis of Assessments. The Association may change the basis of the assessments fixed by Section 3 hereof prospectively for any such period, provided that any such change shall have the assent of not less than two-thirds (2/3) of the votes of each class of Members who are voting

in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of Section 3 hereof shall not apply to any change in the basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation and under Article II, Section 2, hereof.

Section 7. Quorum for any Action Authorized Under Sections 4, 5, and 6. The quorum required for any action authorized by Sections 3, 4, and 5 of this Article V shall be as follows:

At the first meeting called, as provided in Section 3, 4, and 5 of this Article V, the presence at the meeting of Members, or of proxies, entitled to cast makes seventy-five percent (75%) 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, another meeting may be called, subject to the notice requirements set forth in Sections 3, 4, and 5, and the required quorum at any such subsequent meeting shall be two-thirds (2/3) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Date of Commencement of Assessments: Due Dates. The Regular assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner. The first Regular assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Regular assessment against each Lot at least thirty (30) days in advance of each Regular assessment period. Written notice of the Regular assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as of the date of its issuance.

Section 9. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Living Unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto; failure to provide a written notice shall indicate that the assessment is unchanged from the previous assessment.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 10. Insurance.

- (a) Hazard Insurance. The Board of Directors of the Association, or the manager, shall obtain insurance upon the property for the benefit of the Association, lot owners and their mortgagees against (1) loss or damage by fire and other hazards covered by the standard extended coverage endorsement and (2) such other hazards or risks covered for similar projects, including those



covered by the standard “all risk” endorsement. Such policies shall make provision for the issuance of certificates of insurance or mortgagee endorsements to the mortgagees of lot owners, and if the companies writing such policies will agree, the policies shall provide that the insurer waives its rights of subrogation as to any claims against lot owners, the Association and their respective servants, agents and guests. In addition to the above, the Board of Directors may obtain such other insurance coverage as they deem necessary and desirable. All liability insurance shall contain cross-liability endorsements to cover liability of the lot owners as a group to a single lot owner. Each lot owner may obtain insurance, at his own expense, affording coverage upon his own lot, his personal property and such other coverage as he may desire. All hazard insurance shall meet the minimum requirements and standards of the Federal National Mortgage Association.

- (b) Amount of Coverage. The Board of Directors or the manager shall insure all buildings and improvements upon the land and all personal property included in the Common Properties in an amount equal to their insurance replacement value as determined annually by the Board of Directors, or manager, with the assistance of the insurance company or companies providing coverage.
- (c) Premiums. All premiums on insurance policies purchased by the Board of Directors or manager and any deductibles payable in the event of loss shall be paid by the Association and chargeable to the Association as a common expense.
- (d) Proceeds. All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board of Directors or manager as insurance trustee for the lot owners and their mortgagees. The insurance trustee shall have authority to deal with the insurer in the compromise and settlement of claims and to execute and deliver releases to the insurer upon the payment of claims. The insurance trustee’s duty upon receipt of any insurance proceeds shall be to hold the same in trust for the benefit of the lot owners and their mortgagees.
- (e) Distribution of Insurance Proceeds. Proceeds of insurance policies shall be distributed by the insurance trustee to or for the benefit of the beneficial lot owners in the following manner:
  - i. Expenses of the insurance trustee. All expenses of the insurance trustee shall be paid first.
  - ii. Reconstruction or repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds remaining after deduction of the insurance trustee’s expenses shall be paid to defray the cost of such repair or reconstruction. Any proceeds remaining after defraying such costs shall be distributed to the lot owners equally. In the event a mortgagee endorsement has been issued for a condominium lot, any proceeds remitted under this section shall be payable jointly to the lot owner and the mortgagee.
  - iii. Failure to reconstruct or repair. If it is determined as provided below that the damage for which the proceeds are paid will not be reconstructed or repaired, the remaining proceeds shall be distributed to the lot owners equally.

(f) Damage and destruction.

- i. Determination to reconstruct or repair. Damage to or destruction of the buildings and improvements, except that which solely the responsibility of the lot owner, shall be promptly repaired or restored by the Board of Directors or manager, using the proceeds of insurance on the building for that purpose, and lot owners shall be liable for assessment for any deficiency in accordance with their percentage undivided interest in the Common Properties; provided, however, if the buildings shall be more than two-thirds (2/3) destroyed and the owners of three-fourth of the lots resolve not to proceed with repair or reconstruction, then in that event, the property shall be deemed to be owned as tenants in common by the lot owners and shall be governed by the provisions of Chapter 47C of the North Carolina General Statutes and any amendments thereto. No mortgagee shall have any right to participate in the decision to reconstruct or repair the damaged property.
- ii. Plans and specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications of the original building and improvements unless other plans and specifications are unanimously approved by the lot owners.

(g) Flood Insurance and Earthquake Insurance. The Association will not provide flood or earthquake insurance on the property unless approved by a subsequent vote to amend this Declaration as outlined herein. Each owner will be responsible for obtaining their own flood and earthquake insurance if they want it.

(h) Liability Insurance. The Association must maintain a comprehensive general liability insurance policy covering all common areas, public ways and any other areas that are under its supervision. The policy should provide coverage of at least \$1,000,000 for bodily injury, property damage, personal injury liability for any single occurrence.

Section 11. Effect if Nonpayment of Assessments and Remedies of the Association. Any assessment, or installment thereof, which is not paid within thirty (30) days after its due date will be delinquent. In the event that an assessment, or installment thereof, becomes delinquent, or in the event a Default assessment is established under this Declaration, the Association, in its sole discretion, may take any and all of the following actions:

- (a) assess a late charge for each delinquency at uniform rates set by the Board of Directors from time to time;
- (b) charge interest from the date of delinquency at the maximum rate allowed by law;
- (c) suspend the voting rights of the Owner during any period of delinquency;
- (d) accelerate all remaining assessment installments for the assessment period in question so that unpaid assessments for the remainder of the assessment period in question so that unpaid assessments for the remainder of the assessment period will be due and payable at once;
- (e) bring an action at law against any Owner personally obligated to pay the delinquent assessment charges; or
- (f) file a claim of lien with respect of the Lot or Living Unit foreclosure the lien against the Lot or Living Unit in the same manner as provided for the foreclosure of a mortgage under the statutes of the State of North Carolina.

The remedies provided under Declaration will not be exclusive, and the Association may enforce any other remedies to collect delinquent assessments as may be provided by law.

If the assessment is not paid within thirty (30) days after the delinquency date or a written arrangement for payment consented to by the Association, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, will be charged a \$15.00 late fee for monthly assessments not received by the fifteenth (15<sup>th</sup>) of each month.

Section 12. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first deed of trust now or hereafter placed upon the properties subject to assessment; provided, however that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, a deed of foreclosure under power of sale or any other transfer in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments which thereafter become due, nor from the lien of any such subsequent assessment.

Section 13. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Properties as defined in Article I, Section 1, hereof.

Section 14. Successor's Liability for Assessments. All successors, except as provided hereinabove in Section 11, Article V, to the fee simple title of a Lot will be jointly and severally liable for the prior Owner or Owners thereof for any and all unpaid assessments, fines, interest, late charges, costs, expenses, and attorney's (and legal assistants') fees against such Lot without prejudice to any successor's right to recover from any prior Owner any amounts paid by such successor. Any successor will be entitled to rely on a written statement of status of assessments received by such successor from the Association or its managing agent. The Association agrees that it will furnish to any owner of his designate, a written statement setting forth the amount of unpaid assessments then levied against the Lot in which the Owner or his designate has an interest. The information contained in such written shall be conclusive upon the Association, the Board of Directors, and every owner as to the person or persons to whom such statement is issued and who rely on it in good faith when such statement is signed by an officer of the Association or the managing agent for the Association.

Section 15. Working Capital. At the time that Declarant or its successors or assigns conveys title to an owner, each owner shall contribute to the Association as a working capital reserve an amount of Four Hundred Ninety-Nine and 00/100 Dollars (\$499.00) . Such funds shall be used solely for initial operating and capital expenses of the Association, such as pre-paid insurance, supplies and the Common Properties, furnishings and equipment, etc. Amounts paid into the working capital fund are not to be considered as advance payment of regular assessments. Any working capital funds remaining at the end of the first full operating year shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.

## ARTICLE VI RIGHTS OF FIRST MORTGAGEES

Section 1. Inspection of Books and Records. First Mortgagees shall have the right, upon request and during normal business hours, to examine the books and records of the Association.

Section 2. Notice of Default. Upon its written request, the holder of a first mortgage upon a Lot or Living Unit shall be entitled to written notification of any default by the Owner of said Lot or Living Unit in the performance of his obligations pursuant to these Covenants of the By-Laws of the Association, if such default is not cured within thirty (30) days.

Section 3. Payments by First Mortgagees. One or more first Mortgagees of Lots or Living Units pay, jointly or singly, in respect to the Common Properties, pay taxes or other charges which are in default and have or become a charge against same, pay overdue hazard insurance premiums or secure new hazard insurance coverage after policy lapse. The parties making such expenditures shall be entitled to immediate reimbursement from the Association.

Section 4. Prohibitions. Without having first received written approval from at least one hundred percent (100%) of the first Mortgagees (based upon one vote for each Mortgagee) of the Lots or Living Units, the Association may not:

- (a) fail to maintain hazard insurance on insurable improvements upon the Common Property in an amount equal to one hundred percent (100%) of the current insurable replacement cost;
- (b) use hazard insurance proceeds from losses to any Common Properties for other than the repair, replacement or reconstruction of such improvements.

## ARTICLE VII PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Living Units upon the Properties and places 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 rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall must restore it as a party wall unless the other Owner agrees to the contrary in advance, and the other Owners thereafter making use of the wall 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.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent 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.

Section 5. Right of Contribution Runs with Land. 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.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all the arbitrators shall be final and conclusive of the question involved.

## **ARTICLE VIII ARCHITECTURAL REVIEW COMMITTEE**

Section 1. Review by Committee. No building, fence, wall, patio or other structure nor any planting or landscaping change (including removal of any tree) shall be commenced, erected or maintained upon the Properties by other than the Declarant nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Review Committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been complied with fully. The Association shall have the right to bring an action to enjoin any activity taken in violation of this Article.

## **ARTICLE IX EXTERIOR MAINTENANCE**

Section 1. Exterior Maintenance. In addition to maintenance upon the Common Properties, the Association shall provide exterior maintenance upon each Lot or Living Unit which is subject to assessment under Article V hereof as follows: paint, repair, replace and care for roofs, gutters, down-spouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include doors, garage doors, windows, window screens, screen porches, door and window frames, rear decks, roof skylights, HVAC Systems, glass surfaces, exterior lights, hose bibs, electrical outlets or fixtures, driveways, or concrete inside the lot lines or patios.

Section 2. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by this document, the Association may levy, in an assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair of, replacement for exterior maintenance of any Lot or Living Unit, provided that any such assessment shall have the assent of all of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 3. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance required by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any Living Unit at reasonable hours on any day.

## **ARTICLE X USE RESTRICTIONS**

Section 1. Land Use and Building Type. All lots shall be used for residential purposes except that so long as Declarant shall retain ownership of any lots, it may utilize any such lot or lots for sales or rentals,

offices, models or other usage for the purpose of selling or leasing lots and the clubhouse within said property. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose; provided, however, that when all lots have been sold, this right of commercial usage by the Declarant, its successors and assigns shall immediately cease. Co-ownership of lots shall not be prohibited. Any building erected, altered, placed or permitted to remain on any lot shall be subject to the provisions of Article VIII of this Declaration of Covenants and Restrictions relating to architectural control.

Section 2. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 3. Junk Vehicles. No inoperable vehicles or vehicle without current registration and insurance will be permitted on the premises. The Association shall have the right to have all such vehicles towed away at the owner's expense.

Section 4. Outside Furniture. No furniture shall be permitted in the Common Areas. No furniture shall be permitted on the front porch of each unit except approved porch furniture and plants. Porch furniture shall be permitted in the patio of each unit. All grill and accessories must be kept in the courtyard areas and must be covered when not in use. Use of any grill shall be prohibited within five (5) feet of any dwelling.

Section 5. For Sale Signs Prohibited. No signs shall be permitted on any lot or in the Common Properties, except: a) an Owner may display one "For Sale" sign not to exceed 18 inches by 24 inches on its Lot; and (b) Declarant or its designee may place "For Sale" signs on any Lots owned by Declarant or in the common area for so long as Declarant shall retain ownership of any unsold lot(s).

Section 6. Temporary Structures. No structure of a temporary character, trailer basement, tent, shack, garage, barn or other outbuilding shall be used on any lot any time as a residence either temporarily or permanently.

Section 7. Recreational Vehicles. No boat, motorboat, camper, trailer, motor or mobile homes, or similar type vehicle shall be permitted to remain on any lot or in parking spaces, at any time, unless by consent of the Association.

Section 8. 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 not allowed to run free and are at all times properly leashed and personally escorted and all waste must be picked up and disposed of immediately. No more than two dogs or cats shall be maintained on any property. If any pet shall be determined by the Board of Directors to be a nuisance, the Board shall have full authority to have such pet permanently expelled from the properties.

Section 9. Outside Antennas. No outside radio or television antennas shall be erected on any lot or dwelling unit within the Properties unless permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

Section 10. Window Coverings. All drapes, curtains or other similar materials hung at window, or in any manner so as to be visible from the outside of any building erected upon any lot, shall be of a white or neutral background or material, unless the Board of Directors approves another color.

Section 11. Exterior Lights. All light bulbs or other lights installed in any fixture located on the exterior of any building or any lot shall be clear, white or non-frost lights or bulbs.

Section 12. Flags. No flags shall be hung on the exterior or exposed in any window or vehicles which exceed 3' X 5' in size. This provision shall not apply to the flag of the United States or the flag of North Carolina.

## **ARTICLE XI COMMON AMENITIES**

The Association may impose uniform standards for mail collection facilities (which may be a central facility or individual receptacles), waste disposal containers, newspaper boxes, mailboxes and such other common features typically installed on the exterior of a Living Unit, or on Common Properties. The owner of each Lot shall comply fully with all such standards adopted by the Association.

## **ARTICLE XII GENERAL PROVISIONS**

Section 1. Rules. The Board of Directors shall have the authority to adopt rules for the use of the Common Properties and shall furnish a written copy of said rules to the Owners. Any violation of such rules shall be punishable by fine and/or suspension of the voting rights of the violating Owners. The Board of Directors shall also have the power to adopt rules and regulations which prohibit or limit the types of animals or household pets which may be kept in or about the Lots or Living Units and which govern their allowance upon the Common Properties.

Section 2. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after successive periods of ten (10) years unless an instrument signed by the then Owners of one hundred percent (100%) of the Lots or Living Units has been recorded, agreeing to change said covenants and restrictions in whole or in part. (For purposes of meeting the one hundred percent (100%) requirements, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted.) No such agreement to change shall be effective, however, unless made and recorded one (1) year in advance of the effective date of such change, and unless written notice of the proposed change is sent to every Owner at least ninety (90) days in advance of any action taken, and provided, however, that at all times during the existence of these covenants and restrictions that those areas set forth and set aside as Common Properties shall be retained for those purposes.

Section 3. Amendment. These covenants and restrictions may be amended during the first twenty (20) year period by the vote of not less than seventy-five percent (75%) of each class of Members cast in person or by proxy at a meeting duly called for this purpose, written notice of which including the subject matter of the proposed amendment, shall be sent to all Members at least thirty (30) days in advance. Thereafter, these covenants and restrictions may be amended by the vote of at least seventy-five percent (75%) of each class of Members cast in person or by proxy at a meeting duly called for this purpose, written notice of which including the subject matter of the proposed amendment, shall be sent to all Members at least thirty (30) days in advance. Matters mentioned elsewhere in these covenants requiring the approval of first mortgages or requiring a greater percentage of Members for approval shall be so governed. Any such amendment shall become operative and binding upon all Members and their properties when set forth in an amended Declaration of Covenants and Restrictions and recorded in the office of the Register of Deeds of New Hanover County, North Carolina.

Section 4. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, or otherwise delivered, to the

last known address of the person who appears as a Member of Owner on the records of the Association at the time of such mailing.

Section 5. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any liens or charges created by these covenants; and failure by the Association or any 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 6. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect.

Section 7. Roads and Streets. All roads and streets made subject to this Declaration shall be private and shall be maintained by the Association as a Common Property unless designated as "public" on a recorded plat. Furthermore, Declarant reserves a right of ingress and egress over and across all of such roads and streets for purposes of accessing any property described on Exhibit "A", Exhibit "B" or adjoining properties owned by Declarant or its successors and assigns. The Association shall maintain such roads and streets in good condition, readily available for normal use at all times.

Section 8. Parking. There shall be no parking on Tommy Jacobs Drive except in designated parking spots.

Section 9. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than thirty (30) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast all of the votes of each class of membership shall constitute a quorum. If the required quorum is not present at the first meeting, the required quorum at any subsequent meeting shall be the entire required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

*{Signatures and Notary Acknowledgement on subsequent page}*



IN WITNESS WHEREOF, 33 EAST SHORE INVESTMENTS, LLC has caused this instrument to be duly executed as of the day and year first above written.

33 EAST SHORE INVESTMENTS, LLC  
*Renee Eastman* (SEAL)  
BY: Renee Eastman  
MEMBER-MANAGER

STATE OF NORTH CAROLINA  
COUNTY OF Brunswick

I, Patricia G. McKenna, a Notary Public in and for the State and County aforesaid, certify that RENEE EASTMAN personally came before me this day and acknowledged that she is the Member-Manager of 33 EAST SHORE INVESTMENTS, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by its member-manager.

Witness my hand and official seal this 29 day of September 2020

Patricia G. McKenna  
Notary Public

My commission expires: 3-19-22 (Notary Seal)

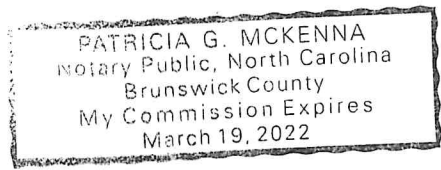
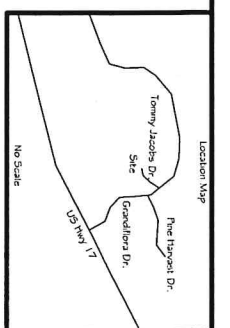
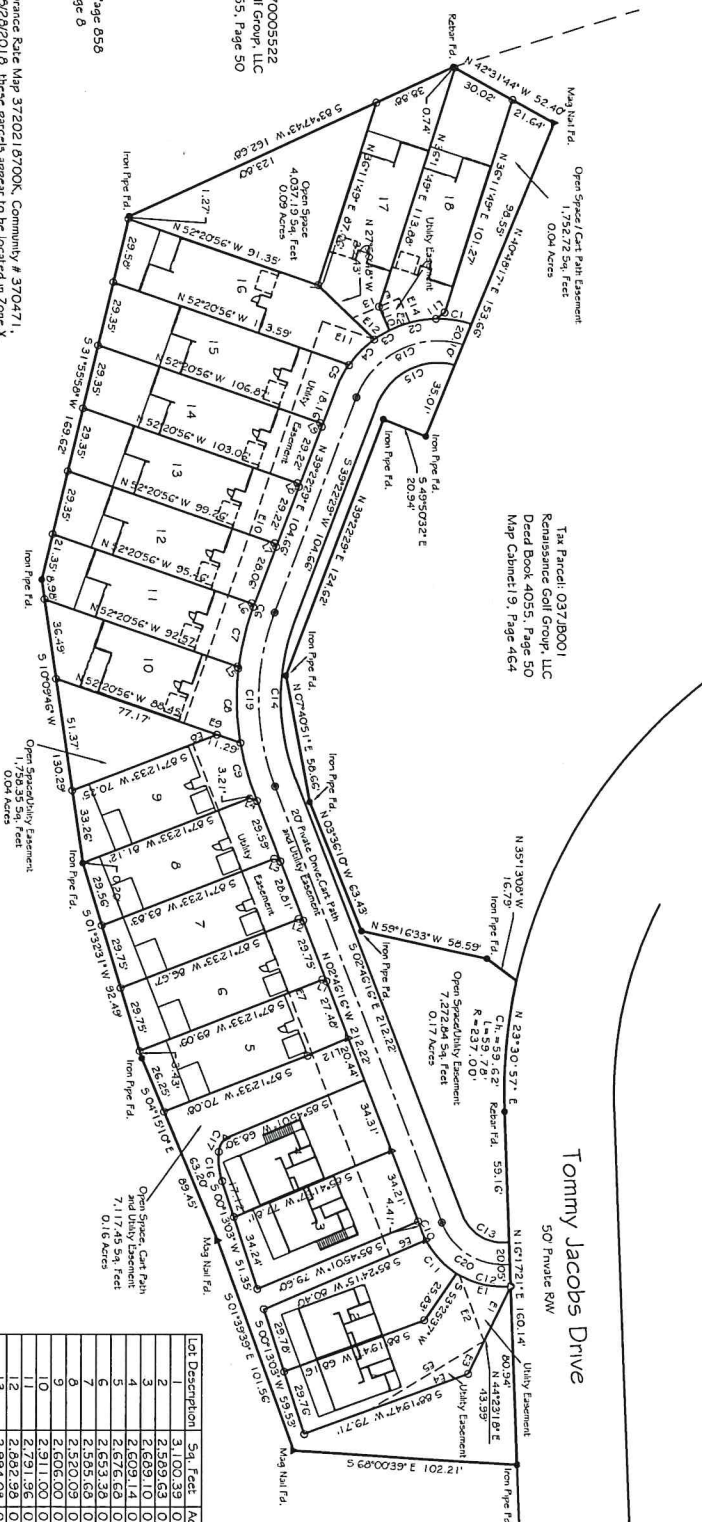


Exhibit A

Being all of Lots 1 thru 16 and Common Areas, Magnolia Cottages Townhouses, as the same are shown on a map of said subdivision entitled "Magnolia Cottages, Lot 1 thru 16 and Common Area Tract", as prepared by Michael Underwood and Associates, PA, dated October 14, 2014 and recorded October 15, 2014 in Map Cabinet 86 at Page 8 of the Brunswick County Registry, reference to which is made for a more particular description of the property herein conveyed.



# Exhibit B



Tax Parcel: 0370005522  
Renaissance Golf Group, LLC  
Deed Book 4055, Page 50

Tax Parcel: 03718001  
Renaissance Golf Group, LLC  
Deed Book 4055, Page 50  
Map Cabinet 9, Page 464

Tommy Jacobs Drive  
50' Private RW

Notes:  
Based on Flood Insurance Rate Map 372021 D700K, Community # 370471, Panel 21B7, dated 6/28/2018, these parcels appear to be located in Zone X.  
Adjoining property owners based on Bunswick County GIS.  
For further see maps as referenced.  
Area calculated by coordinates.

Tax Parcel: 0370005522  
Renaissance Golf Group, LLC  
Deed Book 4055, Page 50

Area summary  
Private Drive = 0.935,07 Sq. Feet 0.23 Acres  
Open Area = 21,936.55 Sq. Feet 0.50 Acres  
Lots = 51,790.66 Sq. Feet 1.19 Acres  
Total = 83,664.28 Sq. Feet 1.92 Acres

**NORRIS & WARD**  
Land Surveyors, P.A.  
North Carolina & South Carolina  
P.O. Box 7994  
Ocean Isle Beach, NC 28549  
NC 1837

(P) (O) 910-5900  
Fax (P) (O) 910-5902  
Street W. Norm, P.L.L.C.  
Kathy D. Ward P.L.L.C.

LINE	BEARING	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
E1	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E2	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E3	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E4	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E5	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E6	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E7	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E8	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E9	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E10	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E11	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E12	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E13	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E14	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"

LINE	BEARING	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
E1	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E2	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E3	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E4	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E5	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E6	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E7	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E8	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E9	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E10	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E11	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E12	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E13	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E14	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"

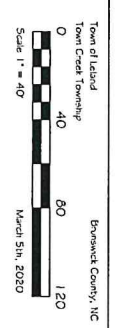
LINE	BEARING	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
E1	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E2	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E3	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E4	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E5	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
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E11	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E12	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E13	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"
E14	S 0°00'00" E	0.00	0.00	N 0°00'00" W	0°00'00"

Lot	Description	Sq. Feet	Acres
1		3,100.39	0.07
2		2,609.63	0.06
3		2,609.10	0.06
4		2,609.14	0.06
5		2,615.58	0.06
6		2,615.58	0.06
7		2,620.09	0.06
8		2,620.09	0.06
9		2,606.00	0.06
10		2,291.00	0.07
11		2,291.96	0.07
12		2,630.98	0.07
13		2,994.02	0.07
14		3,105.18	0.07
15		3,223.65	0.07
16		3,290.67	0.07
17		3,262.58	0.07
Total		51,790.66	1.19

## LEGEND

- These standard symbols will be found in the drawings.
- Center Found as Noted
  - ▲ 1/2" Rebar Start
  - ▲ Mag Nail Set
  - ▲ Mag Nail Set
  - Center Spike Set (Center)

# Magnolia Cottages



Owner:  
33 EAST SHORE INVESTMENTS LLC  
Mailing Address:  
425 TRULHIP LN  
WAKE FOREST, NC 27587

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