

North Carolina

Declaration of Covenants, and Restrictions

Lenoir County

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THIS DECLARATION, made and entered into this the 3 day of August 2023, by and between Harry H. Cummings, Inc. hereinafter (Developer being hereinafter sometimes referred to as "Declarant"); and PROSPECTIVE PURCHASERS of lots in Marion Heights SUBDIVISION (hereinafter referred to as "Owners");

WITNESSETH

WHEREAS, Developer is the owner of all lots except Lot 19 depicted on that certain map or plat entitled "Map for Record, Marion Heights" and,

WHEREAS, Developer desires prior to selling and conveying the aforesaid residential lots, to impose upon their respective lots certain mutual and beneficial restrictions, covenants and conditions and Charges (hereinafter collectively referred to as "Restrictions") for the benefit and complement of all of the residential lots in the subdivision in order to promote the best interests and protect the investments of Developer and Owners, and

NOW, THEREFORE, it is hereby declared that the Property described herein is, and shall be, held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth; said Property being more particularly described as follow:

Being all of lots 5-18 as depicted on a map entitled, "Map for Record Marion Heights" dated July 7, 2008, prepared by Stroud Engineering, P.A. and recorded in Plat Cabinet 11, Page 260 in the Office of the Register of Deeds of Lenoir County, North Carolina "Lots", and hereby declares that said lots and any additional property within the Development Area which Developer, Harry H. Cummings, Inc. may by subsequent amendment add to and subject to this Declaration, are held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to this Declaration and to following Restrictions. This Declaration and the Restrictions shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to the real property or any part or parts thereof subject to this Declaration.

ARTICLE 1  
DEFINITIONS

As used herein:

A. "Corporation" means, a North Carolina non-profit corporation. The "Executive Board" or "Board" shall be the elected body governing the Corporation and managing the affairs of the Corporation. The term "Executive Board" as used herein shall be synonymous with the term "Board of Directors" as used in Chapter 47F of the General Statutes of North Carolina.

B. "By-Laws" means, the Bylaws of Marion Heights Homeowner's Association, Inc.

C. "Community Use Areas" means, all real and personal property, together with those areas within dedicated portions of the Development Area of the Subdivision, which may be deeded to or acquired by the Corporation for the common enjoyment of the members of the Corporation. Community Use Areas shall include roads, berms, entrances, Askew Cemetery, or other such properties, easements, rights of facilities which may be deeded to or acquired by the Corporation for the common enjoyment of the members of the Corporation

D. "Common Expenses" means, and includes actual and estimated expenses of maintaining and operating Community Use area and operating the Corporation for general purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Executive Board pursuant to this Declaration, the Bylaws and the Articles of Incorporation of the Corporation.

E. "Dedication" means, the act of committing a portion of the Development Area or the Subdivision to the purposes of this Declaration.

F. "Developer" means, Harry H. Cummings, Inc. their successors or assigns.

G. "Lot" means, a separately numbered tract of land lying within the Subdivision or other dedicated portion of the Development Area and which, according to the plat of that portion recorded at the dedication thereof, may be conveyed by the Developer and owned in fee by the Grantee thereof, and held for such uses as are consistent with this Declaration and the Restrictions covering the area within the tract is located. The Owner of all of a numbered Lot may combine such numbered Lot, part or parts of another such numbered Lot and the aggregate shall be considered as one Lot for the purpose of the Restrictions.

H. "Subdivision" means, Marion Heights Subdivision and any portion of the Development Area which has been dedicated pursuant to this Declaration.

I. "Period of Declarant Control" means, the period commencing on the date hereof and continuing until the earlier of Developer no longer owns any lots numbered 1-28 as same are depicted on plat Cabinet 11, Page 260, Lenoir County Registry or the date upon which Developer voluntarily surrenders any control rights arising under this Declaration.

J. "Landscape Easement" shall mean the area of Property along side Banks School Road to include 30 feet from Banks School Road onto lots 2 through 10 and lot 28.

K. Declarant and Developer shall mean and refer to Harry H Cummings, Inc. a North Carolina Corporation, or any successor in title or any successor in interest of Harry H Cummings, Inc., or all of the Property then owned by Harry H Cummings, Inc. or if it is provided in writing by the Declarant that the successor in title or successor in interest to any portion of the Property then subject to this Declaration.

## ARTICLE 2 APPLICABILITY

These Restrictions shall apply to lots 5-18 shown on the aforesaid plat or map, (hereinafter referred to as "Lot" or "Lots"), which Lots are for residential purposes or other lands of Developer as Developer may annex at a later time. Developer reserves the right to annex the remaining lots 1-4 and 20-28 into these restrictions or to develop and sell them under a different set of restrictions.

## ARTICLE 3 MANAGEMENT AND ADMINISTRATION

The management and administration of the affairs of the Community Use Areas of the Subdivision shall be the sole right and responsibility of the Corporation subject to the terms of Chapter 46F of the North Carolina General Statutes ("Planned Community Act"). The management shall be carried out in accordance with the terms and conditions of these Restrictions, the Articles and the Bylaws of the Corporation, but may be delegated or contracted to managers or management services.

## ARTICLE 4 COMMUNITY EXPENSES

The Community Expenses of the Subdivision include:

All amounts expended by the Corporation in operating, administering, managing, repairing, replacing and improving the Community Use Areas of the Subdivision; all amounts expended by the Corporation in insuring the Community Use Areas in the Subdivision; all amounts expended by the Corporation in legal, engineering, or architectural fees; all similar fees which may be incurred by the Corporation from time to time in performing the functions delegated to the Corporation by these Restrictions; and all amounts expended in any form by the Corporation in enforcing these Restrictions, the Articles or the Bylaws.

All amounts expended by the Corporation in carrying out any duty as may be required or allowed by these Restrictions, the Articles or the Bylaws.

All amounts declared to be Community Expenses in the Bylaws or these Restrictions.

A. All taxes and special assessments which may be levied from time to time by any governmental authority upon the Community Use Areas in the Subdivision.

B. All amounts expended by the Corporation to maintain the property 30 feet from Banks School Road onto lots 2 through 10 and lot 28.

## ARTICLE 5 ANNUAL GENERAL ASSESSMENT

A. The Declarant for each Lot owned, hereby covenants and each Owner of any Lot by acceptance of a deed for same (whether or not it shall be so expressed in such deed) is deemed to covenant and agrees to pay to the Corporation annual general assessments or charges as hereinafter provided. The annual general assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and lien on the land and, subject to the provisions of Paragraph F. of this Article, shall be a continuing lien upon the property against which each such assessment is made. Furthermore, each such assessment, together with interest, costs, and reasonable attorneys'

fees, shall also be the personal obligation of the person who was the owner of the Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to a successor in title to a Lot unless expressly assumed by them but, subject to the provisions of this Declaration, delinquent assessments shall continue to be a lien upon such Lot.

B. The annual general assessment shall commence when assessment of same shall be made by the Executive Board. Until June 1 of the year immediately following the conveyance of the first Lot to an Owner, the initial annual general assessment shall be Three Hundred and No/100 Dollars (\$300.00) per Lot.

1. The Executive Board may fix the annual general assessment at an amount not in excess of the maximum.

2. Once the annual general assessment has been set, notice of the annual general assessment shall be given to all members. After the initial notice of the assessment, the assessment shall become due and payable as provided by the Executive Board.

C. Written notice of any meeting called for the purpose of taking any action authorized under Paragraph B shall be sent to all members not less than thirty (30) days, no more than sixty (60) days in advance of the meeting. At any such meeting called, the presence 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 required quorum is not present, the meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. The required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No meeting shall be adjourned to a time more than ten (10) days following the preceding meeting but may be adjourned to a time a little as five minutes after the preceding meeting.

D. The annual general assessments levied by the Corporation shall be used exclusively to improve, maintain and repair the Community Use Areas, to pay the expenses of the Corporation, to pay the cost of any insurance the Corporation determines as necessary to promote the health, safety and welfare of the members, and to pay taxes levied upon the Community Use Areas.

E. The Corporation shall, upon demand, and for a reasonable charge, furnish a certificate signed by an office of the Corporation setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Corporation as to the status of assessments on Lot is binding upon the Corporation as of the date of its issuance.

F. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage of any proceeding in lieu therefore, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE 6 SPECIAL ASSESSMENTS

Special assessments may be levied against Lots for such reasons as are provided in these Restrictions, the Articles, or the Bylaws and on such terms as provided by the Executive Board of the members. Either the Executive Board or the members may levy and impose special assessments upon a majority vote. The purposes for which special assessments may be levied include, but are not limited to, providing funds to pay Community Expenses which exceed the general assessment fund then on hand to pay same and providing a contingency fund for capital improvements and extraordinary expenses. Furthermore, special assessments may be assessed against specific Lots. In the event the Owner of a Lot fails to comply with the provisions of Article 10 hereof, the Corporation may perform such task or remedy such matter and levy the cost of such performance against the Owner of such Lot as a special assessment.

#### ARTICLE 7 LIEN FOR ASSESSMENTS

Any general or special assessment, if not paid within thirty (30) days after the date such assessment is due, together with interest at the rate of ten percent (10%) per annum, costs of collection, court costs, and reasonable attorneys' fees shall constitute a lien against the Lot upon which such assessment is levied. The Corporation may record notice of the same in the Office of the Clerk of Superior Court of County or file a suit to collect such delinquent assessments and charges, the Corporation may file Notice of Lis Pendens, bring an action law against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein.

#### ARTICLE 8 COMPLIANCE WITH THIS DECLARATION, THE ARTICLES AND THE BYLAWS OF THE CORPORATION

In the case of failure of a Lot Owner to comply with the terms and provisions contained in the Declaration, the Articles or the Bylaws of the Corporation, the following relief shall be available so long as it is in compliance with the terms of the Planned Community Act:

A. The Corporation, an aggrieved Lot Owner or Owners within the Subdivision on behalf of

the Corporation, or any Lot Owner on behalf of all the Lot Owners within the Subdivision shall have the right of action and recover sums due, damages, injunctive relief, and/or such other and further relief as may be just and appropriate.

B. The Corporation shall have the right to remedy a violation and assess the costs of remedying same against the offending Lot Owners as a special assessment.

C. If the violation is the nonpayment of any general or special assessment, the Corporation shall have the right to suspend the offending Owner's voting rights and the use by such Owner, his agents, employees and invitees of the Community Use Areas in the Subdivision for any period during which an assessment against the Lot remains unpaid.

D. The remedies provided by this Article are cumulative, and are in addition to any other remedies provided by law.

E. The failure of the Corporation or any Persons to enforce any restriction contained in these restrictions, the Articles or the Bylaws shall not be deemed to waive the right to enforce such restrictions thereafter as to the same violation or subsequent violation of similar character.

#### ARTICLE 9

#### PROPERTY RIGHTS OF LOT OWNER, CROSS-EASEMENTS, AND EXCEPTIONS AND RESERVATIONS BY DECLARANT; SPECIAL DECLARANT RIGHTS

A. Every Owner of a Lot within the Subdivision, as an appurtenance to such Lot, shall have a perpetual easement over and upon the Community Use Areas within the Subdivision for each and every purpose or use to which such Community Use Areas were intended as determined by their type, or for which such Community Use Areas generally are used. Such easements shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

1. The Corporation shall have the right to make reasonable rules and regulations respecting these of same.

2. Following a hearing in accordance with 47F-3-107.1, the Corporation shall have the right to suspend rights to use the Community Use Areas within the Subdivision for any period during which any dues assessment against such Owner's Lot remains unpaid as is provided in Article 5 hereof, and for a period not to exceed ninety (90) days for any infraction of its published Rules and Regulations.

B. The Corporation hereinafter may grant easements for utility purposes for the benefit of the Subdivision and the Lots now or hereafter located thereon, over, under, along and through the Community Use Areas and lots. Provided, however, that no such grant of easement shall have a material adverse effect on the use, enjoyment or value of any lot.

C. Any other provision of this Declaration notwithstanding, Declarant does hereby reserve for the Period of Declarant Control, rights, powers and easements as follows:

(i) To complete any and all improvements indicated on the map of record referred to herein or in any other map describing Lots which may be added to be Subdivision pursuant to the foregoing paragraph of this Article.

(ii) To construct and maintain any sales office, management office or model in any of the units or on any of the common elements shown on the Subdivision Plat.

(iii) To alter the size of any Lot, combine or merge two or more Lots, and subdivide and Lot or Lots.

(iv) To appoint and remove any executive board members.

(v) To use easements through the common elements for the purpose of making improvements within the Subdivision or within real estate, which may be added to the Subdivision.

(vi) To make the Subdivision part of a larger planned community or group of planned communities.

(vii) To make the Subdivision subject to a master association.

#### Article 10

#### RESTRICTIONS ON USE AND OCCUPANCY

A. LAND USE AND BUILDING TYPE: No Lot shall be used except for single family residential purposes. No structure shall be erected, placed or permitted to remain on a numbered Lot other than one (1) detached, single family residence and such outbuildings as are usually accessory to a single family residence and/or "mother-in-law" suite, including a private enclosed garage with space for not more than three (3) automobiles and a second story for guests which garage shall not be rented separately for remuneration without approval of Executive Board. Unenclosed separate carports, or similar storage structures, shall not be erected, placed or permitted to remain on any Lot unless approved by the Executive Board. The use of easements reserved over any portion of a Lot for

egress and ingress (including the construction and maintenance of roads and installation of utilities) shall not be considered a violation of the residential use restriction contained in this paragraph.

**B. DWELLING SIZE:** Any dwelling constructed on the following Lots subject to these Restrictions shall contain not less than 1600 square feet of fully enclosed and heated floor area devoted to living purposes (exclusive of roofed or unroofed porches, terraces, garages, and any outbuildings).

**C. BUILDING SETBACKS:** No above grade structures (except approved fences or walls) may be constructed or placed in any lot except within the minimum building setback lines as set forth herein:

1. Thirty (30) feet from a Lot front line.
2. Ten (10) feet from a Lot side line. Except corner lot line adjacent to the road shall have fifteen (15) foot offset.
3. Twenty (20) feet from a Lot rear line with respect to any such Lot.

The term "lot front line" defines the boundary line of a Lot that is contiguous to and bounded by a named Street as shown on the recorded Subdivision plat. Or in the case of a Lot with a named street running across such Lot, the "Lot front line" for purposes of computing the foregoing set back requirements shall be the interior edge of the right of way of such street.

The term "lot rear line" defines the boundary line of a lot that is farthest from, and substantially parallel to, the line of the street on which the Lots abuts.

An owner of a Lot and a portion of all of an adjoining and contiguous Lot or Lots may construct a dwelling and/or other structures permitted hereunder upon and across the dividing line of such adjoining and contiguous Lots, all such structures to comply with the minimum building setback lines from the actual boundary lines of the subject owner's property, and thereafter such combinations of Lots or portions thereof shall be treated for all purposes under these Restrictions as a single Lot.

**D. SEWER:** All plumbing fixtures and sources of sewage located on a Lot shall be connected to an individual septic tank or other sewer system located upon such Lot (or upon that certain Lot designated). Each such approved individual septic tank or sewer system shall be maintained in good and proper working order and condition by the owner in accordance with the requirements of governmental authorities having jurisdiction. No outside toilet shall be constructed or permitted on any Lot except during construction as herein expressly provided.

**E. CONSTRUCTION QUALITY:** Any dwelling or outbuilding erected upon any lot shall be of construction conforming to the applicable building codes of Lenoir County, and the State of North Carolina when constructed and of good quality and similar appearances to the home i.e.-roof pitch, siding, shingles, etc. All construction shall be performed in good workmanlike manner and shall be complete and finish when constructed. No used structures shall be relocated or placed on the lot. No structures shall have an exterior constructed of concrete block, aluminum, sheet metal, or exposed asphalt siding., No "Log House" shall be constructed or placed on a lot without written approval of the Declarant.

**F. GENERAL RESTRICTIONS:** The following general prohibitions and requirements shall apply and control the improvement, maintenance and use of all Lots:

1. No mobile homes, trailer, camper, tent, or temporary house, temporary garage, or other temporary outbuilding shall be placed or erected on any lot except for temporary structures for storage of material during construction. No temporary structure shall be used at any time as a residence or be allowed to remain after construction of the dwelling upon the Lot shall be completed.
2. Once construction of a dwelling or other improvements is started on any Lot, the improvements must be substantially completed in accordance with the approved plans and specifications within twelve (12) months from commencement.
3. During construction of improvements on any Lot, adequate portable sanitary toilets must be provided for the construction crew and the Lot must be cleaned of excess debris at least once a week.
4. All dwellings and permitted structures erected or placed on any Lot shall be constructed of material of good grade, quality and appearance, and all construction shall be performed in good and workmanlike manner and quality.
5. All Lots, whether occupied or unoccupied, shall be well maintained and no unattractive growth or accumulation of rubbish, trash, ashes, garbage or debris shall be permitted to remain thereon.
6. Any dwelling or improvements on any Lot which is destroyed in whole or in part by fire or other casualty must be rebuilt or all debris removed and the Lot restored to a sightly condition with reasonable promptness, provided, however, that in no event shall such debris remain on such Lot longer than three (3) months.

7. No stripped, partially wrecked, or junked automobile, truck, trailer or motor vehicle, or part thereof, shall be permitted to be parked or kept on any Lot. All motor vehicles of any type kept on any Lot shall have current registration and inspection certificates.

8. No truck or vehicle used for commercial purposes in excess of a two (2) ton load capacity shall be parked or permitted to remain on any Lot. All motor vehicles of any type kept on any Lot shall have current registration and inspection certificates, unless stored in an enclosed garage.

9. All fuel storage tanks and outdoor receptacles for ashes, trash rubbish or garbage shall be screened or so placed and kept as not to be visible to the occupants of other Lots or the users of any street.

10. All outdoor poles, clotheslines and similar equipment shall be screened or so placed as not to be visible to the occupants of other Lots or the users of any street.

11. No sign (excluding typical "For Sale" and builder identification signs or similar signs) bill board or other advertising structure of any kind may be erected or maintained upon any Lot; provided, however, that construction identification signs showing the Lot number may be exhibited upon the Lot during the period of construction. The foregoing does not effect a Lot Owner's right to post political signs on their Lot in accordance with North Carolina law.

12. All radio and television antenna and satellite dish installations and all outside solar structures of any kind shall be erected in the back of the dwelling.

13. All dwelling connections for all utilities including but not limited to water, electricity, gas, telephone and television shall be run underground from the proper connecting points to the dwelling structure in such manner as may be acceptable to the appropriate utility authority.

14. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other customary household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose. Owners shall be obligated to construct fences in compliance with the fence requirements set forth in Article 1, Section 16, infra, or invisible fencing to ensure pets remain confined on the owner's lot. Pets shall not be restrained on lots by any chains, ropes or other leash type device anchored or fastened to a temporary or permanently immovable object or structure. Any and all pets shall not be allowed off the owner's lot, unless same are leashed, under the direct physical control of the owner at all times, and are not creating a nuisance to, or threat to the safety of the other residents, or guests of residents in the Subdivision. Any violation of this provisions set forth in this Paragraph, shall subject the lot owner to a fine, and/or directive for the owner's animal to be permanently removed from the subdivision, as determined in the reasonable discretion of the Declarant, or the Association, in accordance with North Carolina General Statutes Section 47F-3-102(12)

15. ERECTION OF FENCES AND FENCE ENCROACHMENT EASEMENTS: Every owner of a Lot shall be entitled to construct a fence on his Lot, in accordance with the specifications in this paragraph:

a.) All fences shall be constructed so as not to exceed six (6) feet in height and shall be of stockade style, wooden or vinyl fence. All wooden fences shall be stained a natural wood color. All vinyl fences shall be white in color. All fences shall constructed on the common property line with the adjacent Lot. Every Lot owner shall have to tie in an existing fence wall running down a common property line of his lot, such that the fence along common property line becomes a shared fence wall. Every Owner is deemed to agree that minor deviations (less than one foot) in the actual layout of the fence along the common property line shall be waived upon completion of construction.

b.) All reconstruction of such shared fence walls shall be subject to general rules of law regarding party walls. The cost of reasonable repair and maintenance of a shared fence wall shall be shared by the Owners who make use of the fence. Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance or reconstruction of a shared fence wall and those improvements belonging to his lot which encroach on an adjoining Lot or Common area. Such repair, maintenance or reconstruction shall be done expeditiously, and upon completion of the work, the Owner shall restore the adjoining Lot or Lots and Common area to as near the same condition as that which prevailed prior to commencement of the work as reasonably practicable.

16. No obnoxious, offensive, or illegal trade or activity shall be carried on or upon a Lot, nor shall anything be done on a Lot that shall be or become an unreasonable annoyance or nuisance to other Lot owners or the Neighborhood.

17. All driveway drainage tiles must be installed in accordance with North Carolina Department of Transportation requirements. The tile installation is to be inspected and approved by Developer. Failure to have a proper inspection could result in a lien of up to one thousand five hundred (\$1500) dollars on the property.

18. No commercial enterprise or other business activity including but not limited to operation of a group home shall be allowed on any lot. Remote working from home is acceptable.

19. All driveways shall be concrete, brick or asphalt.

20. All Lot Owners and guest, shall operate any vehicle motorized for enjoyment or necessity on the community streets at speed at or below 25 mile per hour and avoid any and all damage to the community street herein.

ARTICLE 11  
AMENITIES AND FACILITIES

Dedicated accesses and other amenities appurtenant to the Subdivision, whether or not shown and delineated on any recorded plat of the Subdivision, shall be considered private and for sole and exclusive use of the Owners of Lots within the Subdivision. Neither Developer's execution nor the recording of any plat nor any other act of Developer with respect to such areas is, or is intended to be, or shall be construed as a dedication to the public of any such areas, facilities or amenities. Notwithstanding any of the foregoing language, Developer reserves the right to dedicate and convey all streets in the Subdivision to the North Carolina Department of Transportation for inclusion in the system of roads maintained by the State of North Carolina.

ARTICLE 12  
WAIVER

No provision contained in these Restrictions, the Articles or the Bylaws, shall be deemed to have been waived, abandoned, or abrogated by reason of failure to enforce them on the part of any Person as to the same or similar future violations, no matter how often the failure to enforce is repeated.

ARTICLE 13  
VARIANCES

The Declarant or Executive Board in its discretion may allow reasonable variances and adjustments of these Restrictions in order to alleviate practical difficulties and hardships in their enforcement and operation. Any such variances shall not violate the spirit or the intent of this document to create a Subdivision of Lots owned in fee by various Persons with each such Owner having an easement upon areas owned by the Corporation. To be effective, a variance hereunder shall be recorded in the Lenoir County Register of Deeds Office; shall be executed on behalf of the Corporation; and shall refer specifically to this Declaration.

ARTICLE 14  
DURATION, AMENDMENT AND TERMINATION

A. The provisions of this Declaration and the Covenants and Restrictions contained herein shall run with and bind the land until such time as the planned community provided for herein shall be terminated in accordance with the provisions of North Carolina General Statutes Section 47F-2-118. To be effective any amendment must be recorded in the Office of the Register of Deeds of Lenoir County, North Carolina and a marginal entry of same must be signified on the face of this document. For so long as Developer owns a lot depicted on Plat Cabinet 11, Page 260, Lenoir County Registry, no amendment or termination shall be effective without Developer consenting in writing to same.

B. Invalidation of any one of these Covenants or Restrictions by judgement of court order shall in no way affect any other provisions which shall remain in full force and effect.

ARTICLE 15  
CAPTIONS

The captions preceding the various Articles of these Restrictions are for the convenience of reference only, and shall not be used as an aid in interpretation or construction of these Restrictions. As used herein, the singular includes the plural and where there is more than one Owner of a Lot, said Owners are jointly and severally liable for the obligations herein imposed. Throughout this Declaration, references to the masculine shall be deemed to include the feminine, the feminine to include the masculine and the neuter to include the masculine and the feminine.

ARTICLE 16  
ASSIGNABILITY OF RIGHTS AND LIABILITIES

Developer shall have the right to sell, lease transfer, assign, license and in any manner alienate or dispose any rights, interests and liabilities retained, accruing or reserved to it by this Declaration.

Following any such disposition, Developer in no way shall be liable or responsible to any party with regard to any such right, interest, liability or any claim or claims arising out of the same in any manner.

ARTICLE 17  
LIBERAL CONSTRUCTION

The provisions of this Declaration shall be construed liberally to effectuate its purpose of creating a Subdivision of fee simple ownership of Lots and buildings governed and controlled by rules, regulations, restrictions, covenants, conditions, reservations and easements administered by an Owners association with each Owner entitled to and burdened with the rights and easements equivalent to those of other Owners.

ARTICLE 18  
RESERVATION OF RIGHTS

Anything in the foregoing notwithstanding the Developer does hereby specifically reserve unto himself, his successors and assigns (whether or not it shall be so expressed in such deed) and in addition to any such rights reserved in any deed, rights with respect to the property made subject to these Restrictions, said rights being as follows:

A. The right to go upon any Lot for the purpose of performing or maintaining any reclamation work required by any mining or other governmental permit by which Developer may be bound.

B. The right to use any and all roads, roadways or ingress egress easements for access to other property owned by Developer and for a period of 20 years from the execution of this agreement.

ARTICLE 19  
ANNEXATION OF ADDITIONAL PROPERTY INTO SUBDIVISION

The Declarant, for itself and its successors and assigns, hereby expressly reserves the right, but shall in now way be obligated, to expand the real property which is subject to this Declaration without the consent or joinder of any Owner or Owners of any Lot or Lots or person or entities having a lien or security in such joinder of any Owner or Owners of any Lot or Lots or person or entities having a lien or security in such Lots or Lots, by annexing, from the time to time other real property into the Subdivision.

An amendment to this Declaration shall be made and recorded in the office of the Register of Deeds of Lenoir County, North Carolina, to include each portion of the real property which is to be subject to this Declaration and each such portion of the real property shall constitute an additional to the Subdivision. The right of the Declarant, or its successors and assigns to expand the Subdivision as herein provide shall expire fifteen (15) years following the date of recordation of this Declaration.

Developer shall also have the right to develop the remaining lots depicted on Plat Cabinet 11, page 260 under a different scheme if development so long as said lots are restricted to residential use.

ARTICLE 20  
ENFORCEMENT

Enforcement shall be by proceedings at law or in equity against any person violating or attempting to violate any covenant, either to restrain violation or recover damages. In the event any proceeding is commenced to enforce the provisions of this Declaration, the non-prevailing party shall be obligated to pay, in addition to any monetary damages or toward other award granted by the court, the expenses and costs of such proceeding, including reasonable attorney's fees of the prevailing party.

IN TESTIMONY WHEREOF, Developer and I have hereunto set their hands and seals, this day and year first above written.

*SIGNATURE BEGINS ON THE FOLLOWING PAGE*



Harry H. Cummings, Inc.

By: [Signature] (SEAL)  
Oscar Greene, III, President

NORTH CAROLINA

Lenoir COUNTY

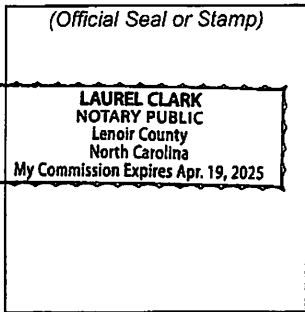
I, Laurel Clark, Notary Public, certify that Oscar Greene, III being personally known to me or identified by satisfactory evidence, personally came before me this day and acknowledged that he is President of HARRY H. CUMMINGS, INC., a corporation, and that he, as President, being authorized to do so, voluntarily executed the foregoing on behalf of the corporation.

Witness my hand and official seal or stamp, this the 2 day of August, 2023.

[Signature]  
Laurel Clark, Notary Public

(OFFICIAL SEAL)

My commission expires: 4/19/2025



Notary seal or stamp must appear within this box.

Type: CONSOLIDATED REAL PROPERTY  
Recorded: 6/18/2024 1:17:48 PM  
Fee Amt: \$26.00 Page 1 of 8  
Revenue Tax: \$0.00  
Lenoir County, NC  
Treva Jenkins Register of Deeds

**BK 2023 PG 470 - 477**

**DECLARATION OF ANNEXATION AND  
RESTRICTIVE AND PROTECTIVE COVENANTS  
FOR  
MARION HEIGHTS SUBDIVISION LOTS 1-4 AND 20-28**

This Declaration of Annexation and Restrictive and Protective Covenants is made on this the 18<sup>th</sup> day of June, 2024 by GHTR Properties, LLC, a North Carolina Limited Liability Company (hereinafter also referred to as "Declarant") being the owners and developers of Marion Heights Subdivision, Lots 1-4 and 20-28 as shown on that certain plat entitled "Map for Record Marion Heights" recorded in Plat Cabinet 11, Page 260 of the Lenoir County Registry.

THAT WHEREAS, GHTR Properties, LLC is the owner of Lots 1-4 and 20-28 as shown on that certain plat entitled "Map for Record Marion Heights" recorded in Plat Cabinet 11, Page 260 of the Lenoir County Registry pursuant to that certain deed recorded in Deed Book 2019, Page 369 of the Lenoir County Registry wherein GHTR Properties, LLC was also assigned the rights of the Declarant, Harry H. Cummings, Inc.; and,

WHEREAS, GHTR Properties, LLC desires to annex the above referenced property in accordance with Article 2 of that certain Declaration of Covenants and Restrictions, as recorded in Deed Book 1996, Page 358 of the Lenoir County Registry placed on the property by former Declarant Harry H. Cummings, Inc.; and,

WHEREAS, that certain Declaration of Covenants and Restrictions as recorded in Deed Book 1996, Page 358 of the Lenoir County Registry shall also be binding on the above described property along with any covenants, conditions or restrictions contained herein, however, should there be any conflict or difference between any covenants and restrictions contained herein with the covenants and restrictions listed in Deed Book 1996, Page 358 of the Lenoir County Registry, the covenants and restrictions contained herein shall apply; and,

WHEREAS, this instrument shall constitute a Declaration of Annexation such that the above described property and each lot and lot owner of any property known as Lots 1-4 and 20-28 shown on that certain plat entitled "Map for Record Marion Heights" recorded in Plat Cabinet 11, Page 260 of the Lenoir County Registry shall be subject to the rules, regulations and covenants empowering and creating the MARION HEIGHTS HOMEOWNERS ASSOCIATION, INC. as set forth in that certain Declaration of Covenants and Restrictions as recorded in Deed Book 1996, Page 358 of the Lenoir County Registry, incorporated herein by reference as if fully described herein; and

NOW THEREFORE, in consideration of the promises, mutual benefits and duties herein contained, GHTR Properties, LLC hereby declares that the above referenced property shall be developed according to a general plan for the improvement and development of said property and does hereby establish the covenants, conditions, reservations and restrictions upon which, and subject to which, all lots and portions of such lots shall be improved or sold and conveyed by it as owner thereof. These covenants, conditions, reservations, restrictions and easements are hereinafter set out and shall run with the land and shall bind and inure to the benefit of the purchasers, their prospective heirs, personal representatives, successors and assigns as set forth herein. The covenants, conditions, reservations and restrictions are as follows:

**1. LAND USE AND BUILDING TYPE:** No lot shall be used for anything except for single-family residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed two and one-half stories in height and a private garage for no more than three cars and customary outbuildings. No trailer, mobile home or other similar type dwelling shall be permitted or maintained on any lot for use as a residence or any other purpose.

**2. DWELLING QUALITY AND SIZE:** Neither cinderblock or asbestos shingle siding structures, nor mobile homes, or modular type homes shall be erected or permitted on any lot located in this subdivision. The heated square footage of the main structure of any dwelling located on these lots, exclusive of open porches and garages, shall not be less than 1,250 square feet for a single story and 1,350 square feet for a two-story structure. Architectural design and building plans must be submitted and approved by the Architectural Committee before beginning construction.

**3. ARCHITECTURAL COMMITTEE:** The initial Board of Directors of Marion Heights Homeowners Association, Inc. shall be the only members of the Architectural Committee until such time as MARION HEIGHTS SUBDIVISION as shown on that certain plat entitled "Map for Record Marion Heights" recorded in Plat Cabinet 11, Page 260 of the Lenoir County Registry and any future property which may later be annexed in accordance with that certain Declaration of

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Covenants and Restrictions recorded in Book 1996, Page 358 of the Lenoir County Registry are fully developed. At that time, the Board of Directors of the Marion Heights Homeowners Association, Inc. shall appoint a Committee of three persons to serve as the Architectural Committee.

**4. NATIVE GROWTH:** The native growth of such premises shall not be permitted to be destroyed or removed except as approved in writing by the Architectural Committee designated herein. In the event such growth is removed, except as stated above, the lot owner shall within a reasonable time replant or replace the same, the cost thereof to be borne by the lot owner. Approval is not necessary for the initial strip clearing of the home site, including a distance of twenty feet from the outside walls of the house.

**5. BUILDING LOCATIONS SHALL BE AS FOLLOWS:**

A. No building shall be located on any lot nearer to the front line or nearer to the side street line than the minimum building setback lines shown on the recorded plat. Provided, however, GHTR Properties, LLC as the Declarant may waive any minor violation of said set back requirements. A minor violation is defined as any encroachment which does not exceed ten percent (10%) of the minimum set back required.

B. For the purposes of these covenants, eaves, steps, carports and open porches shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot or any easement shown on the subdivision map.

**6. LOT AREA AND WIDTH:** No lot shall be subdivided unless it is for the purpose of enlarging the lots of adjoining lot owners where a vacant lot lies between them.

**7. FENCE RESTRICTION:** All fences must be approved by the Architectural Committee prior to installation after submission by lot owner of a plot plan regarding proposed fence. All fences must be installed by a professional fence company or if installed by someone other than a professional fence company the finished fence must be approved by the Architectural Committee. Should the Architectural Committee, in its sole discretion require changes to the fence, the lot owner shall have ten (10) days to comply with those requirements or the Architectural Committee may hire a professional fence company to meet those requirements and the cost shall be assessed to the lot owner. However, all fences must connect to the dwelling located on the property and must be located no closer than six (6) feet to the front corners of the dwelling. Furthermore, after installation, all fences shall be maintained in a good aesthetically pleasing condition by the lot owner.

8. **DRIVEWAYS:** All driveways must be constructed of concrete. Furthermore, any basketball goals must be housed on the driveway of the property and shall not be allowed to be placed in the streets of the subdivision.

9. **NUISANCE:** No noxious or offensive activity shall be carried on upon a lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. All lots must be kept neat and manicured. The Marion Heights Homeowners Association, Inc. reserves the right to assess a fine of \$25.00 per day to any property owner who after written notice from the Marion Heights Homeowners Association, Inc. of the need to maintain their lot, which may include but is not limited to the need to mow their lawn, clear refuse from their property or correct any violation of the restrictive covenants contained herein. Specifically, there will be no inoperable (junk) cars allowed on Lots 1-4 and Lots 20-28 of MARION HEIGHTS SUBDIVISION as shown on that certain plat entitled "Map for Record Marion Heights" recorded in Plat Cabinet 11, Page 260 of the Lenoir County Registry. There will be no cars on blocks allowed on any lot, unless said cars are within an enclosed garage on the lot. All cars stored on Lots 1-4 and Lots 20-28 of MARION HEIGHTS SUBDIVISION as shown on that certain plat entitled "Map for Record Marion Heights" recorded in Plat Cabinet 11, Page 260 of the Lenoir County Registry must be stored either in the driveway or garage and must be registered with an appropriate state vehicular authority and no cars shall be allowed to park in the Subdivision streets or any common area of MARION HEIGHTS SUBDIVISION as shown on that certain plat entitled "Map for Record Marion Heights" recorded in Plat Cabinet 11, Page 260 of the Lenoir County Registry. Furthermore, any area lights or flood lights installed on any lot in the subdivision shall be installed so as to prevent the creation of a nuisance for neighboring lot owners. No colored light bulbs will be allowed on Lots 1-4 and Lots 20-28 of MARION HEIGHTS SUBDIVISION as shown on that certain plat entitled "Map for Record Marion Heights" recorded in Plat Cabinet 11, Page 260 of the Lenoir County Registry other than holiday decorations and any holiday decorations must be taken down within two (2) weeks of the holiday.

10. **COMMENCEMENT OF CONSTRUCTION:** Each purchaser of any lot must begin construction upon each lot within eighteen (18) months following closing. The developer, in its sole discretion, may extend the above time period for an additional six (6) months upon buyer showing just cause for the extension of time. Prior to construction, purchasers must maintain their lots in a suitable manner including but not limited to regular grass cutting.

11. **MAINTENANCE/REFUSE DISPOSAL:** No weeds, underbrush or other unsightly growth shall be permitted to grow or remain on any Lot, and no refuse pile or unsightly objects shall be placed on any lot.

The owner of each lot, at the Owner's sole cost and expense, shall maintain their property, including improvements thereof, in a safe, clean and attractive condition at all times, including but not limited to the following:

- (a) No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept, except in sanitary containers. All incinerators or other equipment for the disposal of such material shall be kept in a clean and sanitary condition. All trash containers shall be concealed by fence or shrubbery; and
- (b) Lawn Maintenance on a regular basis, including rights of way.

In the event that a property owner does not properly maintain their lot then, the Association may, Forty-Eight (48) hours after reasonable notice to the property owner in writing, either hand delivered or posted on property owner's front door, maintain the lawn and assess the costs to the property owner for non-compliance, said costs shall be a lien against the property until paid. Any costs related to the enforcement of these covenants, including the costs of filing a lien against the property shall be taxed to the property owner who is deemed in violation of these covenants. In addition to this provision, the Marion Heights Homeowners Association, Inc. may assess a fine of \$25.00 per day for failure to maintain the lawn after written notice to the property owner until the lawn is properly maintained.

**12. TEMPORARY STRUCTURES:** No structure of a temporary character, car trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently. Furthermore, no more than one car trailer, garage, barn or other outbuilding is allowed per lot. Any outbuilding less than or equal to 250 square feet must be constructed using wood and must be approved by the Architectural Committee. Any outbuilding or garage larger than 250 square feet must be built to match the residence on the lot it is placed (i.e. same materials and same general appearance) and must be approved by the Architectural Committee. Under no circumstances will a metal building or metal carport be allowed on any lot.

**13. SWIMMING POOLS:** Both above-ground and in-ground swimming pools shall be allowed on Lots 1-4 and Lots 20-28 of MARION HEIGHTS SUBDIVISION as shown on that certain plat entitled "Map for Record Marion Heights" recorded in Plat Cabinet 11, Page 260 of the Lenoir County Registry. The materials and construction of any deck, platform or steps for the improvement of any above-ground pool must be approved by the Architectural Committee. Lot owners shall be required to keep pools in good repair and the Association may in its discretion require repairs or removal of a pool which is not in good repair. A lot owner shall be required to comply with any repair or removal request within ten (10) days and the Association may assess a fine of \$25.00 per day to the lot owner for non-compliance and may seek enforcement

of these covenants through an appropriate legal proceeding with any costs related to the enforcement of these covenants being taxed to the property owner who is deemed in violation of these covenants.

**14. SIGNS:** No signs of any kind shall be displayed to the public view on any lot except sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sale period.

**15. CLOTHESLINES AND SATELLITE DISHES:** No clotheslines of any kind shall be erected on Lots 1-4 and Lots 20-28 of MARION HEIGHTS SUBDIVISION as shown on that certain plat entitled "Map for Record Marion Heights" recorded in Plat Cabinet 11, Page 260 of the Lenoir County Registry. No satellite dish of more than Twenty-Four (24) inches in diameter shall be placed on any lot and no exterior antennae of any kind shall be placed on Lots 1-4 and Lots 20-28 of MARION HEIGHTS SUBDIVISION as shown on that certain plat entitled "Map for Record Marion Heights" recorded in Plat Cabinet 11, Page 260 of the Lenoir County Registry.

**16. TRASH CANS AND COLLECTION:** Any trashcan used for collection by a waste collection service may be placed at the curb only on the day of pickup or the night before pickup and must be removed from the curb on the day of pickup. All trashcans, whether used for collection by a waste collection service or for personal use must be stored behind the residence and must not be visible from the street.

**17. ANIMALS:** No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot except that cats, dogs or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. All outdoor pets shall be contained in structures or kennels/runs that have been approved by the Architectural Committee. No animal will be chained or tethered. A small doghouse is permissible if located with concern for adjoining property owners. Furthermore, no property owner may own more than three dogs, cats or other household pets and no property owner shall allow their dogs, cats or other household pets to create a nuisance for other homeowners. The Marion Heights Homeowners Association, Inc. in its sole discretion shall determine if a property owner's dogs, cats or other household pets are creating a nuisance and may assess a fine of \$25.00 for each day a property owner allows their dogs, cats or other household pets to remain on their property after written notice from the Marion Heights Homeowners Association, Inc. that their dogs, cats or other household pets are creating a nuisance.

18. **WATER SUPPLY:** No individual water supply system shall be permitted on any lot unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the Lenoir County Health Department. Approval of such system as installed shall be obtained from such authority.

19. **SEWAGE DISPOSAL:** No individual sewage disposal system shall be permitted on any lot unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of the Lenoir County Health Department. Approval of such system as installed shall be obtained from such authority.

20. **UNDERGROUND UTILITIES:** All electrical service, telephone lines and other utility lines shall be placed underground unless the Architectural Committee waives this restriction. The developer reserves the right to subject the real property in this subdivision to a contract with Duke Energy Progress, Inc. for the installation of street lighting, which requires a continuing monthly payment to Duke Energy Progress, Inc. by each residential customer.

21. **HOMEOWNERS ASSOCIATION:** All purchasers of Lots 1-4 and Lots 20-28 in MARION HEIGHTS SUBDIVISION as shown on that certain plat entitled "Map for Record Marion Heights" recorded in Plat Cabinet 11, Page 260 of the Lenoir County Registry, and by the acceptance of deeds conveying such lots do, for themselves, their heirs, successors and assigns, agree to become members of the Marion Heights Homeowners Association, Inc. organized or to be organized for the purposes set out in the Articles of Incorporation and Bylaws thereof and the Declaration of Covenants and Restrictions recorded in Deed Book 1996, Page 358 of the Lenoir County Registry.

22. **TERM:** These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date these covenants are recorded after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the owners of the lots has been recorded agreeing to change said covenants in whole or in part.

23. **ENFORCEMENT:** Enforcement shall be by proceeding at law or in equity or as specifically described herein, against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

24. **SEVERABILITY:** Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

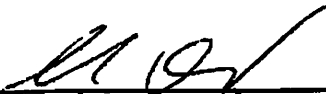


**25. COMMERCIAL PURPOSES:** No lot shall be used for any commercial purposes, except a professional person may use a part of the home for an office.

**26. WILDLIFE REFUGE:** MARION HEIGHTS SUBDIVISION as shown on that certain plat entitled "Map for Record Marion Heights" recorded in Plat Cabinet 11, Page 260 of the Lenoir County Registry shall be declared a wildlife refuge. No hunting shall be allowed on any property within the subdivision.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by its duly authorized officers and its seal hereto affixed, as of the day and year first set forth above.

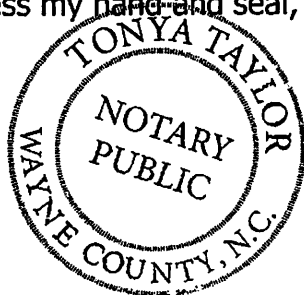
**GHTR Properties, LLC, a  
North Carolina Limited Liability Company**

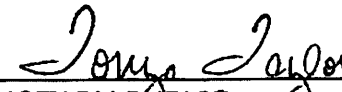
By:   
Michael Radford, Member/Manager

North Carolina  
Wayne County

I, Tonya Taylor, a Notary Public for said County and State, do hereby certify that Michael Radford personally came before me this day and acknowledged that he is a Member/Manager of GHTR Properties, LLC, a North Carolina Limited Liability Company and further acknowledged the due execution of the foregoing instrument on behalf of the Limited Liability Company.

Witness my hand and seal, this the 18<sup>th</sup> day of June, 2024.



  
NOTARY PUBLIC  
Tonya Taylor  
Printed Name of Notary  
My Commission Expires: 3/1/2026