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NORTH CAROLINA  
ONSLow COUNTY

**MASTER DECLARATION OF  
COVENANTS AND RESTRICTIONS**  
(47F-1-101 et seq.)

**ASHBURY PARK**

THIS DECLARATION OF RESTRICTIVE COVENANTS, is made this 22<sup>nd</sup> day of  
APRIL, 2008, by the ASHBURY PARK, INC., a North Carolina Corporation of New Hanover

ERWIN, SIMPSON & STROUD Attorneys, P.L.L.C. - Telephone: (910) 455-1800  
825 Gum Branch Road, Suite 115, Jacksonville, NC 28540

County, North Carolina; and **DEMCO BUILDERS, INC.**, a North Carolina Corporation, (collectively referred to as "**Declarant**") ;

### **BACKGROUND STATEMENT**

WHEREAS, Declarant is the owner of or may acquire a certain tract of land located in Onslow County, North Carolina, (hereinafter referred to as "Development Area") and being more particularly described on Exhibit A:

AND WHEREAS, Declarant is constructing on a portion of the development area a "residential subdivision" which may include community facilities for the benefit of the community, with a planned mix of residential housing types, which may include without limitation detached single family homes and townhouses (hereinafter referred to as "Project");

AND WHEREAS, pursuant to 47F-1-101 et seq., Declarant desires to provide for the preservation and enhancement of the property values and amenities within said community and to provide for the maintenance of common areas, properties and improvements located thereon, and to this end desires to subject Project property to the covenants, restrictions, easements, charges and liens as are hereinafter set forth, each and all of which are for the benefit of said real property and each present and future owner thereof;

AND WHEREAS, pursuant to 47F-1-101 et seq., the Declarant also desires to provide and allow for the submission of additional "sections" to the Project as said phases are developed and completed, and to provide for equality of rights, privileges and obligations of all lot owners in all phases of the Project by adding additional phases by amendment to this Declaration by the recording of an Amendment hereto.

### **DECLARATION**

**NOW THEREFORE**, it is hereby declared that the Project 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 follows:

**BEING all of that property as shown on Exhibit A-1 ("Project Area"), attached hereto and incorporated herein by reference as if fully set forth, and being known generally as Ashbury Park Section I.**

**1. DEFINITIONS:**

A. "Association" shall mean and refer to the **ASHBURY PARK COMMUNITY**

**SERVICES ASSOCIATION, INC.**, a North Carolina non profit corporation, its successors and assigns.

B. "Common Area" shall mean all real property owned by the Association, if any, for the common use and enjoyment of the Owners.

C. "Declarant" shall mean and refer to **ASHBURY PARK, INC.**, a North Carolina and **DEMCO BUILDERS, INC.**, collectively, its successors and assigns.

D. "Declaration" shall mean and refer to this instrument, as may from time to time be amended.

E. "Living Unit" or "Unit" shall mean and refer to any portion of a structure situated upon the Properties designed and intended for use and occupancy as a residence by a single family, including without limitation detached single family homes, townhouse homes, patio homes and condominium units.

F. "Property" or "Properties" shall mean and refer to any of the real property which is or may be subject to this Declaration or Supplemental Declaration.

G. "Lot" shall mean and refer to any plot of land or condominium unit as defined in N.C.G.S. 47C-1-103, shown upon any recorded subdivision map of the Properties with the exception of the Common Area, and includes any improvements thereon, if any.

H. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties but shall not include those having such interest merely as security for the performance of an obligation.

I. "Parcel" shall mean and refer to a portion or part of real property, together with the improvements located thereon, which becomes subject to this Declaration. This term shall include any additions to the existing Properties as herein provided.

J. "Supplemental Declaration" shall mean and refer to any declaration of covenants, restrictions, easements, charges and liens recorded by the Declarant, or its successors and assigns, which applies to a specific Parcel within the Properties.

K. "Project Property or Area" shall mean the total of the real property incorporated herein and described hereinabove in Exhibit A-1, together with all structures and other improvements thereon, together with such other portions of the Development Area as may from time to time be added to and incorporated in the Project Area by amendment of this Declaration.

L. "Development Area" shall include that property described in Exhibit A, all or part of which may from time to time be submitted to and made subject to the terms of this Declaration.

**2. RETENTION OF DECLARANT RIGHTS:**

A. Declarant, for itself, its successors and assigns, reserves the right herein, but shall not be obligated, to submit additional property in one (1) or more separate phases to the provisions of the North Carolina Planned Community Act and to the provisions of this Declaration. The property, or a portion thereof, which may be made subject to this Declaration is described on "Exhibit A" hereof as "Development Area". The additions, if any, to the Project shall be made on a portion of portions of said property to be selected by Declarant, it being understood that any or all of said property not utilized by Declarant for the purpose of lots for addition to the Project, as provided in this Declaration, may be, from time to time, otherwise developed by Declarant, its successors and assigns, or for such other development as Declarant may in its sole discretion determine, subject to applicable governmental regulation and control, if any.

The submission of one or more additional phases or sections as herein provided shall not obligate Declarant to submit further additional phases or sections to the provisions of this Declaration. PROVIDED, FURTHER, that Declarant may cause other development to occur on the property described on "Exhibit A" hereof, from time to time, whether or not it has developed, or plans to develop, any of the additional property.

At such time, and from time to time, as any additional Phase is subjected to this Declaration the Project Area will consist of the property described hereinabove, such property as may have been previously added thereto by amendment together with such additional property as may then be added by amendment to this Declaration.

B. Declarant hereby reserves all Special Declarant Rights and Development Rights described or set out in N.C.G.S. Section 47F -1-103 (28) and Section 47F-3-103(d). Any or all of such Special Declarant Rights and Development Rights may be exercised as to any portion or all of the Property, as herein defined, and must be exercised, if at all, within seven (7) years from the date of recording of this Declaration. The transfer of Special Declarant Rights and Development Rights shall be done pursuant to N.C.G.S. Section 47F 3-104.

C. Sales Offices. Other provisions of this Declaration or the Bylaws notwithstanding, Declarant may maintain offices for the sale of Lots and models. Declarant shall have the right to (1) re-locate, discontinue and reestablish within the Project any such offices or models until all Lots have been conveyed to Owners other than a Declarant; and (2) change the use of such offices or models, provided that they shall be used only for sales purposes or models. Notwithstanding anything to the contrary herein, the Declarant's right to use Lots owned or leased by it as sales or models shall continue so long as Declarant owns at least one (1) lot.

D. Declarant Rights Defined: "Special Declarant Rights" or "Declarant Rights" shall include but shall not be limited to, any right (i) to complete improvements indicated on plats and plans filed with the declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the planned community, and models; (iv) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (v) to make the planned community part of a larger planned community or group of planned communities; (vi) to make the planned community subject to a master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any period of declarant control.

Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the county in which this Declaration is recorded. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit A in any manner whatsoever.

The Declarant shall have the rights (i) to use or grant the use of a portion of the Common Area for the purpose of aiding in the sale, or rental, or management of Lots; (ii) to use portions of the Property for parking for prospective purchasers or lessees of Lots and such other parties as the Declarant determines; (iii) to erect and display signs, billboards and placards and store and keep the same on the property; (iv) to distribute audio and visual promotional material upon the Common Area; and (v) to use or permit to be used any Lot which it owns or leases as a sales and/or rental office, management office or laundry and maintenance facility. The Declarant shall have an easement for access to such facilities and activities shall include specifically the right to use residences owned by the Declarant, if any, and any which may be owned by the Association.

So long as Declarant continues to have rights under this paragraph, no person or entity shall record any declaration of restrictions and protective covenants or similar instrument affecting any portion of the Properties without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of restrictions and protective covenants or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

**3. SUPPLEMENTAL DECLARATIONS/EXPANSION OF PROPERTIES INTO DEVELOPMENT AREA:** Declarant shall have the right, from time to time, to record Supplemental Declarations for portions ("Parcels") of the Properties which may designate specific use and other restrictions within said Parcel, may create Common Areas within such Parcel for the use only of Owners of Lots in said Parcel, and may create an internal owners association within said Parcel; provided, however, no Supplemental Declaration shall avoid membership in the Association

by Owners of Lots in said Parcel, nor shall any Supplemental Declaration modify or amend the terms of this Declaration or of any prior Supplemental Declaration for another Parcel.

4. **COMMON AREAS:**

A. **Maintenance:** The Association shall be responsible for the exclusive management and control of the Common Areas and all improvements located thereon, except as otherwise may be provided for in a Supplemental Declaration. This paragraph specifically empowers, but does not limit other powers, the Association to control and regulate the hours and periods of operation of all recreational facilities in the development area, and all maintenance of landscaping in the Development area, even if in areas subject to a Sub-association created by amendment to this Declaration or the recording of a Supplemental Declaration. Subject to any statutory requirement, the Association shall have the right to lease any portion of the Common Area to any management or operating entity for purposes consistent with the goals and ends of the owners and Association.

B. **Owner's Easement of Enjoyment:**

(1) Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to limit the number of guests of members;

(c) the right of the Association to suspend the right to use the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid and for any infraction of its published rules and regulations;

(d) the right of the Association to lease, dedicate or transfer all or any part of the Common Area to any management or operating entity, public agency, authority, or utility for such purposes subject to such conditions as may be agreed to by the Association.

(e) the right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

(2) Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. Recreational facilities, if any, situated upon the Properties may be utilized by guests of Owners or tenants subject to the rules and regulations of the Association governing said use and as established by its Board of Directors.

C. Restriction on Alienation: Notwithstanding anything contained herein to the contrary, the Association shall not alienate in any way or transfer all or any part of the Common Areas without the prior approval of all holders of outstanding first priority mortgages against any of the Properties that are subject to this Declaration; provided, however, this restriction shall not be applicable to grants of easements for utilities, storm sewer, sanitary sewer, road right of ways and other conveyances for dedication to the public.

5. **ASSOCIATION: MEMBERSHIP AND VOTING RIGHTS:**

A. Membership and Voting: Every Owner of a Lot shall be a member of the Association and shall be entitled to one (1) vote. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

B. Directors During Declarant Control. The directors shall be selected by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant until the Declarant Rights shall cease as set forth in the Declaration or at such earlier date as when, in its discretion, the Declarant so determines. Upon such designation and selection of Declarant by written instrument presented to the meeting at which such election is held, said individuals so designated and selected by Declarant shall be deemed and considered for all purposes Directors of the Association, and shall thenceforth perform the offices and duties of such Directors until their successors shall have been selected or elected in accordance with the provisions of the By-Laws.

Within one hundred twenty (120) days after Declarant Rights shall cease, the Declarant shall call a meeting, as provided the By-Laws for special meetings, to advise the membership of the termination of the Declarant control.

Should any vacancy in the Board of Directors be created in any Directorship previously filled by any person designated and selected by Declarant, such vacancy shall be filled by Declarant designating and selecting, by written instrument delivered to any Officer of the Association, the successor Director to fill the vacated Directorship for the unexpired term thereof.

In the event that Declarant in accordance with the rights herein established, selects any person or persons to serve on any Board of Directors of the Association, Declarant shall have the absolute right at any time, in its sole discretion, to replace such person or persons with another person or persons to serve on said Board of Directors. Replacement of any person or persons designated by Declarant to serve on any Association Board of Directors shall be made by written instrument delivered to any Officer of the Association, which instrument shall specify the name or names of the person or persons to be replaced and the name or names of the person or persons designated as successor or successors to the persons so removed from said Board of Directors. The removal of any Director and designation of his successor shall be effective immediately upon delivery of such written instrument by Declarant to any Officer of the Association.

C. Veto. This Section may not be amended without the express, written consent of the Declarant, as long as the Declarant Rights exists.

So long as the Declarant Rights exists, the Declarant shall have a veto power over all actions of the Board and any committee, as is more fully provided in this Section. This veto power shall be exercisable only by the Declarant, or its successors and assigns, which successors and assigns must specifically take this power in a recorded instrument.

The veto power shall be as follows: No action authorized by the Board of Directors or any committee shall become effective, nor shall any action, policy, or program be implemented until and unless:

(a) The Declarant shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or any committee by certified mail, return receipt requested, or by personal delivery at the address of its Registered Agent, as it may change from time to time, which notice complies as to the Board of Directors meetings and to regular and special meetings of the Directors and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy or program to be implemented by the Board, any committee, or the Association. The Declarant and its representatives or agents shall make its concerns, thoughts, and suggestions known to the members of the subject committee and/or the Board. The Declarant shall have and is hereby granted a veto power over any such action, policy, or program authorized by any committee or Board or the Association or any individual member of the Association if Board, committee, or Association approval is necessary for said action. This veto may be exercised by providing to the Association a notice of veto by certified mail, return receipt requested to the Registered Agent of the Association or any officer or Board member thereof within ten (10) days following the meeting held pursuant to the terms and provisions hereof.

**6. ARCHITECTURAL CONTROL COMMITTEE:**

A. Except for original and initial construction and subsequent modification of improvements by the Declarant on any Lot which such construction is and shall be exempt from the provisions of this provision, no building, wall, fence, landscaping, berm or hedge which act as a fence or privacy inducing structure, pier, dock, ornamentation, or other structure or improvements of any nature shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure and landscaping as may be required by the Architectural Control Committee have been approved in writing by the Architectural Control Committee and any review fee or construction deposit as may be required by the Board shall have been paid.



Each building, wall, fence or other structure or improvements of any nature, together with any ornamentation or landscaping, shall be erected, placed or altered upon the premises only in accordance with the plans and specifications and plot plan so approved. Refusal of approval of plans, specifications and plot plans, or any of them, may be based on any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of said Architectural Control Committee deem sufficient. Any change in the appearance of any building, wall, fence or other structure or improvements and any change in the appearance of the landscaping (excepting the planting of flowers and shrubs indigenous to the area), shall be deemed an alteration requiring approval. The Architectural Control Committee shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph.

B. Within thirty (30) days after receipt of all required information, the Architectural Control Committee shall submit in writing to the owner of the lot a response stating whether or not the requested improvements are approved. Unless a response is given by the Architectural Control Committee within thirty (30) days, the plan shall be deemed approved. The response of the Architectural Control Committee may be an approval, a denial, an approval with conditions or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was inadequate and the thirty (30) day time period for response shall only commence upon the receipt of the requested additional information. Conditional approvals may be granted and if approval with conditions is granted and thereafter construction begins, the construction shall be deemed approved by the owner of the lot of the conditions imposed.

C. Refusal of approval of plans, specifications and plot plans or any of them may be based upon any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of the Architectural Control Committee shall deem sufficient. The Architectural Control Committee shall make the following affirmative findings before any plans are approved:

(1) That the improvements sought to be constructed will not have a negative economic impact on any other lot within the subdivision.

(2) That all required specific buildings standards and other conditions contained within the Restrictive Covenants, By Laws and other subdivision documents have been met.

(3) That the improvements are architecturally compatible with proposed or constructed improvements on other lots within the subdivision.

(4) That the natural features of the lot have been retained to the maximum extent possible.

D. The paint, coating, stain and other exterior finishing colors on all buildings may be

maintained as that originally installed, without prior approval of the Architectural Control Committee, but prior approval by the Architectural Control Committee shall be necessary before any such exterior finishing color is changed.

E. Until such time as the sale of the last numbered lot in the subject property is evidenced by the recordation of a deed therefore, all rights, privilege, powers and authority granted herein to the initial Architectural Control Committee, to whom the specific power to act hereunder is expressly conveyed, shall be exercised by the Declarant, its successors or assigns. The Declarant may assign its powers hereunder to an Architectural Control Committee, but so long as Declarant Control shall exist, the Declarant shall appoint a majority of the Architectural Control Committee. Thereafter, all representatives shall be appointed by the Board of Directors of the Association. Except as set out above, the Architectural Control Committee shall be composed of three (3) owners appointed by the Board and shall serve at the pleasure of the Board.

F. A majority of the Architectural Control Committee may take any action said Committee is empowered to take, may designate a representative to act for the Architectural Control Committee, and may employ personnel and consultants to act for it. In the event of death, disability or resignation of any member of the Architectural Control Committee, the remaining members shall have full authority to designate a successor. The members of the Architectural Control Committee shall not be entitled to any compensation for services performed pursuant to this covenant. The Architectural Control Committee may establish a fee to cover the expense of reviewing plans and related data at the time plans are submitted for review in order to compensate any consulting architects, landscape architects, urban designers or attorneys.

G. Any Owner may appeal the decision of the Architectural Control Committee provided that all parties involved comply with the decision of the Architectural Control Committee until such time, if any, as the Board of Directors amends, or reverses the Architectural Control Committee's decision. Appeals petitions must be legibly written, state the grounds for appeal and be submitted to the Board of Directors within thirty (30) days of the decision of the Architectural Control Committee. The Board of Directors shall act upon the appeal by amending, reversing or confirming the decision of the Architectural Control Committee within thirty (30) days of receipt of the petition. The Board of Directors' decision shall be by majority vote. Any owner must exhaust this avenue of appeal prior to resorting to a court of law or equity for relief.

H. Submissions for approval may be made to the Architectural Control Committee c/o the Association to any of the following:

(1) the address to which an owner is directed to send assessments or dues as appears on the most recent billing statement,

(2) the address of the Association Registered Agent as it is listed in the Office of the Secretary of State, or

(3) at such address as may be provided in writing (on the letterhead of the Association and signed by the managing agent or officer of the Association) to the applicant upon request for instructions regarding submission.

The Association shall have the right to assess any owner for such damage and such charge shall be an assessment against the owner and the Lot and shall be subject to collection as any other regular assessment. The ends of culverts to be capped to prevent erosion.

7. **ASSESSMENTS:**

Section 1. Purpose of Assessments:

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the owners in the Properties and for capital improvements and maintenance of the common areas and any improvements thereon.

Section 2. Creation of the Lien and Personal Obligations of Assessment:

The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed, therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (1) annual assessments or charges;
- (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided;
- (3) to the appropriate governmental taxing authority, a pro rata share of ad valorem taxes levied against the Common Area if the Association shall default in the payment therefor for a period of six (6) months, all as hereinafter provided.

The annual and special assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and costs, and reasonable attorneys' fees (as provided in North Carolina General Statutes Section 6-21.2) incurred by the Association in collecting delinquent assessments shall also be the personal obligation of the person or entity who was the Owner at the time when the assessment became due. The obligation of an Owner for delinquent assessments shall not pass to his successors or assigns in title.

Section 2.1 Registration Fee: In addition to any other fee, charge, assessment or payment which may be due to the Association, the Association shall charge a fee to offset the administrative costs of initial owner documentation and a transfer of ownership information. The initial minimum registration or "set up" and the initial transfer fee shall be \$25.00. The Board may modify the fee to offset actual or anticipated costs associated with the transfer or documentation.

Section 3. Determination of Amount of Assessment:

(1) The initial minimum annual assessment shall be \$ 100.00 per year per lot for 2008 calendar year. The subsequent year assessments will be based upon a budget determined by the operating costs and reserve requirements of anticipated amenities which will become part of the common area of the subdivision and as such the initial minimum assessment does not represent subsequent year assessments to which each lot shall be subject. Assessments shall commence as to each lot beginning on the date of closing from the Declarant to an owner other than the Declarant. So long as Declarant Control exists, the Declarant shall pay no assessments but shall be responsible for any deficit in the operating budget.

(2) Except as otherwise required by statute, within thirty (30) days after adoption of any proposed budget for the planned community, the executive board shall provide to all the lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The executive board shall set a date for a meeting of the lot owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the lot owners in the association or any larger vote specified in the declaration rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the lot owners shall be continued until such time as the lot owners ratify a subsequent budget proposed by the executive board.

(3) The due dates shall be established by the Board of Directors of the Association and the Board of Directors shall have the authority to require the assessment to be paid in pro-rata monthly installments, quarterly and semi-annually as well as annually. The Association shall, upon demand, and for a reasonable charge furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified lot have been paid.

Section 4. Collection of Assessments:

(1) The first pro rata payment of the balance of the current year assessment shall be due and payable beginning on the day of closing. In addition thereto, at closing, the Declarant shall cause to be collected from the purchaser, the initial "set up" or documentation fee, and an amount equal to two-twelfths of the then current minimum annual assessment for said lot. This shall be used for the sole purpose and use as a working capital fund.

(2) If an additional property owner's association(s) is established on any property which is or may become subject to this declaration by a supplemental declaration hereto, then, notwithstanding anything contained therein to the contrary, all assessments made by and for any such association shall be paid to the **ASHBURY PARK COMMUNITY SERVICES ASSOCIATION, INC.**, for bookkeeping and record keeping purposes, and shall then be transferred as necessary to the appropriate association. **ASHBURY PARK COMMUNITY SERVICES ASSOCIATION,**

INC. may charge a reasonable fee for its record keeping services and deduct same from assessments collected.

Section 5. Special Assessments: In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for any purpose. Any such assessment for any use other than insurance premiums, any uninsured loss or insurance deductibles, shall have the assent of fifty-one percent (51%) of the votes of the members of each class who are voting in person or by proxy at a meeting duly called for this purpose. Special Assessments for insurance premiums, any uninsured loss or insurance deductibles shall not be limited by member approval.

Section 6. Remedies for Non-Payment of Assessments: Any assessment which are not paid when due shall be delinquent. The assessment shall bear interest from the due date at the rate established by the Board of Directors of the Association, or if not set by the Board, at the highest rate allowed by law, together with such late fees as may be set by the Board. The Association may file a lien of record against any lot where there remains an assessment unpaid for a period of thirty (30) days or longer. Said lien shall be filed in the office of the clerk of superior court of Onslow County in a manner provided therefor by Article 8 of Chapter 44 of the North Carolina General Statutes. No Owner may waive or otherwise escape liability for the assessments provided for herein by the non-use of the Common Area or abandonment of his dwelling unit or site.

The Association may bring an action at law against the Owner personally obligated to pay any assessments and interest. Costs and reasonable attorneys' fees for the prosecution of any such action shall be added to the amount of such assessment. In the event of such action at law and in the further event that such action results in a judgment being entered against the Owner and in favor of the Association, then, and in that event, the Association shall collect on such judgment in such manner and to the extent provided and permitted by the laws of the State of North Carolina.

The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Chapter 45 of the North Carolina General Statutes. All fees, charges, late charges, fines, and interest are enforceable as assessments.

In any foreclosure action brought under the power of sale provisions, the Association shall be deemed to be the holder and owner of the obligation secured by this Declaration. The Registered Agent of the Association shall be the Trustee for all purposes of the foreclosure proceeding and the Association shall have the power to appoint a substitute trustee if for any reason the Association desires to replace the trustee, and the said substitute trustee shall succeed to all rights, powers and duties thereof. The Association shall request of the trustee to sell the land subject to the lien at public action for cash, after having first given such notice and advertising the time and place of such sale in such manner as may then be provided by law for mortgages and deeds of trust, and upon such and resales and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey to the purchaser in as full and ample manner as authorized by Chapter 45. The

Trustee shall be authorized to retain an attorney to represent him in such proceedings. The proceeds of the Sale shall, after the Trustee retains his commission, together with any addition attorney's fees incurred by the Trustee, be applied to the costs of the sale, including but no limited to costs of collection, taxes, assessment, costs of recording, service fees, and incidental expenditures, the amount due on any note secured by the property, and any advancements made by the Association in the protection of the security.

Section 7. Subordination of the Lien to Mortgages: The lien of the assessments 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 mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become 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.

8. **GENERAL RESTRICTIONS**: [Applicable to all properties except as set out in an Amendment to Master Declaration which may add property to the Project Area, or as otherwise amended hereafter.]

A. Section 1. Residential Use (SF): All lots shall be used exclusively for residential purposes of a single family (which may include separate living quarters for one or more members of the owners' family or relative). No business, trade, garage sale, moving sale, rummage sale, or similar activity shall be conducted upon a lot without the prior written consent of the Board. An Owner or occupant residing in a dwelling on a lot may conduct business activities within the dwelling so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the dwelling; (ii) the business activity conforms to all zoning requirements for the lot; (iii) the business activity does not involve regular visitation of the dwelling or lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the subdivision; and (iv) the business activity is consistent with the residential character of the subdivision and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the subdivision, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

The leasing of a dwelling or lot shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the

Properties or its use of any lots which it owns within the subdivision, including the operations of a timeshare or similar program.

Section 2. Allowable/Prohibited Structure: No structure shall be erected, altered, placed or permitted to remain on any Lot other than a single, one family dwelling not to exceed three stories in height, (which may include separate living quarters for one or more members of the owners' family or relative), which may contain living quarters for occupancy by domestic servants of the lot occupant only, and such provided that the same are constructed in line with general architectural design and construction standards used as the dwelling itself. The minimum size for the main level must be 700 square feet. The total square footage for any home for multiple levels must be 1500 square feet.

This covenant shall not be construed as prohibiting the use of a new dwelling as a model home for sales/rental purposes.

Section 3. The provisions of this Paragraph A shall apply to all properties which are hereafter made subject to this Declaration unless specific provisions relating thereto are included in a Supplemental Declaration.

**B. As to that property designated as "Development Area" and set out in Exhibit A : STORMWATER RUNOFF: General Provisions:**

(1) The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8071001, as issued by the Division of Water Quality under NCAC 2H.1000.

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

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

(4) The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality.

(5) Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality.

(6) The maximum allowable built-upon area per lot is 9,215 square feet. This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area

includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, and coquina, but does not include raised, open wood decking, or the water surface of swimming pools.

(7) In the case of a lot within CAMA's regulated AEC, where the Division of Coastal Management calculates a different maximum allowable built-upon area for that lot than is shown herein, the governing maximum built-upon area for that lot shall be the most restrictive of the two.

(8) This project proposes a curb outlet system. Each designated curb outlet swale shown on the approved plan must be maintained at a minimum of 100' long with 5:1 (H:V) side slopes or flatter, have a longitudinal slope no steeper than 5%, carry the flow from a 10 year storm in a non-erosive manner, and maintain a dense vegetated cover.

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

(10) Each lot will maintain a 30' wide vegetated buffer between all impervious areas and surface waters.

(11) All roof drains shall terminate at least 30' from the mean high water mark of surface waters.

(12) Filling in, piping or altering any designated 5:1 curb outlet swale associated with the development is prohibited by any persons.

Special Provisions: **COMPLIANCE WITH WETLAND & BUFFER REGULATIONS.**

In accordance with Title 15 A NCAC 2H .0500, the following shall apply to ASHBURY PARK all sections and lots as shown on plans Sheets EC1 - EC6 prepared by Coastal Site Design, PC titled "Sedimentation and Erosion Control and Stormwater Management Plan for Ashbury Park" dated September 26, 2007.

A portion of this lot has been determined to meet the requirements for designation as a wetland, stream or protected stream buffer. Any subsequent fill or alteration of this area shall conform to the requirements of the state rules adopted by the State of North Carolina in force at the time of the proposed alteration. The intent of this provision is to prevent additional wetland, stream or buffer filling or draining, so the property owner should not assume that a future application for filling or draining would be approved. The property owner shall report the name of the subdivision in any application pertaining to said rules. This covenant is intended to ensure continued compliance with all rules adopted by the State of North Carolina and therefore the State of North Carolina may



enforce benefits. This covenant is to run with the land and shall be binding on all Parties and all persons claiming under them.

Nothing in these covenants shall prohibit Declarant from exceeding density limits through permits properly obtained through State Stormwater Rules, which may include engineered systems. Any of the provisions of this instrument may be amended, modified or terminated to comply with stormwater rules now or hereafter adopted by the State of North Carolina by an instrument in writing executed by Declarant, its successors and assigns.

Special Conservation Provisions: The areas shown on the recorded plat recorded in Map Book 55, Page 141, Onslow County Registry, as conservation areas shall be maintained in perpetuity in their natural or mitigated condition. No person or entity shall perform any of the following activities on such conservation area:

- 1) fill, grade, excavate or perform any other land disturbing activities
- 2) cut, mow, burn, remove, or harm any vegetation
- 3) construct or place any roads, trails, walkways, buildings, mobile homes, signs, utility poles or towers, or any other permanent or temporary structures
- 4) drain or otherwise disrupt or alter the hydrology or drainage ways of the conservation area
- 5) dump or store soil, trash, or other waste
- 6) graze or water animals, or use for any agricultural or horticultural purpose

This covenant is intended to ensure continued compliance with the mitigation condition of a Clean Water Act authorization issued by the United States of America, U.S. Army Corps of Engineers, Wilmington District, Action ID, and therefore may be enforced by the United States of America. This covenant is to run with the land, and shall be binding on the Owner, and all parties claiming under it.

Notwithstanding any provision to the contrary herein, however, the provisions of this section cannot be amended without the express written consent of the U. S. Army Corps of Engineers, Wilmington District.

C. Nuisances: No noxious, offensive, or illegal activity shall be carried on or conducted upon any Lot nor shall anything be done on any Lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood. All Lots, whether occupied or unoccupied, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted to remain on a Lot. No automobile, other vehicle(s), motorcycle(s) or other similar items shall be repaired or placed "on blocks" or stands except in an enclosed garage. Declarant, or Association, its successors or assigns, reserves the right to enter upon and cut grass, weeds, or undergrowth on any lot or easement, but shall be under no obligation to do so. The Declarant or Association may contract for, and assess to owner, any maintenance necessary to enforce his covenant.

D. Animals: Section 1: Except as specifically allowed elsewhere herein, no animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that household pets may be kept provided that said pet shall not be kept for breeding or commercial purposes. Any such household pet shall not be allowed off the Lot of the Owner of said pet unless said pet is attended and on a leash. Any pet which is not kept inside a home shall be provided a fenced in area or cage in the rear yard of a lot. Owners shall be solely and absolutely liable for the acts of any pet kept on their Lot. The following dog breeds shall be specifically prohibited: Rottweiler, Doberman, Mastiff, Boxer, Bulldog, Pit Bulls, Chows and wolf hybrids. In addition, the Association shall specifically have the power and responsibility to designate, based upon temperament, size and/or nature or tendencies, from time to time a list of breeds of animals which shall be prohibited on any lot.

The Owner is responsible to pick up, remove all solid wastes of their pets and to dispose of the solid waste in an Association approved container and in such manner as directed by the Association.

In addition to the above, inherently dangerous animals shall be prohibited. "Inherently dangerous animal" means any nondomesticated animal for which evidence demonstrates that unprotected human contact with the species can result in a life threatening injury or disease to those who come in contact directly or indirectly. The following are examples of inherently dangerous animals, but shall not be deemed an exclusive listing: Bats, wolves and wolf hybrids, lions, tigers, cheetahs, jaguars, cougars, leopards, snow leopards, clouded leopards, all hyena species, all bear species, all apes, Old and New World monkeys, and prosimians, all elephant species, rhinoceroses, hippopotamus, gaur, banteng, kouprey, anoa, Cape buffalo, all Crocodilia, – all species, aHelodermatidae – all species, green anaconda, Amethystine python, African rock python, and Reticulated python and all venomous snakes.

E. Garbage and Refuse Disposal: Except for construction, disposal and stockpiling of material by the Declarant, no lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be burned or disposed of on any Lot and shall be kept except in sanitary containers approved by the Architectural Control Committee. All equipment for the storage prior to disposal of such material shall be kept in a clean and sanitary condition. The placement of containers shall be approved by the Architectural Control Committee and, in any event, shall be kept in an enclosed area not subject to view from any person, from any direction. The Declarant and Association reserves the right for itself, its successors and assigns, to contract for garbage collection services for each lot in the subdivision and the lot owner shall be responsible for the payment of such garbage services to the company providing the same, or the Association may make such a common expense or expense to a particular owner.

F. Exterior Lights: No mercury vapor or similar wide area lighting similar to street lights shall be allowed without prior Architectural Control Committee approval.

G. Sight Distance at Intersections: No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

H. Mailboxes: Multiple unit mailboxes may be constructed by the Declarant for the use of a number of owners within certain areas as determined by the Declarant and postal service. No mailboxes shall be installed on any lot or common area without first obtaining approval by the Architectural Control Committee. Application shall be made thereafter to the Architectural Control Committee prior to installation or replacement for approval as to the style, design, color and location. By accepting a deed to any subject property, owner gives the Architectural Control Committee the right to remove any nonapproved mailbox in a reasonable manner; all costs for same shall be paid by owner, and all damages against the Architectural Control Committee are waived.

I. Signs: For a period of three (3) years from the recording of this document, no sign, billboard, or other advertising of any kind, including without limitation "professionally prepared "for sale" and "for rent" signs, shall be placed or erected on any Lot.

After three (3) years, no sign, billboard, or other advertising of any kind, including without limitation "professionally prepared "for sale" and "for rent" signs, shall be placed or erected on any Lot, right of way or Common Area save and except a professionally prepared "for sale" or "for rent" sign not to exceed six (6) square feet in size. Although approval by the Architectural Control Committee is not required prior to the display of such signs, the Architectural Control Committee may itself remove, have removed, or require the removal of any such sign which in its opinion would not otherwise be allowed under Paragraph 6 of this Declaration. A valid easement shall exist on any Lot for such removal by the Architectural Control Committee or its agents.

Provided, however, nothing shall prohibit or limit in any manner "construction" signs designating the job site and builder which may be placed upon a Lot during the period of the construction of a residential dwelling on the Lot but must be immediately removed upon final completion of such construction. Notwithstanding the above, any additions to the Project Property in the Development area may be further limited in regard to signs, billboards or advertising as set out in any Supplemental Declaration.

Nothing herein shall prohibit any sign erected by the Declarant or its assigns.

J. Antennas: There shall be no exterior antennas of any kind for receiving and/or sending of T.V., radio or other signals unless same have first been approved by the Architectural Control Committee.

K. Reserved.

L. Vehicles, Boats, Storage, Travel Trailers, etc: No vehicle without current inspection sticker, vehicle over 7000 pounds empty weight, motor homes, or bus shall be parked overnight on any lot except in an enclosed garage; provided, however, guests of an owner may so park such vehicle for a period not to exceed seven (7) days each calendar year. A pleasure boat or camper trailer on its trailer may be parked and raw firewood, bicycles, motorcycles, or other items may be stored only on that part of any lot away from the street lying beyond the front line of the house so that it is not viewable from any street. No automobile, other vehicle(s), motorcycle(s) or other similar items shall be repaired or placed "on blocks" or stands except in an enclosed garage.

M. Reserved.

N. Trees: Except as to development or construction by Declarant, or as may be approved by the Architectural Control Committee, no tree four inches (4") in diameter at any location on said tree or ten feet (10') in height shall be cut, removed or intentionally damaged on any Lot unless first approved by Architectural Control Committee.

O. Swimming Pools: Outdoor swimming pools, hot tubs, jacuzzis, and other similar facilities may be located on a lot only after the Architectural Control Committee approval, and shall be screened and fenced. All such improvements shall be subject to approval of and compliance with all governmental laws and regulations.

P. Clotheslines: Exterior clotheslines shall be prohibited, except those located in the backyard, but same should be located with consideration for limiting the view of the clothesline from a street. Location may be subject to rule or regulation by the Association and relocation may be required at anytime to limit the view of a clothesline from a street.

Q. Fence Minimum Requirements: Architectural Control Board review requirements must be met prior to construction of any fence. No plastic mesh, or wire fences permitted, except for temporary structures. The term fence shall include but not be limited to, a wall, fence, landscaping, berm, or hedge which act as a fence or privacy or security inducing structure.

9. **STREET LIGHTING AGREEMENT:** The Declarant and Association reserves the right to subject the real property to a contract with an electric utility company for the installation of underground electric cables and/or the installation of street lighting, either or both which may require an initial payment and/or a continuing monthly payment to an electric utility company or Association by the owner of Lot.

10. **RESTRICTION ON FURTHER SUBDIVISION:** No resubdivision of any single Lot shall be allowed,, except that nothing contained herein shall prohibit the owner of a Lot from conveying by deed or easement a portion of a Lot to an adjoining Lot owner for the purpose of curing

an encroachment or setback violation. Further, provided, however, that the Declarant, its successors or assigns, reserves the right to make minor boundary line adjustments between lots so long as said adjustment does not exceed ten percent (10%) of the total area of a given lot.

Nothing contained herein shall prohibit conveyance of more than one Lot, or portions of contiguous Lots, as long as the resulting Lot or Lots are greater in size than those originally subdivided. Upon the recombination of any Lots to reduce the total number of allowable building Lots, for purposes of membership in the Association and for purposes of the payment of dues and assessments, but the combining of lots shall not reduce the number of lots for the purpose of assessments and the assessments shall be pro rated based upon the area of the recombined lots.

Any recombined or resubdivided lot shall be restricted to the construction thereon of one Living Unit per redivided Lot. It is the intention that the recombining of lots will decrease the number of homes within the property subject to this declaration, but that in no event shall the maximum number of homes which can be constructed within the property subject to this declaration increase.

Furthermore, should any Lot be determined by Declarant to be unbuildable, and should such Lot then be deeded to the Association as Association Property, or dedicated by Declaration as recreation or open space area for the benefit of the Association, all by document duly recorded in the office of the Register of Deeds of Onslow County, there shall be no further dues or assessments owed from the date of such recordation; however, any dues prepaid shall not be reimbursed.

#### 11. EASEMENTS:

A. Easements: There is hereby reserved by the Declarant, its successors and assigns, and for the benefit of the Association, the easements, for utility, sight and buffer areas as well as any other easements, as shown on the recorded plats of the Parcels or included within the Supplemental Declarations pertaining to the Parcels. Said easements may be used for the purposes shown on the plat and, in addition thereto, ingress, egress and regress and for the purpose of installing, maintaining, repairing and replacing all utility service lines and systems including, but in no way limited to, those for water, sewer, gas, telephone, electricity and cable television.

In addition to the above, there is hereby reserved for the benefit of each owner and the Association, an easement over each parcel or lot of each other owner a blanket easement and right of way on, over and under the ground within a parcel or lot for the purpose of installing, construction and the exercise of Declarant Rights, and maintaining, repairing and replacing all utility service lines and systems including, but in no way limited to, those for water, sewer, gas, telephone, electricity, cable television and garbage or refuse collection and pick up.

B. Easement to Correct Drainage: For a period of two (2) years from the date of conveyance of the first Lot in a Parcel, the Declarant reserves a blanket easement and right of way on, over and under the ground within a Parcel to maintain and correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly

includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary. Following such action the Declarant shall restore the affected property to its original condition as near as practical. The Declarant shall give reasonable notice of its intent to take such action to all affected Owners, unless in the opinion of the Declarant an emergency exists which precludes such notice. At the expiration of such two (2) year period, said easement to correct drainage shall automatically be held by the Association.

C. Encroachments: In the event any portion of a Common Area encroaches upon any Living Unit or any Living Unit encroaches on a Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for the encroachment and for the maintenance of same shall exist so long as the encroachment exists.

D. Association Maintenance: The Board of Directors of the Association and the Architectural Control Committee, acting through the Association, its officers, agents, servants and/or employees shall have the right of unobstructed access at all reasonable times to all properties as may be reasonably be necessary for maintenance.

E. Common Areas: Easements are also reserved over those portions of the Common Areas, if any, that may be necessary or required to accommodate overhanging eaves or other cantilevered construction which may encroach upon the common area or the air and light space above such common area.

F. Grant to Others: The Declarant or Association may grant permits, licenses, and easements over any common area or utility easement reserved elsewhere for utilities, roads or other purposes reasonably necessary or useful for the Project maintenance or operation of the Project.

12. VARIANCES: The Association may allow reasonable variances and adjustments of the restrictions set forth in this Declaration and as set forth on any recorded plat in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided, however, that any such variance granted must be done in conformity with the intent and purposes of the general development scheme and provided also that in every instance such variance or adjustment shall not materially be detrimental or injurious to other property or improvements within the Properties.

13. COMPLIANCE, ENFORCEMENT AND REMEDIES:

A. (1) Default and Remedies. A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Declaration, the Association Bylaws, the Association Articles of Incorporation, or the rules and regulations, as the same may be amended from time to time, by any Owner or Occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and

penalties as set in the Bylaws, sums due for damages, an injunction, or any combination thereof, which relief may be sought by the Association, an aggrieved Owner, or by any person or class of persons adversely affected. Also, if any Owner fails to perform any obligation under the Declaration, the Bylaws, the Articles of Incorporation or such rules and regulations, then the Association may, but is not obligated to, perform the same for the Owner's account, and for such purpose may enter upon his lot or dwelling, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may collect all such sums against the lot owned by such defaulting Owner.

(2) Suspension of Rights. The Association also shall be entitled to suspend the right of a defaulting Lot Owner to vote as a member of the Association until the default is cured and may suspend the voting rights of and right to use of the recreational facilities of a Owner during any period in which such Owner shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended, after notice of hearing as set forth in the By Laws, for infraction of published rules and regulations; but provided, however, that the right of an owner to ingress to and egress from his Lot shall not be impaired;

(3) Remedy of Abatement in Additional to Other Remedies. In the event a Owner fails to effect the cure specified by the Board where the default is a structure, thing, or condition existing in or on the premises of the Owner's Lot, the Board, or its duly authorized representative, shall have the right to enter upon the premises of the Owner's Lot in which, on which, or as to which, such default exists, and summarily to abate and remove, at the defaulting Owner's expense (and collect the costs as if an assessment), the structure, thing, or condition constituting the default, and the Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of any manner of trespass.

(4) Injunction. The Association, an aggrieved Owner, or by any person or class of persons adversely affected, is entitled to seek relief for any such default or failure and may obtain a temporary restraining order, injunction or similar relief, without first using the procedure established herein, if such default or failure creates an emergency or a situation dangerous to persons or property.

(5) Fine. Any owner who shall violate the Declaration, By-laws, the articles or the Rules and Regulations may be fined in an amount as set out in the By Laws for each day of such violation. Such fine shall be enforced and collected as an assessment. Prior to the implementation of any fine, or the suspension of voting rights for the infraction of published rules and regulations, a hearing pursuant to the procedure set out in the By Laws.

(6) Recovery of Attorneys' Fees and Costs. In any proceeding arising because of an alleged default by a Owner, the person, class of persons or Association bringing an action against an alleged defaulting Owner shall be entitled to recover the costs of such proceeding and such

reasonable attorneys' fees and costs as may be allowed by the Court, with interest thereon at the highest rate allowed by law.

(7) Non Waiver. The failure of the Association or of any Owner thereof to enforce any terms, provision, right, covenants or condition that may be granted by the Declaration, these Bylaws, the Articles, the rules and regulations, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a Owner or other person to enforce such term, provision, right, covenants, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

(8) Recovery of Fines and Expenditures. Any fine, costs or expenses hereunder shall be recovered by the Association as if an assessment lien.

B. REMEDIES EXTENDED TO THE STATE OF NORTH CAROLINA: To ensure that this subdivision is maintained consistent with the laws of the State of North Carolina, and its political subdivision, the State of North Carolina and any political subdivision thereof, are specifically empowered to take such acts necessary by and through its officers to enforce any of these covenants against an owner or the Association. The State of North Carolina and any political subdivision thereof, are specifically made a beneficiary of these covenants.

C. REMEDIES EXTENDED TO OTHER REGULATORY AGENCIES: These restrictive covenants include provisions that are intended to ensure continued compliance with the mitigation condition of a Clean Water Act authorization issued by the United States of America, U.S. Army Corps of Engineers, Wilmington District, Action ID 200301016, and therefore may be enforced by the United States of America. This covenant is to run with the land, and shall be binding on the Owner, and all parties claiming under it.

14. RIGHTS OF MORTGAGEES: A holder or insurer of a mortgage, upon written request to the Association (such request to state the name and address of such holder or insurer and the description of secured properties) will be entitled to timely written notice of:

A. Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage.

B. Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot upon which it holds a mortgage.

C. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

D. Any proposed amendment to the project instruments effecting a change in the



boundaries of any Lot, ownership of Common Elements, if any, the number of votes in the Association pertaining to any Lot or any proposed change in the restrictions on the properties.

**15. INSURANCE:**

A. Common Areas: The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, for all insurable improvements on the Common Area. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its members or agents. The public liability policy shall have at least a One Million and no/100 (\$1,000,000.00) Dollar single person limit as respects bodily injury and property damage, a Three Million and no/100 (\$3,000,000.00) Dollar limit per occurrence, and a Five Hundred Thousand and no/100 (\$500,000.00) Dollar minimum property damage limit.

Premiums for all insurance on the Common Area shall be common expenses of the Association. This policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total. Cost of insurance coverage obtained by the Association for the Common Area shall be included in the regular assessment.

B. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each owner covenants and agrees with all other Owners and with the Association that each Owner shall carry homeowners or fire insurance policy which shall include public liability and blanket all-risk casualty insurance on his Unit(s) and structures constructed thereon. Owner shall provide a copy of the Declaration page of the policy to Association at such time(s) as the Association may direct. Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction of structures situate upon his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed, Owner shall elect whether to rebuild within sixty (60) days of the loss. If Owner determines not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris within ninety (90) days of loss and return it to substantially the natural state in which it existed prior to the beginning of construction. If Owner fails to so clear the Lot within ninety (90) days of the loss, the Declarant or Association may do so and the cost shall be assessed against the Owner of the Lot.

16. **AMENDMENT:**

A. Declarant may amend this Declaration in accordance with this Declaration to add additional property to this Declaration.

B. These restrictions are subject to being altered, modified, canceled or changed at anytime as to said subdivision as a whole or as to any subdivided lot or part there by written document executed by Declarant or their successors in title and by the owner of not less than fifty-one percent (51%) of the subdivided lots or parts of said subdivision to which these restrictions apply, and recorded in the office of the Register of Deeds of the County in which this Declaration is recorded.

C. The Declarant, without the consent or approval of any other Owner, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made by, guaranteed by, sponsored by or insured by a governmental or quasi-governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale in such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of the Property, including, without limitation, ecological controls, construction standards, aesthetics and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration (VA), U. S. Department of Housing and Urban Development (HUD), the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association, requiring an amendment as a condition of approval, or suggesting an amendment, shall be sufficient evidence of the approval of such amendment of VA, HUD and/or such corporation or agency and permit Declarant to amend to accord with such letter. No amendment made pursuant to this Section shall be effective until duly recorded in the Office of the Court for Onslow County, North Carolina.

D. Modification of Stormwater Provisions: Any of the provisions relating to Stormwater or other Environmental Restrictions may be modified or terminated to comply with stormwater rules now or hereafter adopted by the State of North Carolina by an instrument in writing executed by Declarant, its successors and assigns, without joinder of any other party or owner.

17. **GENERAL PROVISIONS:**

A. Duration: The covenants and restrictions set forth herein shall run with and bind the Properties for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall automatically be extended for successive ten (10) year periods unless otherwise terminated by a vote of eighty percent (80%) of the then record Owners of all Lots within the Properties.

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

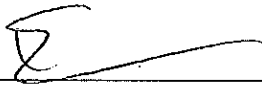
C. Captions: The captions used in this Declaration are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Declaration.

D. Construction: Whenever the context so requires, the use herein of any gender shall be deemed to include the plural and the plural shall include the singular.

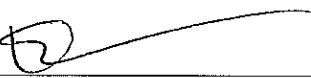
E. Litigation: No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the membership and a majority of the Board of Directors. This Section shall not apply, however to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of personal assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the Declarant or is approved by the percentage votes and pursuant to the same procedures necessary to institute proceedings as provided above.

IN WITNESS WHEREOF, as the above date, Grantor (whether person, corporation, limited liability company, general partnership, limited partnership, or other entity) has signed this instrument in the ordinary course of business, by the signature(s) below if its duly authorized representative(s), as the act of such entity.

**ASHBURY PARK, INC.**

By:   
\_\_\_\_\_  
DAVID DEMOSS, PRESIDENT

**DEMCO BUILDERS, INC.**

By:   
\_\_\_\_\_  
DAVID DEMOSS, PRESIDENT

NORTH CAROLINA  
COUNTY OF ~~ONSLOW~~ Carteret

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: DAVID DEMOSS, PRESIDENT OF ASHBURY PARK, INC.

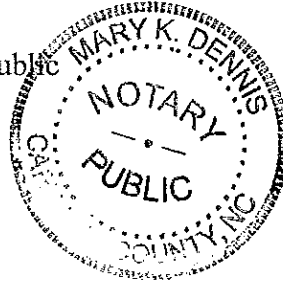
Date: 4-22-08

Mary K. Dennis  
(Official Signature of Notary)

Mary K. Dennis, Notary Public  
(Notary's printed or typed name)

(Official Seal)

My commission expires: 6-24-2012



NORTH CAROLINA  
COUNTY OF ~~ONSLOW~~ Carteret

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: DAVID DEMOSS, PRESIDENT OF DEMCO BUILDERS, INC.

Date: 4-22-08

Mary K. Dennis  
(Official Signature of Notary)

Mary K. Dennis, Notary Public  
(Notary's printed or typed name)

(Official Seal)

My commission expires: 6-24-2012

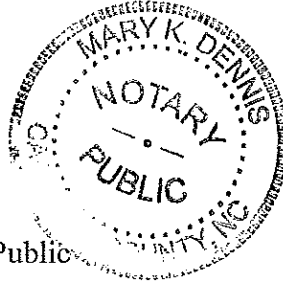


EXHIBIT A (DEVELOPMENT AREA)

Being all of that 380.27 acre tract as shown on the map entitled, "Boundary Survey showing property of BLUE RIDGE LAND COMPANY, Richlands Township, Onslow County, NC", dated January 19, 2001, prepared by John L. Pierce & Associates, P.A. and recorded in Map Book 40, Page 162, Slide K-868, Onslow County Registry.

Less and except Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30 and 31 as shown on a map entitled, "Final Plat Showing FOX CROSSING, Richlands Township, Onslow County, NC" dated April 25, 2001, prepared by John L. Pierce & Associates, P.A. and recorded in Map Book 41, Page 53, Slide K-1000, Onslow County Registry; and

Less and except Lots 36, 37 and 39 as shown on a map entitled "LOTS PREVIOUSLY RECORDED IN MB 41 PG 53) RECOMBINATION SURVEY FOR LOTS 36, 37, 38 AND 39, FOX CROSSING, Richlands Township, Onslow County, NC", dated 7-8-02 to 7-12-02, prepared by Gairy Canady Land Surveying and recorded in Map Book 43, Page 59, Onslow County Registry; and

Less and except Lots 32, 34 and 35 as shown on a map entitled ("LOTS PREVIOUSLY RECORDED IN MB 41 PG 53) RECOMBINATION OF 5 LOTS (27, 32, 33, 34 AND 35) INTO 3 LOTS, FOX CROSSING, Richlands Township, Onslow County, NC", dated 7-8-02 to 8-6-02, prepared by Gairy Canady Land Surveying and recorded in Map Book 43, Page 90, Slide K-1517, Onslow County Registry; and

Less and except that 20.00 acre tract of land as shown on a map entitled, "BLUE RIDGE LAND COMPANY" dated 1/14/03, prepared by Gairy Canady Land Surveying and recorded in Map Book 44, Page 35, Slide K-1702, Onslow County Registry.

Less and except Lots 12, 13, 14, and 18 as shown on a map recorded in Map Book 46 at Page 175, Slide L-317, Onslow County Registry.

Less and except Lot 38 as shown on a map entitled ("LOT PREVIOUSLY RECORDED IN MB 43 PG 59) RECOMBINATION SURVEY FOR LOT 38, FOX CROSSING" dated 12/3/02, prepared by Gairy Canady Land Surveying and recorded in Map Book 43, Page 220, Slide K-1647, Onslow County Registry.

**EXHIBIT A-1 (PROJECT AREA)**

BEING all of that property as shown on that plat entitled "ASHBURY PARK, SECTION I" as recorded in Map Book 55, Page 54 of the Onslow County Public Registry.

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R15057 rev 100407fwe rev 100807fwe\101707dh fwe 102407fwe 102507fwe rev 110607 fwe\110707dh  
fwe 020608fwe rev fwer 022208 rev 031908fwe rev 040908fwe

Handwritten signature: Frank

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Recorded: 05/08/2008 at 12:14:48 PM  
Fee Amt: \$26.00 Page 1 of 5  
Onslow County, NC  
Maryland K. Washington Reg. of Deeds  
BK 3062 PG 499-503

Prepared by: FRANK W. ERWIN, ATTORNEY  
Board Certified Specialist in Real Property Law- Residential Transactions  
Erwin, Simpson & Stroud, PLLC Attorneys  
825 Gum Branch Road, Suite 115  
Jacksonville, NC 28540  
910 455 1800

**Index in the Grantor Index:**  
Ashbury Park  
Ashbury Park Subdivision  
Ashbury Park, Inc.  
Ashbury Park Architectural Control Committee  
Ashbury Park Community Services Association, Inc.  
Demco Builders, Inc.

NORTH CAROLINA  
ONSLow COUNTY

AMENDMENT TO MASTER DECLARATION  
OF RESTRICTIVE COVENANTS OF  
ASHBURY PARK

THIS AMENDMENT TO MASTER DECLARATION OF RESTRICTIVE COVENANTS OF BROOKSTONE, made this the 8<sup>th</sup> day of MAY, 2008, by ASHBURY PARK, INC., a North Carolina Corporation of New Hanover County, North Carolina; and DEMCO BUILDERS, INC., a North Carolina Corporation, (collectively referred to as "Declarant");

ERWIN, SIMPSON & STROUD Attorneys, P.L.L.C. - Telephone: (910) 455-1800  
825 Gum Branch Road, Suite 115, Jacksonville, NC 28540

Whereas, the Declarant has heretofore caused to be recorded a Master Declaration of Restrictive Covenants in Book 3053, Page 75, Onslow County Registry; and

WHEREAS, the Master Declaration as above recorded and originally published expressly allowed the amendment of said Restrictive Covenants according to Sections 16 and 17 thereof; and

WHEREAS, the Declarant has desires to amend the Restrictive Covenants as set out below herein;

**NOW, THEREFORE**, the Declarants do hereby amend the aforesaid Restrictive Covenants recorded in Book 3053, Page 75, Onslow County Registry, as follows:

1. Paragraph 1. **DEFINITIONS:** B: "Common Area" shall be deleted in its entirety and the following shall be inserted in lieu thereof:

"Common Area" shall mean all real property owned by the Association, if any, for the common use and enjoyment of the Owners and shall specifically include any streets conveyed to the Association which have not yet been accepted by the North Carolina Department of Transportation.

2. An additional and new paragraph shall be inserted to be Paragraph 4.1 as follows:

**4.1. ASSOCIATION/ STREETS/ROADS:**

Section 1. Declarant or declarant's successors in interest shall cause to be formed an Association as a not for profit corporation pursuant to Chapter 55A of the North Carolina General Statutes, prior to the conveyance of any property to the Association.

Section 2. The purpose of the association and any assessments imposed by the association shall be as set out elsewhere in this Declaration and shall specifically include the obligation to maintain in passable condition all roads and streets within the subdivision that may hereinafter be transferred to the Association, until and unless the streets are dedicated and accepted by the North Carolina Department of Transportation. The non-state maintained road(s) allowed under the Onslow County Subdivision Regulations and which are a part of this subdivision have been designed and will be built to the standards of said Ordinance. It is the intention of the Declarant to dedicate the streets to the State of North Carolina Department of Transportation or a political subdivision of the State of North Carolina or a governmental entity or authority for ownership and maintenance. Prior to that time, then in accordance with these covenants, streets within the subdivision shall be maintained by the Association until such time as maintenance is assumed by the State of North Carolina. In the event dedication is not allowed or accepted, streets within the subdivision shall be maintained by the Association. The obligation of the



Homeowners Association to maintain the streets and roads in the subdivision shall continue until such time as the North Carolina Department of Transportation has accepted said roads into its statewide system.

Section 4. Upon the acceptance of the subdivision streets by the North Carolina Department of Transportation, the Association shall be dissolved, unless the Association has been conveyed other property or unless a majority of the members vote, at a Special Meeting of the Association, to not dissolve the Association.

Section 5. Notwithstanding anything to the contrary contained herein, the Declarant shall retain the right and authority and the Association and all owners of lots subject to this Declaration, hereby grant authority to the Declarant and its assigns, the right and power to act on their behalf for the purpose of and in furtherance of the dedication of streets in this subdivision. The Association and lot owners agree that those streets and rights of ways shown on the recorded plats referred to in this Declaration or any amendment hereto may, without further approval or the joinder of the said lot owners, be dedicated to the State of North Carolina Department of Transportation or any political subdivision of the State of North Carolina or any governmental entity or authority created for by governmental action for the purpose of, but not limited, holding title to such property for the purpose of roads, streets or utilities.

The Association and the lot owners also agree that any dedication of the streets may be undertaken and may be effected by the Declarant and/ or its assigns. Such act of the Declarant and/or its assigns, shall have the effect to dedicate those streets and rights of ways shown on the recorded plats referred to in this Declaration or any amendment hereto may, without further approval or the joinder of the Association or said lot owners.

3. INCORPORATION BY REFERENCE: All of the terms, conditions, provisions and rights reserved by the Declarant as set forth in the Master Declaration as recorded in Book 3053, Page 75, , Onslow County Registry, are incorporated herein by reference.

IN WITNESS WHEREOF, as the above date, Grantor (whether person, corporation, limited liability company, general partnership, limited partnership, or other entity) has signed this instrument in the ordinary course of business, by the signature(s) below if its duly authorized representative(s), as the act of such entity.

**ASHBURY PARK, INC.**

By: 

\_\_\_\_\_  
DAVID DEMOSS, PRESIDENT

ERWIN, SIMPSON & STROUD Attorneys, P.L.L.C. - Telephone: (910) 455-1800  
825 Gum Branch Road, Suite 115, Jacksonville, NC 28540

DEMCO BUILDERS, INC.

By: [Signature]  
DAVID DEMOSS, PRESIDENT

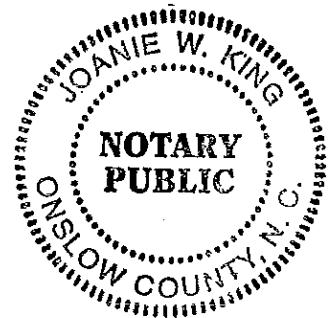
NORTH CAROLINA  
COUNTY OF ONSLOW

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: DAVID DEMOSS, PRESIDENT OF ASHBURY PARK, INC.

Date: 5-8-08

[Signature]  
(Official Signature of Notary)

Joanie W King, Notary Public  
(Notary's printed or typed name)



(Official Seal)

My commission expires: 5-24-08

NORTH CAROLINA  
COUNTY OF ONSLOW

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: DAVID DEMOSS, PRESIDENT OF DEMCO BUILDERS, INC.

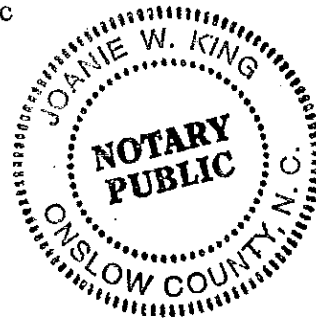
Date: 5.8-08

Joanie W King  
(Official Signature of Notary)

Joanie W King, Notary Public  
(Notary's printed or typed name)

(Official Seal)

My commission expires: 5-24-08



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