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Onslow County, NC  
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STATE OF NORTH CAROLINA

DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR MIMOSA BAY SUBDIVISION

COUNTY OF ONSLOW

This Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision ("Declarations") made the 15<sup>th</sup> day of June 2005, by BLUE MARLIN, L.L.C., hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated:

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Onslow County, North Carolina, known as MIMOSA BAY, PHASE I, as shown on a plat recorded in the Office of the Register of Deeds of Onslow County, North Carolina, in Map Book 48, Page 171 to which reference is made for a more particular description and all other such property that may be annexed in accordance with the process set forth herein (the "Property"); and

WHEREAS, Declarant now owns or may acquire other lands that may or may not be contiguous with real property that constitutes Phase 1, which at Declarant's sole option may be added to the Planned Community (as hereinafter defined) and be bound by the provisions of these Declaration and shall be treated as part of the Property; and

WHEREAS, Declarant is unable to determine at the time of recording of this Declaration what types of residential housing or units or developments will be constructed on any Additional Property (as hereinafter defined) but desires to retain the flexibility for this Declaration to accommodate such different housing or units and developments.

NOW, THEREFORE, Declarant declares that the Property described above shall be held, sold and conveyed subject to the North Carolina Planned Community Act set forth in Chapter 47F of the North Carolina General Statutes (the "Act"), as well as the following easements, restrictions, covenants, and conditions.

ARTICLE I  
DEFINITIONS

In addition to other terms defined herein, the following capitalized terms shall have the following meanings as used herein:

SECTION 1. Additional Property shall mean and refer to any lands, in addition to the above described Property, annexed to and made a part of the Planned Community, whether such lands are now owned or hereafter acquired by Declarant or others, and whether developed by Declarant or others and whether contiguous with existing phases or not contiguous thereto.

SECTION 2. Allocated Interest shall mean the Common Expense Liability and votes in the Association allocated to each Lot.

SECTION 3. Association shall mean and refer to MIMOSA BAY HOMEOWNERS' ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns, the owners association organized pursuant to the Act for the purposes set forth herein.

SECTION 4. Common Elements shall mean and refer to all lands and easements within or appurtenant to the Planned Community which are owned or enjoyed by the Association, other than a Lot, and intended for the common use and enjoyment of the Declarant, Owners, and their tenants including, without limitation, any private roads, perimeter fencing for the Property (but not privacy fences located on or within a Lot), and storm water retention ponds within the Planned Community. Common Elements shall also include any areas designated on any plats for the Planned Community as "Open Space", "Common Area", "Common Element", "Recreation Area", "Amenity Area", or any Roads shown on such plats or any other area designated or described by any other similar designation. Common Elements need not be contiguous to or abutting the Property or any Additional Property.

SECTION 5. Common Expenses means expenditures made by or financial liabilities of the Association, together with any allocations to reserves, all of which shall be the responsibility of the Owners (as that term is defined herein).

SECTION 6. Common Expense Liability means the liability for Common Expenses allocated to each Lot as permitted by the Act, this Declaration or otherwise.

SECTION 7. Declarant shall be used interchangeably with Developer (which designations shall include singular, plural, masculine and neuter as required by the context) and shall mean and refer to BLUE MARLIN, L.L.C., its successors and assigns, if such successors or assigns should acquire undeveloped property from the Declarant or a Lot not previously disposed of for the purpose of development and reserves or succeeds to any Special Declarant Right.

SECTION 8. Declarant Control Period or Period of Declarant Control shall have the meaning set forth in Article III hereof.

SECTION 9. Declaration shall mean this instrument and as it may be from time to time amended or supplemented.

SECTION 10. Executive Board or Board shall be used interchangeably with the Board of Directors and means the body, regardless of name, designated in this Declaration or otherwise to act on behalf of the Association.

SECTION 11. Lot(s) shall mean and refer to any portion of the Planned Community designated for separate ownership by a Lot Owner and shown on a recorded subdivision plat which has been approved by the applicable planning board or other governmental authority.

SECTION 12. Lot Owner or Owner shall mean any Person, except the Declarant who owns a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Declarant is not an Owner or Lot Owner.

SECTION 13. Master Association means a master association as defined in the Act.

SECTION 14. Member shall mean any member of the Association, including Declarant.

SECTION 15. Person means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, or agency or other legal or commercial entity.

SECTION 16. Planned Community shall mean and refer to the Property plus any Additional Property made a part of the Planned Community by the exercise of any Special Declarant Right.

SECTION 17. Purchaser means any Person, other than the Declarant or a Person in the business of selling real estate for the purchaser's own account, who by means of a voluntary transfer acquires a legal or equitable interest in a Lot, other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.

SECTION 18. Reasonable Attorneys' Fees means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

SECTION 19. Sewer or Sewer/Septic shall mean any public or private wastewater disposal system, including private septic systems, lines and related equipment and improvements. These terms shall be construed broadly

SECTION 20. Special Declarant Rights means rights reserved for the benefit of the Declarant including, without limitation, the right (i) to complete improvements intended or planned by Developer for the Property or Additional Property; (ii) to exercise any development or other right reserved to the Declarant by this Declaration or otherwise; (iii) to maintain within the Planned Community sales offices, management offices, construction offices/trailers, signs advertising the Planned Community, and models; (iv) to use the Common Elements for the purpose of making improvements within 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; (vii) to appoint or remove any officer or Executive Board member of the Association or any Master Association or any member of the Architectural Review Committee during the Declarant Control Period or (viii) to permit other land to be annexed to and made part of the Planned Community in accordance with the terms of

this Declaration.

SECTION 21. Utilities shall mean any and all improvements that provide cable, water, electricity, Sewer, Sewer/Septic or wastewater disposal, telephone lines and equipment, internet, security systems, refuse disposal and related services to the Lots or Common Elements. This term shall be construed as broadly as possible to include all services that could apply to the development as intended herein.

ARTICLE II  
PROPERTY RIGHTS AND EASEMENTS

SECTION 1. Owners' Property Rights and Easement of Enjoyment. Every Owner and Declarant shall have and is hereby granted a right and easement of enjoyment in and to the Common Elements, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The Association may make and amend reasonable rules and regulations governing use of the Common Elements by the Owners;

(b) Without modifying the Declarant's rights as set forth herein, the Association may grant a security interest in or convey the Common Elements, or dedicate or transfer all or part of the Common Elements, for such purposes and subject to such conditions as may be approved by 67% of the Members (including Declarant) present at a Meeting (which must have a quorum and meet the other requirements set forth in the Act, these Declarations and the Association's By-Laws) called to authorize the same. All members, including the Declarant, shall be entitled to vote pursuant to the Voting Rights process set forth in Article III. However, that the Association, if it has the Declarant's written consent (which is necessary during the Period of Declarant Control), may, without the consent of the Owners, grant easements, leases (including conservation easements), licenses and concessions through or over the Common Elements. No conveyance or encumbrance of Common Elements shall deprive any Lot of its rights of access or support.

SECTION 2. Easements in Favor of Declarant and the Association. The following easements are reserved to Declarant and the Association, their agents, contractors, employees, successors and assigns:

(a) easements as necessary in the Common Elements and fifteen feet on the rear and front of all Lots and fifteen feet along all roads and ten feet on each side of all Lots (except for sides which front a road where the fifteen foot easement applies) for the installation and maintenance of Sewer/Septic, Utilities and drainage facilities (including the right to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, wires, cables, conduits, sewers, septic lines and related equipment water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, septic, water or other public conveniences (including cable, telephone, internet and security systems) or utilities on, in or over each Lot and such other areas as are shown on the plat of the

Property or any Additional Property recorded or to be recorded in the office of the Register of Deeds of Onslow County; the right to cut drain ways, swales and ditches for surface water whenever such action may appear to the Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance; the right to discharge stormwater into any retention ponds and related drainage facilities; the right to cut any trees, bushes or shrubbery; the right to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance; and the right to locate wells, pumping stations, Septic tanks and equipment and Utilities within Common Elements, or upon any easement area (including the aforementioned 15 foot and 10 foot easements on the Lots). No structures or plantings or other material shall be placed or permitted to remain upon such easement areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of Utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion. Declarant reserves the right to grant easements/curb cuts over all private or public streets and all Common Elements within the Planned Community to itself or others for the purpose of providing access and utilities to other lands, whether owned by the Declarant or others and whether or not part of the Planned Community. These easement areas (whether or not shown on the recorded plats for the Planned Community) but not the improvements within such areas shall be maintained by the respective Owner except those for which a public authority or utility company is responsible.

(b) easements over and under all Roads and streets, access easements, and Common Elements within the Planned Community as necessary to provide access, ingress and egress, to and the installation of Utilities for any Additional Property.

(c) an easement of unobstructed access over, on, upon, through and across each Lot and the Common Elements located thereon, if any, at all reasonable times to perform any maintenance and repair to the Common Elements and Utilities.

(d) a temporary construction easement of twenty-five (25) feet in width along both sides and running parallel to streets or roads, which easements shall expire twelve (12) months after the particular road construction commences, or upon the acceptance of such streets or roads for maintenance by governmental authority, whichever first occurs.

(e) the right to erect and maintain Utilities, drainways and other public conveniences in common lands or the aforementioned 10 and 15 foot easements on the Lots, including the right to cut any trees, bushes or shrubbery, make any grading in the soil or take any similar action reasonable and necessary or desirable to provide economical and safe installation or service.

(f) the right to contract with a third-party service contractor to construct, own and maintain cable, internet, telephone and security system equipment and facilities on Common Elements and through any easement area described in subparagraph (a) above. This specifically includes the right to allow third-party service providers to construct, own and maintain a "bunker" that houses the equipment (which the third-party service provider may or may not own) it deems necessary to

integrate a wiring system for cable, telephone, internet and security systems for the entire Planned Community. In addition to this bunker, related equipment, including satellite dishes, may be erected, owned and maintained by third-party service provider. The third-party shall be allowed to provide service to other persons and landowners who live outside the Planned Community from this bunker.

(g) unless specifically stated therein, nothing in these restrictions, nor in the recording of any plat or deed pursuant hereto, shall dedicate (or be deemed to dedicate) to public use any of the Roads, streets, bridges, common lands or other grounds within the Property.

SECTION 3. Other Easements. The following additional easements are granted by Declarant:

(a) an easement to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots and Common Elements in the performance of their duties.

(b) in case of any emergency originating in or threatening any Lot or Common Elements, regardless of whether any Lot Owner is present at the time of such emergency, the Association or any other person authorized by it, shall have the immediate right to enter any Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot Owners.

(c) the Association is granted an easement over each Lot for the purposes of providing Lot maintenance when an Owner fails to provide maintenance and upkeep in accordance with this Declaration.

SECTION 4. Nature of Easements. All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Declarant and the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Planned Community, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

SECTION 5. Septic Fields shall revert to Declarant. Any area that is designated as a septic field or proposed septic field or is used as a septic field for an off site Lot, shall revert to the Declarant upon the availability of Public Sewer Service, which must be utilized by all Lots and Lot Owners. Upon reversion, Declarant may sell such former Septic Fields as Lots. Declarant, at its sole discretion, may reject to receive such reversion.

SECTION 6. The Declarant makes no representation in these covenants as to the type, quality, or amount of common areas and improvements other than shown on the Final Plat.

ARTICLE III  
HOMEOWNERS' ASSOCIATION

SECTION 1. Formation of Association. The Association shall be incorporated no later than the date the first Lot in the Planned Community is conveyed. The Association is a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Declarant and Owners of Lots to operate and maintain the Common Elements and any Limited Common Elements in accordance with this Declaration, its Charter and Bylaws. The Association shall be empowered to perform and/or exercise those powers set forth in the Act as it may be amended from time to time, in addition to any powers and authority otherwise granted to it.

SECTION 2. Membership. Every Lot Owner and Declarant shall be a Member of the Association. Except for the Declarant, membership shall be appurtenant to and may not be separated from Lot ownership.

SECTION 3. Membership Classes. The Association shall initially have two classes of voting membership (but the Declarant by amendment to this Declaration without the consent of any Lot Owners may add other membership classes for each Limited Common Element Development or other type development which may be annexed to the Planned Community).

Class A. Class A Members shall be Owners who have not been assigned to another membership class pursuant to this Declaration.

Class B. The Declarant and its successors shall be a Class B Member.

SECTION 4. Voting Rights. The voting rights of each class of membership shall be as follows:

(a) The Class A Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is hereby prohibited. Only certain classes of members may vote on certain issues as hereinafter provided.

(b) The Class B Member shall be entitled to ten (10) votes for each Lot owned. The Class B Membership shall cease and be converted to a Class A Membership on the happening of any of the following events, whichever occurs earlier:

(i) when the total vote outstanding in all Classes of Membership, other than Class B Membership, constitutes a representation of ninety percent (90%) of the total Lots; or

(ii) on December 31, 2020; or

(iii) upon the voluntary surrender of all Class B Membership by the holder

thereof.

The period during which there is Class B Membership is sometimes referred to herein as the Declarant Control Period or Period of Declarant Control. If the Declarant loses Class B Membership, it shall re-acquire Class B Membership for the Planned Community upon adding Additional Property or reacquiring septic fields as set forth herein. During the Declarant Control Period, the Declarant shall have the right to designate and select the Executive Board of the Association (from Members or Non-Members) and the right to remove any person or persons designated and selected by the Declarant to serve on the Executive Board, and to replace them for the remainder of the term of any person designated and selected by the Declarant to serve on the Executive Board who may resign, die, or be removed by the Declarant.

SECTION 5. Government Permits. After completion of construction of any facilities required to be constructed by Declarant pursuant to permits, agreements and easements for the Planned Community, all duties, obligations, rights and privileges of the Declarant under any water, sewer, septic stormwater and utility agreements, easements and permits for the Planned Community with municipal or governmental agencies or public or private utility companies, shall be the duties, rights, obligations, privileges and the responsibility of the Association, notwithstanding that such agreements, easements or permits have not been assigned or the responsibilities thereunder specifically assumed by the Association. There are additional provisions made in this Declaration concerning stormwater facilities and the Stormwater Permit.

SECTION 6. Common Elements. The Association shall at its sole cost and expense be responsible for the operation and maintenance of each Common Element within the Planned Community after such Common Element has actually been deeded or turned over to the Association and such transfer may be made by the Declarant to the Association at any time after the common Element is constructed and the Association must accept ownership of the same upon tender by the Declarant. Declarant shall be entitled to specific performance to require the Association to accept such transfer of Common Elements. If the Declarant is required by any government agency to provide any operation or maintenance activities to a Common Element for which the Association is liable to perform such operation and maintenance pursuant to this section, then the Association agrees to reimburse the Declarant the cost of such operation and maintenance within 30 days after Declarant renders a bill to the Association therefor. The Association agrees to levy a Special Assessment to cover the amount of such bill if it does not have other sufficient funds available. Declarant shall be entitled to specific performance to require the Association to levy and collect such Special Assessment and shall be entitled to receive its attorneys' fees and costs associated with any action it takes to collect said sums .

SECTION 7. Architectural Review Committee. The Executive Board shall perform all duties of the Architectural Review Committee if no such committee is appointed by it, subject, however, to the Special Declarant Rights. During the Period of Declarant Control, the Declarant shall appoint all members of the Architectural Review Committee by appointing any persons it deems fit (Owners or non- Owners). Any Architectural Review Committee appointed by the Executive Board shall consist of at least 3 members.



ARTICLE IV  
INSURANCE AND BONDS

SECTION 1. Individual Home Insurance. All Owners shall purchase at their individual expense individual policies covering each Lot and Lot Owner individually.

SECTION 2. Common Element Insurance. The Board of Directors on behalf of the Association, as a Common Expense of all Lot Owners, shall at all times keep the Common Elements and other assets of the Association insured against loss or damage by fire or other hazards and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees. The Association at minimum shall maintain with regard to the Common Elements the insurance coverage(s) required by the Act.

SECTION 3. Fidelity Bond, Directors and Officers Insurance and General Liability Insurance. The Association shall maintain, as a Common Expense paid by the Owners, blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association; provided, however, that if the Association shall delegate some or all of the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association. Similarly, the Association shall maintain Directors and Officers Insurance and General Liability Insurance in order to protect the Association, its members, Board and Officers and the same shall also be considered a Common Expense of the Lot Owners.

ARTICLE V  
COVENANTS FOR ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. Each Lot Owner (which term specifically excludes the Declarant) covenants and agrees to pay to the Association the following assessments, as applicable (collectively the "Assessments"):

- A. Annual Common Element Assessments;
- B. Special Assessments;
- C. Insurance Assessments;
- D. Ad Valorem Tax Assessments; and

E. Working Capital Assessments.

The Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the respective Lot against which the Assessments are made. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall pass to the Owner's successors in title. However, in such event that the delinquent obligation passes to subsequent Owners, the successors in title are hereby granted a right to indemnity against the previous Owner who allowed the assessments to become delinquents and such right of indemnification shall cover all sums paid to satisfy the delinquent assessments.

SECTION 2. Purpose of Annual Assessments. The Annual Common Element Assessments levied by the Association shall be used, as applicable, exclusively to promote the recreation, health, safety and welfare of the Owners, Declarant and residents of the Planned Community and for the maintenance, repair and replacement of the Common Elements. The funds arising from said assessments or charges, may be used for any or all of the following purposes: Operations, maintenance and improvement of the Common Elements, including payment of Utilities; enforcing this Declaration; paying taxes, insurance premiums, legal and accounting fees and governmental charges; establishing working capital; paying dues and assessments to any organization or Master Association of which the Association is a member; and in addition, doing any other things necessary or desirable in the opinion of the Association to keep the Common Elements in good operating order and repair.

SECTION 3. Annual Assessments. At least 30 days before or after the beginning of each fiscal year, the Executive Board shall adopt proposed annual budgets, as follows:

- (i) a budget for the Annual Common Element Assessments consisting of the annual cost of operating and maintaining the Common Elements.
- (ii) such other budgets as the Executive Board deems appropriate.

Within 30 days after adoption of the proposed budgets for the Planned Community, the Executive Board shall provide to all of the Lot Owners and Declarant a summary of the budgets and notice of a meeting to consider ratification of the budgets, including a statement that the budgets may be ratified without a quorum. Each budget is ratified unless at a Meeting (which must have a quorum and the meet other requirements set forth in the Act, these Declarations and the Association's By-Laws) a majority of all of the Members of the Association entitled to vote at that Meeting on the particular budget rejects the budget. All Members, including the Declarant, shall be entitled to vote on the budget for the Annual Common Element Assessments pursuant to the Voting Rights process set forth in Article III herein. In the event a proposed budget is rejected, the periodic budget shall be continued until such time as the Members ratify a subsequent budget proposed by the Executive Board pursuant to the Voting Rights process set forth in Article III herein. The Annual Assessments for each Lot shall be established based on

the annual budgets thus adopted, with all Lots funding the budget for the Annual Common Element Assessments; provided, however, that the first Annual Assessments shall be set by the Declarant prior to the conveyance of the first Lot to an Owner. The due date for payment shall be established by the Executive Board. The Executive Board shall have the authority to require the Assessments to be paid in full or in periodic installments. 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. The initial annual assessment is hereby established by the Declarant as \$500.00 per year. This annual assessment may be increased by the Executive Board without Member approval, if such increase shall not exceed twenty percent and the Declarant consents. If the Executive Board desires to increase the annual assessment by an amount greater than 20% of the previous annual assessment amount, then such increase must have the assent of a majority of the Members who vote at a Meeting, which must have a quorum and meet the other requirements set forth in the Act, these Declarations and the Association's.

SECTION 4. Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to the year only for the following purposes:

A. To defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such Special Assessment shall be approved majority of all of the Members of the Association, including the Declarant who vote at a Meeting, which must have a quorum and meet the other requirements set forth in the Act, these Declarations and the Association's By-Laws. All members, including the Declarant, shall be entitled to vote on the Assessments pursuant to the Voting Rights process set forth in Article III herein. Written notice of any Special Meeting called for the purpose of approving such Special Assessment shall be sent to all Members, including Declarant, not less than ten (10) days nor more than sixty (60) days in advance of the meeting.

B. To comply with the terms of any contract with a third-party service provider of integrated telephone, cable, internet and/or security systems, the Association may issue special assessments for the costs thereof. These costs may be in the form of a special assessment or may be part of the annual assessment or may be a combination of the two. The costs of the third-party service provider may be allocated to the Lots as a Common Expense for the "basic plan" and any upgrades desired by a Lot Owner may be added to such assessment.

SECTION 5. Insurance Assessments. All premiums on insurance policies purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a Common Expense, and the Association may at any time levy against the Members to which it applies an "Insurance Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay the cost of all such deductibles and insurance premiums not included as a component of the Annual Assessment.

SECTION 6. Ad Valorem Tax Assessments. All ad valorem taxes levied against the Common Elements, if any, shall be a common expense, and the Association may at any time year levy against the Owners equally an "Ad Valorem Tax Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay ad valorem taxes not included as a component of the Annual Assessment.

SECTION 7. Working Capital Assessments. At the time title to a Lot is conveyed to an Owner by Declarant, the Owner shall pay the sum of \$200.00 to the Association as working capital to be used for operating and capital expenses of the Association. Such amounts paid for working capital are not to be considered as advance payment of the Annual or any other Assessments.

SECTION 8. Commencement of Assessments. Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant.

SECTION 9. Effect of Nonpayment of Assessments And Remedies Of The Association. Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments.

SECTION 10. Lien for Assessments. The Association may file a lien against a Lot when any Assessment levied against said Lot remains unpaid for a period of 30 days or longer.

A. The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the office of the Clerk of Superior Court of the county in which the Lot is located. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, interest, and other charges imposed pursuant to the Planned Community Act are enforceable as Assessments.

B. The lien under this section shall be prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot.

C. The lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court.

D. Any judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.

E. Where the holder of a first mortgage or deed of trust of record obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors and assigns shall not be liable for the Assessments against the Lot which became due prior to the acquisition of title to the Lot by such purchaser. The unpaid Assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners including such purchaser, its heirs, successors and assigns. This exclusion shall not be construed to apply to any other successor in title.

F. A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed.

G. In no instance, whatsoever, shall the Declarant, nor the Declarant's Lots be subject to any assessments nor liens.

## ARTICLE VI RIGHTS OF DEVELOPER

The Declarant shall have, and there is hereby reserved to the Declarant, the Special Declarant Rights as herein defined and the following rights, powers and privileges which shall be in addition to the Special Declarant Rights and any other rights, powers and privileges reserved to the Declarant herein:

SECTION 1. The Architectural Review Committee/Executive Board. The Declarant shall be entitled, during the Period of Declarant Control, to appoint and remove the members of the Architectural Review Committee. The Declarant shall be entitled during the Declarant Control Period to appoint and remove the Directors, officers and members of the Executive Board. These appointments may be made from Members or Non-Members.

SECTION 2. Plan of Planned Community. The right to change, add to, delete, alter or re-designate the allocated planned, platted, or recorded use or designation of any of the lands constituting the Planned Community including, but not limited to, the right to change, alter or re-designate road, Utility and drainage facilities and easements and to change, alter, add to, delete, or re-designate such other present and proposed amenities, Common Elements, Limited Common Elements, or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable. The Declarant shall have the right, but shall not have the obligation, of installing an integrated wiring system throughout the Planned Community, on common area and otherwise, which will facilitate a uniform service of telephone, cable, internet and security systems and this may be undertaken by and through a third-party service provider. The Declarant may allow for the erection of a bunker and related equipment including satellite dishes that will facilitate the supply of such services. The Declarant hereby expressly reserves unto itself, its successors and

assigns, the right to re-plat any one (1) or more Lots shown on the plat of any subdivision of the Property or Additional Property in order to create one or more modified Lots; to further subdivide tracts or Lots shown on any such subdivision plat into two or more Lots; to recombine one or more tracts or Lots or a tract and Lots to create a larger tract or Lot (any Lot resulting from such recombination shall be treated as one Lot for purposes of Assessments); to eliminate from this Declaration or any plats of the Planned Community Lots that are not otherwise buildable or are needed or desired by Declarant for access or are needed or desired by Declarant for use as public or private roads or access areas, whether serving the Planned Community or other property owned by the Declarant or others, or which are needed for the installation of Utilities, Common Elements or amenities, and to take such steps as are reasonably necessary to make such re-platted Lots or tracts suitable and fit as a building site, access area, roadway or Common Elements. The Declarant need not develop, or develop in any particular manner, any lands now owned or hereafter acquired by the Declarant, including any lands shown on plats of the Planned Community as "Future Development" or potential lots in planned future sections of the Planned Community. Any such lands shall not be subject to this Declaration unless Declarant expressly subjects them hereto by filing of a supplemental declaration in the Register of Deeds office of Onslow County. Declarant is required by the Division of Water Quality (DWQ) to state herein the maximum allowed built-upon area for all lots which Declarant has planned to develop within the Planned Community. By listing the maximum built-upon area herein for all such lots, Declarant does not obligate itself to develop in any particular manner or for any particular uses any lands now owned or hereinafter acquired by Declarant which are not shown on the recorded plats referenced herein.

SECTION 3. Amendment of Declaration by the Declarant. This Declaration may be amended without Member approval by the Declarant, or the Executive Board, as the case may be, as follows:

- A. In any respect, prior to the sale of the first Lot.
- B. To the extent this Declaration applies to Additional Property, including, but not limited to, amendments to add additional classes of Membership to the Association, to add, delete or alter Common and Limited Common Elements and to establish minimum square footages and other standards for structures.
- C. To correct any obvious error or inconsistency in drafting, typing or reproduction or to clarify the Declarant's intentions. This right shall be broadly construed.
- D. To qualify the Association or the Property and Additional Property, or any portion thereof, for tax-exempt status.
- E. To incorporate or reflect any platting change as permitted by this Article or otherwise permitted herein.
- F. To conform this Declaration to the requirements of any law or governmental agency

having legal jurisdiction over the Planned Community or to qualify the Planned Community or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a 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 of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, stormwater regulations, 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 North Carolina Department of Environment and Natural Resources, the Department of Veterans Affairs, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. The Declarant may at any time amend this Declaration to change the maximum built-upon area permitted by DENR/DWQ. Notwithstanding anything else herein to the contrary, only the Declarant, during the Declarant Control Period, shall be entitled to amend this Declaration pursuant to this Section.

G. To file a restrictive covenant limiting usage of property still owned by Declarant or Common Elements and granting enforcement rights to the United States of America in order preserve mitigation property in an effort to ensure continued compliance with any Clean Water Act authorization issued by any District of the U.S. Army Corps of Engineers. These Additional Restrictions may be in the form of an amendment to the Declarations or a new set of Restrictions, all of which shall be binding on All Lots and Lot Owners and Members.

SECTION 4. Annexation of Additional Property. Declarant may annex to and make a part of the Planned Community any other real property, whether now owned or hereafter acquired by Declarant or others, and whether developed by the Declarant or others (the "Additional Property") and brought within the scheme of these Declarations and the Bylaws of the Association and the jurisdiction of the Association, in the following ways:

A. Declarant intends to and therefore, reserves the right, to develop and subject to these Declarations and Restrictions and the Bylaws any or all of the Property described in Schedule A, which is attached hereto and incorporated herein by reference. Each, any, or all of this Property may be annexed to the properties by Declarant, at its sole and absolute discretion, and brought within the scheme of these Restrictions and the Bylaws and within the jurisdiction of the Association, in future stages of development without the consent of the Association or its Members; provided, however that said annexations must occur within 20 years after the date of this instrument.

B. At Declarant's sole and absolute discretion, additional residential property and

common area, consisting of not more than Eight Hundred (800) acres, outside of the area described in the aforementioned Schedule A, may be annexed to the properties and brought within the scheme of development and these Declarations and the jurisdiction of the Association and the Associations's By-Laws in future stages of development without the consent of the Association or its members; provided, however, that said annexations must occur within 20 years after the date of this instrument.

C. The additions authorized under the preceding subsections (A) and (B) shall be made by filing of record Supplementary Declarations with respect to the additional properties which shall extend the scheme of the Declarations and By-Laws and thereby subject such additions to the Association's jurisdiction. Such Supplementary Declarations may contain such complementary additions and modification of these Declarations and the By-Laws as may be necessary to reflect only the different character and density of the housing planned on the added properties and are not inconsistent with the provisions of these Declarations. For example, future stages may include Villa Lots, which will be smaller lots, which may have a proportionally increased common area that may be used for the sole benefit of the Villa Lots and will be maintained by a separate homeowner's Association. Also, Associations may be created to maintain and own septic lines and equipment, or maintain at their sole expense special common areas shared amongst the new Owners and not the entire Association, etc.

D. Declarant is not required to annex any land to the Planned Community.

SECTION 5. Sales Model/Parking. So long as the Declarant or its designee shall retain ownership of any Lot, it may utilize any such Lot for offices, models or other purposes relating to the development, construction, sale or rental of Lots and dwellings, including the right to place "For Sale" or "For Rent" signs on any Lots. In addition, in connection with any of the above activities, the Declarant and its agents shall have the right to park vehicles and materials on any street or within the right of way thereof.

SECTION 6. Transfer of Declarant and Special Declarant Rights. Without limiting Declarant's general authority to transfer its rights hereunder, the Declarant specifically reserves the right to transfer, without the approval of any Lot Owners, any Declarant or Special Declarant rights contained herein or which shall be hereinafter imposed or reserved by Declarant, to any other Person. Upon such transfer, the transferee shall have all of the rights of the Declarant hereunder except to the extent any such rights are limited in the document of transfer.

SECTION 7. Use of Infrastructure and Amenities. Declarant may allow other owners' associations, and their owners, to use the amenities and infrastructure (including all Utilities) within the Planned Community so long as such other owners' associations pay a portion of the cost or the operation and maintenance of such amenities and infrastructure, the exact amount of such payment to be in the sole discretion of the Declarant. However, with respect to any bunker that houses internet, telephone, cable and/or security system equipment, such other persons shall not be required to share in the cost of supplying such services to the Planned Community.



SECTION 8. Declarant Shall Grant Rights of Ingress, Egress and Regress to Others. The Declarant, for itself and the Association, reserves the right to grant onto property owners of properties adjacent to or near Mimosa Bay, the right of ingress, egress and regress through Mimosa Bay as it now exists or as it may be expanded as set forth herein. The Declarant and/or the Association, may cause any and all roads constructed in this Mimosa Bay development, or which may be constructed, to become a servient estate to other real property for the purpose of ingress, egress and regress to said dominate estate property. The Declarant may grant said easements without the consent of the Association, except these easements must be granted within 20 years after the date of this instrument. For example, certain easement rights have been or will be granted by Declarant to the adjacent property owners. All Members shall abide by and will not interfere with any easement rights granted by Declarant to others. Declarant hereby creates no obligation to grant any easement rights but merely reserves the ability to do so.

SECTION 9. Street Lighting Agreement. The Declarant and the Association (with approval of the Declarant during the Period of Declarant Control) shall have the right to subject the 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 of which may require an initial payment and/or continuing monthly payment to an electric company or Association by Lot Owners and/or the Association. If the monetary obligation is required of the Association, then the same shall be a Common Expense.

ARTICLE VII  
USE RESTRICTIONS, ARCHITECTURAL CONTROL  
AND MAINTENANCE

SECTION 1. Approval of Plans for Building and Site Improvements. No dwelling, wall, tent or other structure shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Review Committee. If the Architectural Review Committee fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Architectural Review Committee shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Architectural Review Committee for its records. The Architectural Review Committee shall not be responsible for any structural or other defects in plans and specifications submitted to it or in any structure erected according to such plans and specifications.

SECTION 2. Minimum Standards for Site Improvements.

A. Each dwelling, on the following Lots shown on the above referenced plat, shall have the following minimum of square footages of enclosed, heated dwelling area:

LOTS NUMBER 1 through 24 (consecutively); 82 through 87 (consecutively); and A1, A2 and A3 shall have a minimum square footage of 2500 square feet of enclosed, heated dwelling area.

ALL OTHER LOTS IN PHASE I shall have a minimum square footage of 1800 square feet of enclosed, heated dwelling area.

The term "enclosed, heated dwelling area" shall mean the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas. The Declarant, as provided above, shall be entitled to amend this Declaration to establish different square footage minimums for any Additional Property annexed to the Planned Community for the types of homes that could be included in these future phases, including Villa Lots or townhomes.

B. Setbacks: All improvements to all Lots must comply with Onslow County setback requirements for a development of this type. The establishment of inflexible building setback lines for location of houses on Lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any Lot shall be controlled by and must be approved absolutely by the Architectural Review Committee; provided, however, that no structure shall be constructed closer to a Lot line than is permitted by applicable governmental regulations. Further, absent extraordinary circumstances set forth below, the Architectural Review Committee shall approve no plans unless the following minimum setback requirements are met:

|                                     |                       |
|-------------------------------------|-----------------------|
| Front yard:                         | 30 feet from Lot line |
| Side yard (not situated on a Road): | 10 feet from Lot line |
| Rear yard and Side yard on Road:    | 15 feet from Lot line |

Setbacks for Lots in all other phases or annexed properties shall be set by Declarant in its sole discretion. It is possible that future phases may have Villa Lots or townhomes, which could have less setbacks than those set forth above.

The Architectural Review Committee shall have the right to approve deviations from each of these setback requirements upon application of an individual lot owner if, for reasons of topography or septic approvals, strict compliance creates a hardship if such approval does not violate the applicable governmental regulations or approvals. If required by Onslow County, each plot plan must receive zoning approval prior to the commencement of any construction.

C. The exterior of all dwellings, yards, landscaping, irrigation and other structures must

be completed within twelve (12) months after the construction of same shall have commenced. In the event that such improvements on any lot is not completed within one year, and it is determined by the Declarant, its successors and assigns, or if the Declarant so designates, by the Architectural Review Committee, that construction progress has diminished to such an extent that completion of the dwelling, outbuildings, or other improvements is unlikely within 120 days, the Association, will be advised of this determination. The Association shall then have the right to give notice to the Owner that the Owner has the obligation, within 30 days, to complete the removal of all the construction work in progress, including without limitation, the foundation and all building improvements and all stored building materials, and fill and grade the lot so that it is restored to its natural grade level, and the Association shall have the right to undertake this work upon Owner's failure to do so and charge the cost to the Owner and place a lien upon the lot upon the Owner's failure to pay these charges. During period of construction, the general contractor shall be allowed a sign of a design and substance approved by the Declarant, its successors or assigns, or if the Declarant so designates, by the Architectural Review Committee, but no sub-contractor signs shall be permitted. Unless otherwise changed by Declarant, the allowed contractor sign shall be no larger than 12 inches by 24 inches and may contain only an identification of the address and the Contractor's name. Declarant shall also have the right to allow certain selected "Preferred" or "Approved" Builders to have larger more elaborate signs, the location, size dimension and colors of which must be approved by Declarant, in its sole and absolute discretion.

D. All service utilities, garbage receptacles, fuel tanks, and heating ventilation and air conditioning units are to be enclosed within a wall or plant screen of a type and size approved by the Architectural Review Committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the Planned Community. All mail and newspaper boxes shall be uniform in design within each type development within the Planned Community. Design for mail and newspaper boxes shall be furnished by the Architectural Review Committee. Fences shall be permitted on any Lot; provided, however, that the design, placement, and materials of any fence are approved by the Architectural Review Committee. Clothes lines are not permitted on any Lot.

E. Off street parking for not less than two (2) passenger automobiles must be provided on each Lot prior to the occupancy of any dwelling constructed on said Lot which parking areas and the driveways thereto shall be constructed of concrete, brick, asphalt, or turf stone, or any other material approved by the Architectural Review Committee. Garages must be included as part of any plans submitted to the Architectural Review Committee. As with all other provisions, this restriction may be amended for future phases.

F. All light bulbs or other lights installed in any fixture located on the exterior of any building or any Lot for the purpose of illumination shall be clear, white or non-frost lights or bulbs.

G. If the Architectural Review Board requires grass on a particular Lot, then such requirement shall be accomplished by sodding such area.

H. Construction activity on a Lot shall be confined within the boundaries of said Lot. Each Lot Owner shall have the obligation to repair damage to Common Elements or other property and to collect and dispose of all rubbish and trash resulting from the construction on his Lot. Upon a Lot Owner's failure to repair such damage within thirty (30) days or to collect and dispose of such trash within thirty (14) days after receipt of a written notice from the Association, the Association may repair the damage or collect and dispose of such rubbish and trash at the Lot Owner's expense. Any expense incurred by the Association in repair or clean-up of the Lot shall be billed to the Owner of the Lot and if not paid within 30 days, the amount thereof shall become a lien against the Lot which shall be enforceable pursuant to the provisions of this Declaration as is the case for delinquent assessments.

I. The Association shall be entitled to collect a Construction deposit of Five Hundred and No/100 Dollars (\$500.00) and an Architectural Review Fee of Two Hundred and No/100 Dollars (\$250.00) from any Owner who desires to construct a home on his or her Lot. This Construction Deposit and Architectural Review Fee amounts may be adjusted by the Declarant during the Declarant Control Period and thereafter by the Board in any amount in its sole discretion.

J. More than one lot may be combined to form one or more lots by (or with the written consent of) Declarant, its successors and assigns. If a Person other than Declarant combines two Lots into One Lot, and elects to notify the Association to treat the combined Lots as one Lot it may do so but by doing so, the Owner waives any right or ability to thereafter have the lots divided back into two Lots as before and the Association is entitled to demand a proper filing be made with the Onslow County Registry showing that the Lots shall thereafter be treated as a single lot. If the Owner does not make such an election and make such a filing, then the two lots shall continue to be treated as two Lots by the Association despite their being owned by one Owner. No lot may be subdivided by sale or otherwise, except by written consent of Declarant, its successors and assigns. Upon combination or subdivision of lots, the building line requirements prescribed herein shall apply and the easements reserved herein shall be applicable to the rear, side and front lot lines of such lot as combined or subdivided. The resulting building site and structures erected thereon must otherwise comply with these Restrictions and the new property line of the resulting building site shall be used to compute the setback lines as set forth herein.

K. All connections of private driveways to the Mimosa Bay road system shall be constructed, by the Lot Owner, and maintained, by the Lot Owner, in accordance with the rules, regulations and specifications of the Committee. However, in order to insure emergency vehicle access to all lots, all driveways which connect residences or other structures that are more than fifty (50) feet from the subdivision road must be at least eleven (11) feet in width, with a clearance of no less than eleven (11) feet in height.

L. The exterior materials used in the construction of a house shall be subject to Architectural Review Board approval. The Architectural Review Board shall establish general guidelines for acceptable construction materials and may alter and revise the same at their discretion. For example, certain types of vinyl siding shall not be allowed, while other more

attractive higher grade vinyl siding may be allowed.

M. As of the date these Declarations are being prepared, because of unavailability of certain services such as high speed internet and because of potential cost savings to the Lot Owners and other reasons, the Declarant is investigating the propriety of having an integrated wiring system installed in the Planned Community for the Lots to receive cable, high speed internet, telephone and/or security systems from a third-party service provider. As is set forth in this Declaration and in the By-Laws, the Association may contract with such third-party service provider to install fiber optic lines in easement areas and to supply such cable, internet, telephone and/or security system services to all Lots and the cost of the same shall be collected from Lot Owners through assessments or otherwise, regardless of whether the services are actually used by the Owners. If this contract is consummated, then the Architectural Review Board is required to reject any plan that fails to include structural wiring for telephone, data and video and security system wiring. Wiring specifications shall be developed by the third-party service providers and will be made available to all Owners and the Architectural Review Board. Further, in the event this contract is entered into, all owners will be required to comply with any terms therein. By purchasing a Lot in the Planned Development, all Owners agree and consent that any violation of such terms shall be subject to immediate enforcement action by the Declarant and/or the Association and agree that immediate and irreparable harm can and will occur to the Declarant, the Association and all Owners if such terms are violated and thus agree that Temporary Restraining Orders, Preliminary Injunctions and Permanent Injunctions shall be granted by the Court to avoid the same and require specific performance to ensure compliance with such contractual terms and attorney's fees and all costs of enforcing such contractual terms shall be awarded to the Declarant and/or the Association.

### SECTION 3. Use Restrictions.

A. Land Use And Building Type. No Lot or parcel of land shall be used for any purpose except for residential purposes, subject, however, to the rights of the Declarant contained herein. All Lots are restricted for construction of one single family dwelling (plus, a detached garage, if there is not one attached to the residence, and such other accessory buildings as may be approved by the Architectural Review Committee). Notwithstanding the foregoing, the Declarant may develop any parcel of land annexed to the Planned Community as multifamily so long as the parcel is restricted only to residential use.

B. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the enjoyment of other Lots by the Owners thereof or the Declarant's development and sales activities. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or un-kept condition of buildings or grounds on the Owner's Lot which would tend to decrease the beauty of the neighborhood as a whole or the specific area. Each Lot Owner shall keep his Lot free from weeds, underbrush or

refuse piles, or unsightly growth or objects. All structures shall be kept neat and in good condition and repair. All shrubs, trees, grass and plantings shall be kept neatly trimmed and properly cultivated.

C. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot any time as a residence either temporarily or permanently without the written consent of the Association or its designee; provided, however, that this shall not prevent the Declarant, its designees or assigns from maintaining a construction trailer or office on any part of the Planned Community until the construction and sale of dwellings on all Lots and the Common Elements improvements are completed.

D. Modular Homes. Modular homes are permissible only if approved by the Architectural Review Committee at their sole and absolute discretion.

E. Vehicles/Boats. No boat, motor boat, camper, trailer, motor or mobile homes, tractor/trailer, or similar type vehicle, shall be permitted to remain on any Lot or on any street at any time, without the written consent of the Association. No inoperable vehicle or vehicle without current registration and insurance will be permitted on any Lot, street or Common Element. The Association shall have the right to have all such vehicles towed away at the owner's expense. No repairs to any vehicle may be made on streets or in driveways but only in garages or other areas and not visible from the street.

F. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free, are at all times kept properly leashed and personally escorted and do not become a nuisance.

G. Statuary, TV Satellite Dishes and Outside Antennas. No yard statuary or TV satellite signal receiving dishes are permitted on any Lot and no outside radio or television antennas shall be erected on any Lot or dwelling unit unless and until permission for the same has been granted by the Architectural Review Committee; provided, however, satellite dishes not over 18" in diameter which cannot be seen from the street are permitted. If a contract with a third-party service provider prohibits the use of satellite dishes or outside antennas, then the same shall be prohibited.

H. Construction in Common Elements. No Person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction or with the express written consent of the Association.

I. Signs. Except as provided herein for Declarant and for Builders (including Article VII Section 2 Paragraph C), no signs (including "For Sale" or "For Rent" signs) shall be permitted on any Lot or in the Common Elements. Again, Declarant shall be allowed to erect and maintain

whatever signs it desires, at its sole and absolute discretion, including signs on Common Elements. Prior to the expiration of the Declarant Control Period, Declarant shall have the authority to establish sign rules and regulations that will be permitted after the end of the Declarant Control Period. For example, Declarant may establish a standard "For Sale" sign that will be allowed to be displayed after the expiration of the Declarant Control Period.

J. Subdividing. Subject to any rights reserved to the Declarant herein, no Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the Declarant Control Period and thereafter by the Board of Directors.

K. Leases. No rental or lease for any Lot shall be for a term of less than six months. All leases must be in writing and must contain a provision requiring the tenant to comply with all the use restrictions of this Declaration and any rules and regulations adopted by the Association. Transient rentals are strictly prohibited.

L. Trees. Except for trees located within ten feet of an approved "house foot print," no trees on any Lot 6 inches in diameter or greater may be removed without the approval of the Architectural Review Committee.

## ARTICLE VIII STORMWATER PERMIT/FACILITIES

SECTION 1. Stormwater Permit. The Association and each of its Members agree that at anytime after (i) all work required under the Stormwater Permit has been completed (other than operation and maintenance activities), and (ii) the Developer is not prohibited under DENR regulations from transferring the Stormwater Permit for the Planned Community to the Association, the Association's officers without any vote or approval of Lot Owners, and within 10 days after being requested to do so, will sign all documents required by DENR for the Stormwater Permit to be transferred to the Association; provided, however, that at the time the Developer requests that the Association accept transfer of the Stormwater Permit, the Developer has delivered to the Association a certificate from an engineer licensed in the State of North Carolina, dated no more than 45 days before the date of the request, that all stormwater retention ponds, swales and related facilities are constructed in accordance with the plans and specifications therefore. If the Association fails to sign the documents required by this paragraph, the Developer shall be entitled to specific performance in the courts of North Carolina requiring that the appropriate Association officers sign all documents necessary for the Stormwater Permit to be transferred to the Association. Failure of the officers to sign as provided herein shall not relieve the Association of its obligations to operate and maintain the stormwater facilities covered by the Stormwater Permit.

SECTION 2. Stormwater Facilities Operation and Maintenance. Any stormwater retention ponds and related facilities for the Planned Community which have or are to be constructed by or on behalf of Declarant constitute Common Elements and, subject only to the provisions of

Section 3 of this Article, the Association, at its sole cost and expense, is responsible for the operation and maintenance of such facilities. Such Operation and Maintenance shall include, but not be limited to, compliance with all of the terms and obtaining any renewals of the Stormwater Permit. Except as provided in *Section 3 of this Article*, the Association shall indemnify and hold harmless the Developer from any obligations and costs under the Stormwater Permit for operation and maintenance of the stormwater retention ponds and related facilities.

**SECTION 3. Damage to Storm Water Facilities.** The Declarant shall at its sole cost and expense be responsible for repairing any damage to storm water facilities which Declarant determines is caused by the Developer's development activities. The Developer shall not be responsible for damages to stormwater retention ponds and related facilities caused by any other cause whatsoever, including but not limited to construction of residences or other activities by Owners, their agents and contractors, upon their Lots, acts of God, and the negligence of others. Lot Owners shall be responsible for damages to such stormwater facilities caused by construction of buildings or other activities upon the Owner's Lot. Each Owner, shall within 30 days after receipt of notice of damage to stormwater facilities, repair the damage at the Owner's sole cost and expense to return them to the state required by the storm water plans and specifications for the Planned Community. If the Lot Owner fails to do so within said 30-day period, the Association shall perform the work and the cost of the work shall be added to the Annual Assessment due from the Lot Owner.

**SECTION 4. Enforcement Of Storm Water Runoff Regulations.**

A. The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 050325, as issued by the Division of Water Quality under NCAC 2H.1000.

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

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

D. 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.

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

F. The maximum allowable built-upon area per Lot is as follows (this data is for Lots shown on the above-referenced plat plus lots for which the Declarant has an approved stormwater plan but which Declarant is under no obligation to subdivide or develop in any particular fashion or for any particular use):



|             |      |
|-------------|------|
| 1           | 6200 |
| 2           | 6000 |
| 3           | 6500 |
| 4           | 6800 |
| 5           | 6200 |
| 6           | 6200 |
| 7           | 7000 |
| 8           | 6500 |
| Marina area | 6000 |
| 9           | 6500 |
| 10          | 6500 |
| 11          | 6500 |
| 12          | 8000 |
| 13          | 6500 |
| 14          | 6500 |
| 15          | 7500 |
| 16          | 9000 |
| 17          | 9000 |
| 18          | 7500 |
| 19          | 7000 |
| 20          | 6000 |
| 21          | 6000 |
| 22          | 6000 |
| 23          | 6000 |
| 24          | 6000 |
| 26          | 5000 |
| 27          | 4800 |
| 28          | 4800 |
| 29          | 4800 |
| 30          | 4800 |
| 31          | 4800 |
| 32          | 4800 |
| 33          | 4800 |
| 34          | 4800 |
| 35          | 5000 |
| 36          | 5200 |
| 37          | 5000 |
| 38          | 5000 |

|    |      |
|----|------|
| 39 | 5000 |
| 62 | 5000 |
| 63 | 5000 |
| 64 | 5000 |
| 65 | 5000 |
| 66 | 5000 |
| 67 | 5000 |
| 68 | 5000 |
| 69 | 5000 |
| 70 | 7500 |
| 71 | 5500 |
| 72 | 8000 |
| 73 | 5500 |
| 74 | 5500 |
| 75 | 6500 |
| 76 | 6500 |
| 77 | 6500 |
| 78 | 6000 |
| 79 | 7500 |
| 80 | 8000 |
| 81 | 7500 |
| 82 | 7500 |
| 83 | 6000 |
| 84 | 9000 |
| 85 | 7500 |
| 86 | 8000 |
| 87 | 8000 |
| 88 | 8000 |
| 89 | 8000 |
| 90 | 5500 |
| 91 | 6500 |
| 92 | 6000 |
| 93 | 8000 |
| 94 | 5000 |
| 95 | 5500 |
| 96 | 5500 |
| 97 | 5500 |
| 98 | 4800 |
| 99 | 4800 |
|    | 4800 |
|    | 4800 |

|       |             |
|-------|-------------|
| 100   | 4800        |
| 101   | 4800        |
| 102   | 4800        |
| 103   | 4800        |
| 140   | 7000        |
| 141   | 8000        |
| 142   | 7000        |
| 143   | 7500        |
| 144   | 9000        |
| 145   | 7500        |
| A-1   | 7000        |
| A-2   | 7000        |
| 150   | 7000        |
| A-3   | <u>7000</u> |
| TOTAL | 567,900     |

These allotted amounts include any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools. Declarant reserves the right to recalculate the maximum allowable built-upon areas if required by applicable regulations.

G. Built-upon area in excess of the permitted amount will require a permit modification.

H 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.

I. Each Lot will maintain a 30' wide vegetated buffer between impervious areas and surface waters.

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

#### ARTICLE IX CONSERVATION DECLARATION

SECTION 1. Declarant has filed or will file a Conservation Declaration or similar document to set aside an area within the Property, in order to perpetually maintain and preserve the natural

beauty of this land for the enjoyment of the residents of Mimosa Bay. This area shall have usage restrictions. The Conservation Declaration is intended to ensure continued compliance with the mitigation condition of authorizations issued by the United States of America, U.S. Army Corps of Engineers, Wilmington District, and therefore may be enforced by the United States of America.

ARTICLE X  
LOTS SUBJECT TO DECLARATION/ENFORCEMENT

SECTION 1. Lots Subject to Declaration. The covenants and restrictions contained in this Declaration are for the purpose of protecting the value and desirability of the Planned Community and the Lots. All present and future Owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant or occupant. The covenants and restrictions of this Declaration shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot, their heirs, successors and assigns, as though such provisions were made a part of each and every deed of conveyance or lease, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless terminated by the Lot Owners.

SECTION 2. Lots 25 and 50. Lots 25 and 50 will be transferred back to the previous owner, A. K. Everett, Jr. (hereinafter referred to as "Everett"). At this time, Lots 25 and 50 shall not be part of Mimosa Bay and will not be subject to the rules, restrictions and assessments set forth therein. However, Everett or persons who are "Qualified Successors" may elect to subject either or both Lot 25 and Lot 50 to the Mimosa Bay subdivision, at which time the same shall be treated like all other Lots and the owners of Lot 25 and 50 shall be treated like all other Lot Owners. A "Qualified Successor" is either an heir of Everett who takes title of either Lot 25 or 50 from Everett upon his death, or from an owner who received title by bequeath or intestate succession transfer from an heir of Everett or a member of Everett's immediate family who takes possession by a deed from Everett. In the event that title to Lot 25 or Lot 50 is acquired by someone who is not a Qualified Successor, then the Lot shall become a part of Mimosa Bay and shall be treated like all other Lots. In the event that these Lots become part of Mimosa Bay, then they will be subject to the Storm Water provisions set forth in Article VIII above and shall have a limitation of impervious surface in an amount to be established by Declarant at or before the time of annexation, which shall not be more than 25% of the total square footage of said Lots.

SECTION 3. Enforcement and Remedies. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable (by proceedings at law or in equity) by the Association, the Declarant or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns. The Executive Board shall be entitled to enforce its Articles of Incorporation, Bylaws and Rules and Regulations. In addition to the remedies otherwise

provided for herein concerning the collection of Assessments, the following remedies shall be available:

A. Association to Remedy Violation. In the event an Owner (or other occupant of a Lot) is in violation of or fails to perform any maintenance or other activities required by this Declaration, the Association's Bylaws, Charter or Rules and Regulations, the Executive Board, after 30-days notice, may enter upon the Lot and remedy the violation or perform the required maintenance or other activities, all at the expense of the Owner. The full amount of the cost of remedying the violation or performing such maintenance or other activities shall be chargeable to the Lot, including collection costs and reasonable attorneys' fees. Such amounts shall be due and payable within 30 days after Owner is billed. If not paid within said 30 day period, the amount thereof may immediately be added to and become a part of the Annual Assessment levied against said Owner's Lot. In the event that any maintenance activities are necessitated to any Common Elements by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors, the cost of the same shall be the personal obligation of the Owner and if not paid to the Association upon demand, may immediately be added to and become a part of the Annual Assessment levied against said Owner's Lot.

B. Fines. The Association may in accordance with the procedures set forth in the Act establish a schedule of and collect fines for the violation of this Declaration or of the Association's Articles of Incorporation, Bylaws or Rules and Regulations. If an Owner does not pay the fine when due, the fine shall immediately become a part of and be added to the Annual Assessment against the Owner's Lot and may be enforced by the Association as all other Assessments provided for herein.

C. Suspension of Services and Privileges. The Association may in accordance with the procedures set forth in the Act suspend all services and privileges provided by the Association to an Owner (other than rights of access to Lots) for any period during which any Assessments against the Owner's lot remain unpaid for at least 30 days or for any period that the Owner or the Owner's Lot is otherwise in violation of this Declaration or the Association's Charter, Bylaws, or Rules and Regulations.

SECTION 4. Miscellaneous. Failure by the Association, the Declarant or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The remedies provided herein are cumulative and are in addition to any other remedies provided by law.

#### ARTICLE XI COMPLIANCE WITH WETLAND AND BUFFER REGULATIONS

SECTION 1. Deed Restrictions. In accordance with Title 15 A NCAC 2H .0500, the following Deed Notification shall restrict the following Lots: 1 through 24 (consecutively); 53; 54; 77

through 87 (consecutively); 91 through 95 (consecutively); 98; 140 through 145 (consecutively) and 150: "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 any application pertaining to said rules. This covenant is intended to insure 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."

## ARTICLE XII GENERAL PROVISIONS

SECTION 1. Rights of Institutional Note Holders. Any institutional holder of a first lien on a Lot will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the Planned Community or the property securing its loan, (e) receive written notice of any sixty-day (60) delinquency in the payment of Assessments or charges owed by any Owner of any property which is security for the loan, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of any master insurance policy.

SECTION 2. Utility Service. Declarant reserves the right to subject the Property to contracts for the installation of utilities, cable TV and street lighting, which may require an initial payment and/or a continuing monthly payment by the Owner of each Lot. Each Lot Owner will be required to pay for any water connections, sewer connections (if any), impact fees or any other charges imposed by any entity furnishing water, sewer or other utility service to the Lots. In the alternative, the Developer may collect such connection, impact and other fees, and charges directly from the Lot Owners. All Lot Owners shall be required, for household purposes, to use water and sewer supplied by the companies/governmental units servicing the Planned Community, if and when available. Separate water systems for outside irrigation and other outdoor uses shall not be permitted without the consent of the Architectural Review Committee.

SECTION 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

SECTION 4. Amendment of Declaration. Except in cases of amendments that may be executed

by the Declarant under this Declaration or by certain Members under the Act, this Declaration may be amended by affirmative vote or written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, or by the Declarant if necessary for the exercise of any Special Declarant Right or development or other right reserved to the Declarant herein.

SECTION 5. North Carolina Planned Community Act. It is the intent of the Declarant to comply with the requirements imposed on the Planned Community by the Act and to the extent any of the terms of this Declaration violate the Act, the terms of the Act shall control.

SECTION 6. Liability Outside Class. By virtue of this Declaration, the Association's Articles and Bylaws, certain actions by the Association are required to be taken for only a particular Class of Members. The Members of any Class of Membership outside of a Class for which the Association is required or elects to take any action shall have no liability, through assessments or otherwise, for the Association's failure to take or to mismanage any such action.

IN TESTIMONY WHEREOF, Declarant has caused this Declaration to be signed in its corporate name by its MANAGER as of the day and year first above written.

BLUE MARLIN, L.L.C.

By: Gordon P. Frieze Jr.  
MANAGER

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

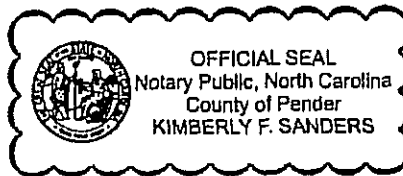
I, Kimberly F. Sanders a Notary Public, certify that Gordon P. Frieze Jr. personally came before me this day and acknowledged that he is the \_\_\_\_\_ MANAGER of BLUE MARLIN, L.L.C., a Limited Liability Corporation, and that he, as MANAGER, being authorized to do so, executed the foregoing on behalf of said Limited Liability Corporation.

Witness my hand and seal, this the 15<sup>th</sup> day of June, 2005.

Kimberly F. Sanders  
Notary Public

My commission expires: 5-15-2010

(SEAL)



NORTH CAROLINA, ONSLOW COUNTY  
The foregoing certificate(s) of

Kimberly F. Sanders

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Waldron M. Thomas Register of Deeds for Onslow County  
Deputy/Assistant-Register of Deeds