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Onslow County, NC  
Rebecca L. Pollard Reg. of Deeds

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**MASTER DECLARATION OF COVENANTS, CONDITIONS  
RESTRICTIONS AND EASEMENTS FOR MOSS CREEK AND  
MOSS CREEK, SECTION I (the "Declaration")**

Prepared by and return to:  
Gaylor Edwards & Vatcher, P.A.

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

**THIS MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MOSS CREEK, and MOSS CREEK, SECTION I, is made this the 23 day of May, 2011 by MOSS CREEK DEVELOPMENT, INC., a North Carolina corporation, hereinafter called "Declarant".**

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of a certain tract of land situated in Jacksonville Township, Onslow County, North Carolina, being more particularly described on Exhibit "A", being hereinafter referred to as the "Development Area"; and

**WHEREAS**, Declarant is constructing on a portion of the Development Area, a residential subdivision with single family dwellings, hereinafter referred to as the "Project", and plans to construct, or have constructed, on the remainder of the Development Area additional single family dwellings; and

**WHEREAS**, Declarant desires to provide for the preservation and enhancement of the property values and to provide for the maintenance of certain improvements located thereon, and to this end desires to subject the 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;

**WHEREAS**, Declarant desires to provide and allow for the annexation of additional "sections" to the Project as said "sections" are developed and completed, and to provide for equality of rights, privileges and obligations of all lot owners in all "sections" of the Project by adding and annexing such "sections" to the Project by recordation of "Supplemental Declarations" to this Declaration.

**NOW, THEREFORE**, the Declarant hereby declares that the real property described in Article I hereof, together with such additional property as may be annexed by the Declarant as hereinafter provided, is and shall be held, transferred, sold and conveyed subject to the protective covenants, conditions, restrictions and easements set forth below.

## ARTICLE I SUBJECT PROPERTY

The real property which is, and shall be held, transferred, sold and conveyed subject to the protective covenants set forth in the Articles of this Declaration is located in the Township of Jacksonville, County of Onslow, State of North Carolina, and is more particularly described as follows:

BEING all that property as shown on that certain plat entitled, "Revised Final Plat Showing Planned Residential Development, MOSS CREEK - SECTION I, Prepared For MOSS CREEK DEVELOPMENT INC. (OWNER)", dated May 11, 2011, prepared by John L. Pierce & Associates, P.A. and recorded in Map Book 62, Page 40, Slide N-74, in the Office of the Register of Deeds of Onslow County, North Carolina, (the "Recorded Plat") hereinafter referred to as the "Subdivision."

## ARTICLE II DEFINITIONS

**Section 1.** Association shall mean and refer to "MOSS CREEK HOA, INC.", its successors or assigns.

**Section 2.** Board shall mean and refer to the Board of Directors of the Association.

**Section 3.** This Section Left Intentionally Blank.

**Section 4.** Common Expenses shall mean and refer to :

a. the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Articles of Incorporation of the Association and its By-Laws;

b. all amounts expended by the Association in accordance with Article XVI in holding and being responsible for the obligations of the Sedimentation and Erosion Control Permit and Stormwater Management Permit SW8 090902 and overseeing, supervising, administering, managing, repairing, replacing and insuring all Stormwater Management Facilities located within the Property as required by this Declaration and all amounts expended in enforcing the provisions of said permits;

c. all amounts expended by the Association for the maintenance, repair and replacement of any sign or other improvements, including the landscaping thereof, within the Subdivision.

**Section 5.** Limited Common Expenses shall mean and refer to all amounts expended by the Association for the maintenance, repair, restoration and replacement of the force mains/supply lines for wastewater treatment systems situated within the sanitary sewer and access easements dedicated for such purpose for Lots 29, 46, 47, and 48, in the Subdivision, as shown on the recorded map set forth in Article I hereof, together with such other lots in any future annexed section of the Project with off-site wastewater treatment systems.

**Section 6.** Limited Common Assessments shall mean and refer to all charges, fees, costs and expenses to be collected from the owners of Lots 29, 46, 47, and 48, as shown on the recorded plat of the Subdivision for Limited Common Expenses, and owners of such other lots with off-site wastewater treatment systems in any future annexed section of the Project.

**Section 7.** Declaration shall mean the covenants, conditions, restrictions and easements and all other provisions set forth in this entire document, as may from time to time be modified or amended.

**Section 8.** Declarant shall mean and refer to MOSS CREEK DEVELOPMENT, INC., a North Carolina corporation, or any successor in title or any successor in interest of Declarant to all of the property then owned by MOSS CREEK DEVELOPMENT, INC., or if it is provided in writing by the Declarant that the successor in title or successor in interest is to assume the rights and obligations of Declarant, then to any successor in title or successor in interest to any portion of the real property then subject to this Declaration.

**Section 9.** Lot shall mean any separately described numbered parcel of land, other than streets, roadways, lots reserved for off-site septic systems for a Lot with the suffix "A", lots reserved for off-site septic system repair areas with the suffix "B", or areas designated as easements, shown on any recorded subdivision map of the Subdivision.

**Section 10.** Permit shall mean the State of North Carolina Stormwater Management Permit number SW8 090902 as issued and modified by the Division of Water Quality under NCAC 2H.1000, and any subsequent modification thereto or other stormwater management permit hereafter issued for any property annexed to the Subdivision by the Declarant.

**Section 11.** Property or Properties shall mean and refer to any real property which is, or may be, subject to this Declaration, or any Supplemental Declaration.

**Section 12.** Sign Easement shall mean any area of the Property designated as "Sign Easement" on the plat of the Property, recorded in Map Book 62, Page 40, in the Office of the Register of Deeds of Onslow County, North Carolina or any other recorded subdivision map of any portion of the Properties.

**Section 13.** 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 Development Area.

### **ARTICLE III** **PURPOSES**

No Lot or Lots shall be put to any use other than for residential purposes, except that any Lot, including, but not limited to a Reserved By Owner Lot, which is owned by Declarant may be used by the Declarant for a street or roadway or off-site sanitary sewer disposal system or off-site sanitary sewer disposal system repair area. All Lots with the suffix "A" or "B" shall be used solely for sanitary sewer treatment and disposal and shall be owned and conveyed together with the same numeral building Lot whether or not it is described in the deed of conveyance of such building Lot.

### **ARTICLE III** **LAND USE AND BUILDING TYPE**

No building shall be used except for residential purposes. No structure shall be erected, placed, altered, or permitted to remain on any such lot other than single family dwellings not to exceed two and one-half stories in height, a private garage which may contain living quarters for occupancy by domestic servants of the lot occupant only, and such other outbuildings as may be reasonably appurtenant to the dwelling, provided that the same are constructed in line with general architectural design and construction standards used as the dwelling itself. This covenant shall not be construed as prohibiting the use of a new single family dwelling as a model home for sales purposes.

### **ARTICLE IV** **DWELLING QUALITY AND SIZE**

All dwellings shall have a minimum enclosed heated living area of 1,600 square feet. All exterior colors of the structure (i.e. exterior walls, window frames, soffit and shingles) and mailbox designs must be approved by the Declarant or its assign prior to construction.

### **ARTICLE V** **BUILDING LOCATION**

No building shall be located on any corner lot nearer to the front line or any side street line than as shown on the Recorded Plat. No building shall be located with respect to interior side lot lines so as to be nearer than 8 feet to either such line. No dwelling shall be located on any interior lot nearer to the front lot line than as shown on the recorded plat nor nearer than 10 feet to the rear lot line, and no garage or other permitted accessory building shall be located nearer than 10 feet to the rear lot line. For the purposes of this covenant, eaves, steps, open porches, and carports shall not be considered as part of a building provided, however, this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot. An error of not more than 10 percent in the location of a building on the Lot with respect to the minimum set back lines shall not be considered a violation of this covenant.

### **ARTICLE VI** **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.

### **ARTICLE VII** **EASEMENTS**

Easements for installation and maintenance of utilities, including sanitary sewer, and drainage facilities, including ditches, are reserved as shown on the Recorded Plat and over the rear ten feet of each Lot. Within these easements, no

structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority, or utility company is responsible.

The Declarant reserves for itself, its successors and assigns, an easement and right at any time in the future to grant a right of way under, over and along the side, rear and front property lines of each and every Lot in the Subdivision described herein, for the installation and maintenance of poles, lines, conduits, pipes, and other equipment necessary to or useful for furnishing electric power, gas, telephone service, ditches, drainage or other utilities, including water and sewer services.

Perpetual, non-exclusive easements for access, installation, maintenance, and repair of sanitary sewer force mains/supply lines and related facilities are reserved over, under and upon the Lots and other property as shown on the recorded plat as "SSE" for the benefit of Owners of Lots whose property's sanitary sewer system and/or repair area is situated on off-site sanitary sewer lots designated with the suffix "A" and/or off-site sanitary sewer repair areas designated with the suffix "B". Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation, maintenance or repair of the sanitary sewer pipes and fixtures therein. The Declarant, or Association, as provided in the Septic System Agreement and Exclusive Easements for MOSS CREEK Subdivision recorded, or to be recorded, following the recordation of this Declaration, shall repair any damage to any sanitary sewer facilities situated in, on or under the easements and restore, as much as reasonably possible, the area in which repairs are made to the condition it existed prior to such damage and repair. Said easements shall be appurtenant to and run with title to said Lots regardless of whether or not the granting of said easements are included in the deeds of conveyance of said Lots.

#### **ARTICLE VIII** **LIVESTOCK AND POULTRY**

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for commercial purposes. Any and all pets shall not be allowed on the premises unless same are under the direct control of the owner at all times and are not creating a nuisance to the other owners within the Subdivision.

#### **ARTICLE IX** **BUILDING PLANS AND SPECIFICATIONS**

No dwelling or other building shall be erected upon any Lot, unless the plans and specification thereof meet or exceed the requirements of "minimum property standards for one and two living units". (FHA. No.300), Federal Housing Administration.

#### **ARTICLE X** **ERECTION OF FENCES**

Fences, not to exceed six (6) feet in height, may be constructed between the front of the primary dwelling on a Lot, and the rear lot line. No fence shall be erected between the front of the primary dwelling and the street right of way, unless such fence shall be of an ornamental nature. Brick and split-rail shall be deemed to meet the requirements of this restriction.

#### **ARTICLE XI** **GARBAGE AND REFUSE DISPOSAL**

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept, except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

#### **ARTICLE XII** **SIGHT DISTANCE AT INTERSECTION**

No fences, 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 boundary lines extended. The same sight line limitations shall apply

upon any Lot within 10 feet from the intersection of a street boundary line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersection, unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

### **ARTICLE XIII TEMPORARY STRUCTURES**

No structure of a temporary character, such as a trailer, storage shed, tent, shack, garage, barn or other outbuilding shall be constructed or placed on a Lot or abutting street, either temporarily or permanently. No trailer, mobile home, camper or recreation vehicle shall be parked on any Lot at any time for any purpose, unless it is parked behind the main dwelling structure or placed inside the carport or garage.

### **ARTICLE XIV DRAINAGE**

All driveways shall have drainage tile in the street ditches installed and sized in accordance with the North Carolina Department of Transportation requirements or recommendations.

### **ARTICLE XV MISCELLANEOUS RESTRICTIONS**

- (A) No boat or boat trailer shall be parked in the area between the front of the dwelling situated on any Lot and the street right of way.
- (B) No portable basketball goals shall be permitted within the right of way adjacent to any Lot.
- (C) No trampoline(s) shall be permitted in the area between the front of the dwelling situated on any Lot and the street right of way.
- (D) Pets shall not be restrained by any chains, ropes or other leash type device anchored or fastened to a temporarily or permanently immovable object or structure.

### **ARTICLE XVI STORMWATER MANAGEMENT**

- (A) The following covenants and restrictions set forth in this Article XVI are intended to insure continued compliance with State Stormwater Management Permit Number SW8 090902 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) The covenants set forth in this Article XVI pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality.
- (D) Alteration of the drainage as shown on the approved plans may not take place without the concurrence of the Division of Water Quality.
- (E) The maximum allowable built-upon area ("BUA") per lot is as shown on Exhibit "B", attached hereto and incorporated herein by reference. 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, coquina and parking areas, but does not include raised, open wood decking or the water surface of swimming pools.
- (F) In case of a Lot within CAMA's regulated Area of Environmental Concern, if built-upon area ("BUA") for that Lot, as calculated by CAMA, is less than the amount shown in these restrictions, the most restrictive BUA will be the maximum permitted limit for that Lot.
- (G) Filling in or piping of any vegetative conveyances (such as ditches, swales, etc.) associated with the development, except for the minimum amount necessary under driveways to provide access to lots and the minimum amount necessary to direct runoff beneath an impervious surface such as a road, is strictly prohibited by any person.
- (H) Each Lot will maintain a fifty (50) foot wide vegetated buffer adjacent to impounded structures, rivers and streams, and tidal waters.
- (I) All roof drains shall terminate at least fifty (50) feet from the normal pool of impounded structures, the bank of each side of rivers and streams, and the mean high water line of tidal waters.
- (J) Built upon area in excess of the permitted amount requires a state stormwater permit modification prior to

construction.

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

All permitted runoff from future development of the Subdivision shall be directed into the permitted stormwater control system. These connections to the stormwater control system shall be performed in a manner that maintains the integrity and performance of the stormwater control system as permitted.

Declarant, the Association, the State of North Carolina and their respective successors and assigns, reserve and retain the right to go upon any Lot to inspect for the compliance of such Lot with the Permit and to maintain, repair, replace and construct ditches and devices necessary to insure that such Lot is in compliance with the Permit.

#### **ARTICLE XVII** **RESERVATION OF EASEMENTS AND RIGHTS BY DECLARANT**

Declarant hereby reserves for itself, its successors and assigns, for any purposes it deems useful to its development of the Subdivision, the development of other property now owned, or which may be owned in the future by Declarant, or the development of other property to which Declarant may grant the benefit of such easements, those easements shown on any Recorded Plat of the Subdivision, or subsequently annexed property, and the following additional easements and rights:

- A. A perpetual easement for ingress, egress, regress, access, the installation and maintenance of utilities, including sanitary sewer, further subdivision, and the right to dedicate to public use, over, under and upon all streets and ditch, drainage and utility easements shown on any recorded map of the Subdivision or lying within the Subdivision and the water and sewer easements lying within the Subdivision;
- B. The right to grant easements for the purposes of ingress, egress, regress, access, the installation, use and maintenance of utilities and further subdivision, over, under and upon (i) all streets shown on any recorded map of the Subdivision and (ii) the ditch, drainage and utility easements and easements for the water and sewer systems located within the Subdivision, to any property outside the Subdivision to which Declarant deems the grant of such easements desirable, whether or not the property to which the easements are granted is owned by Declarant;
- C. A perpetual easement over, under and upon all streets and ditch, drainage, utility, including, but not limited to sanitary sewer and access, easements shown on any recorded map of the Subdivision for the purpose of establishing, constructing and maintaining any underground utility, conduits and wires for telephone, electric power and other purposes and of laying, installing and maintaining facilities for sewage, potable and non-potable water, gas, storm drainage and other utilities therein. This reservation shall not be construed as an obligation of Declarant to provide or maintain any such activity or services;
- D. A perpetual access easement over, under and upon the Lots to trim, cut and remove any trees and brush necessary for the installation, operation and maintenance of utility lines, gas, water and sewer mains and other services for the convenience of the property owners and appurtenances thereto;
- E. A perpetual and exclusive easement for the installation and maintenance of radio and television transmission cables within the rights-of-way easement areas reserved and defined above.

#### **ARTICLE XVIII** **OWNER'S MAINTENANCE OBLIGATIONS AND RIGHT OF DECLARANT AND ASSOCIATION TO PERFORM CERTAIN MAINTENANCE.**

A. On each Lot, the rights-of-way and easement areas reserved by Declarant or dedicated to public utilities purposes shall be maintained continuously by the Lot owner and no structure, plantings or other material shall be placed or permitted to remain, or other activities undertaken which may damage or interfere with the installation or maintenance of ditches and utilities, or which may change the direction of the flow of water through ditch and drainage channels in the easements, or which damage or interfere with established slope ratios or which create erosion problems. It is provided, however, that where the existing location of an easement, ditch or drainage channel reserved in this Declaration or shown on any recorded map of the Subdivision would hinder the orderly development of the Lot on which the easement is located, the easement, ditch or drainage channel may be relocated by Declarant. Improvements within such areas also shall be maintained by the Lot owner except for those for which a public authority or utility is responsible.

B. In the event the Owner of any Lot shall fail to maintain the Lot, the off-site sanitary sewer Lot and/or the improvements situated thereon, in a manner in keeping with this Declaration, or any federal, state or local law, ordinance, rule or regulation, in addition to any other rights set forth herein or provided by law, the

Declarant and the Association shall have the right, and the obligation, through their agents and employees, to enter upon said Lot, off-site sanitary sewer Lot and/or any sanitary sewer easement, and clear, clean, repair, maintain and restore the Lot, off-site sanitary sewer Lot, together with the exterior of any building and any other improvements erected or situated thereon, and the force main/supply lines constituting any portion of the wastewater treatment system for such Lot. There is included in the authority herein granted the power to clear Lots, off-site sanitary sewer Lots, and sanitary sewer system easements, of undergrowth, rubbish, debris, weeds or grass. In the event the owner of any Lot shall damage or through negligent failure to act allow damage to occur to any Stormwater Management Facilities located on said owner's Lot or fail to comply with all applicable North Carolina Sedimentation and Erosion Control Permits, in addition to any other rights set forth herein or provided by law, the Declarant, and the Association shall have the right, but not the obligation, through their agents and employees, to enter upon said Lot and clear, clean, repair, maintain and restore the Stormwater Management Facilities and to bring the Lot into compliance with the applicable North Carolina Sedimentation and Erosion Control Permits. There is included in the authority herein granted the power to clear Lots of undergrowth, rubbish, debris, weeds or grass.

The costs of the maintenance or repair authorized by this Article shall be considered the legal obligation of the Lot Owner. The Declarant, or the Association, as applicable, may maintain an action in court having jurisdiction for such costs, together with all collection costs, including reasonable attorney's fees, and expenses incurred in pursuing such action. The costs shall not constitute a lien on said Lot, unless and until the final judgment of such court to the contrary shall be entered in the office of the Clerk of Court of Onslow County, North Carolina. Any such lien obtained shall be subordinate to any first deed of trust.

In the event of any conflict between the terms and provisions of this Declaration and the Septic System Agreement and Exclusive Easements for the MOSS CREEK Subdivision (the "Tri Party Agreement") recorded immediately following the recordation of this Declaration, the terms and provisions of the Tri Party Agreement shall control.

#### ARTICLE XIX

#### MOSS CREEK HOA, INC.

A. The MOSS CREEK HOA, Inc. (the "Association") has been or will be formed at the direction of the Declarant pursuant to the rules and requirements of the Nonprofit Association Act (Chapter 55A) of the General Statutes of North Carolina as an association of the owners of the Lots. Its purposes are to oversee, inspect, maintain, repair and replace the Stormwater Management Facilities constructed pursuant to the Permit; to enforce the provisions of the Permit; to enforce each Lot owner's obligations with respect to the Stormwater Management Facilities (the "SMF") pursuant to this Declaration; to enforce each Lot owner's obligations with respect to all applicable North Carolina Sedimentation and Erosion Control (the "SEC") Permits; to enforce each owner of a Lot in the MOSS CREEK Subdivision to satisfy such Lot owner's obligation to maintain, repair, restore and replace any force main/supply lines constituting any portion of the wastewater treatment system for such Lot, including any components situated within any sanitary sewer easement. The rights of the Association set forth herein concerning the "SMF" and "SEC" Permits shall only be exercised if, and when, said Permits are transferred to the Association.

B. The Declarant shall have the right, but not the obligation, to annex into the MOSS CREEK Subdivision additional property now, or in the future, owned by Declarant. From and after the date of such annexation, the annexed Lots shall be subject to the jurisdiction of the Association and the owners of the annexed Lots shall be members of the Association.

C. Each owner of a Lot within the Subdivision shall be a member of the Association. The Declarant, by this Declaration, and the owners of each individual Lot, by their acceptance of a deed thereto, covenant and agree with respect to the Association:

- (1) that for so long as each is an owner of a Lot within the Subdivision, each will perform all acts necessary to remain in good and current standing as a member of the Association; and
- (2) that any unpaid assessment, whether general or special, levied by the Association in accordance with this Declaration, the Articles of Incorporation (herein called the "Articles") or the Bylaws of the Association (herein called the "Bylaws") shall be a lien upon the Lot upon which such assessment was levied and also shall be the personal obligation of the person who was the owner of the Lot at the time the assessment fell due.

D. Each membership in the Association shall relate to and have a unity of interest with an individual Lot which may not be separated from the ownership of said Lot. The books and all supporting

documentation, the Declaration, the Articles, the Bylaws, and all amendments thereto shall be available for examination by all Lot owners, and their lenders or their lenders' agents during normal business hours at the principal office of the Association.

E. The Association shall have one class of members. The members shall be all owners of a Lot in the Subdivision, and they shall be entitled to one vote for each lot owned; provided, however, when more than one person holds an interest in any Lot, all such persons shall be members; however, the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote or any fraction of a vote be cast with respect to any Lot.

F. The Declarant shall, at its sole cost and expense, initially construct all Stormwater Management Facilities required to be located upon the Lots, and within the easements dedicated for such purpose. Upon completion of the construction of said Stormwater Management Facilities, the Declarant shall, as hereinafter provided, transfer the applicable Permit to the Association and the Association shall accept the transfer of the applicable Permit from the Declarant at such time as approved by the North Carolina Department of Environment and Natural Resources. Prior to any such transfer, the Stormwater Management Facilities for the Subdivision, including any property annexed by Declarant into the Subdivision, shall be certified, either by state inspection or by a licensed engineer, as being in compliance with the applicable Permit prior to such assignment or transfer. The Association shall indemnify and hold Declarant harmless from any loss, cost, claim, fee, fine, suit, damage or expense, including reasonable attorneys' fees, incurred by Declarant in the defense of any action against Declarant as the holder of the Permit occurring after Declarant tenders transfer of the Permit to the Association following the approval of such transfer by the North Carolina Department of Environment and Natural Resources and the certification of compliance as set forth above. Further, Declarant may bring an action for specific performance of the obligations of the Association pursuant to this paragraph. From and after the transfer of the Permit from the Declarant following the approval of the North Carolina Department of Environment and Natural Resources, the oversight, supervision, management and administration of the Permit shall be the sole responsibility of the Association. The Association's duties with regard to the Permit shall be carried out in accordance with the terms and conditions of this Declaration, the Articles, the Bylaws and the Permit. The Association hereby is granted and conveyed an easement over, under and upon each Lot and future lots which may be annexed into the Subdivision for the purpose of access to and inspection, maintenance, repair and replacement of all Stormwater Management Facilities located upon each Lot and any future subdivided lot. In the event, the Declarant annexes additional property into the Subdivision and transfers the applicable Permit to the Association, the Association shall have, and hereby is granted and conveyed, an easement over, under and upon each annexed lot for the purpose of access to and inspection, maintenance, repair and replacement of all Stormwater Management Facilities located upon each annexed lot.

G. The expenses of the Association shall include:

(1) All amounts expended by the Association in holding and being responsible for the obligations of the Permit and overseeing, supervising, administering, managing, repairing, replacing and insuring all Stormwater Management Facilities located within the Subdivision as required by this Declaration; all amounts expended by the Association in enforcing the provisions of this Declaration, as may be amended; all amounts expended by the Association in the performance of its duties hereunder from and after the time Declarant transfers the Permit; and all amounts expended by the Association in legal, engineering or architectural fees and all similar fees which may be incurred by the Association from time to time in performing the functions delegated to the Association by this Declaration.

(2) All amounts expended by the Association in carrying out any duty or obligation as may be required or allowed by this Declaration, the Articles or the Bylaws.

(3) All amounts expended by the Association in operating, administering, managing, repairing, replacing, improving, paying all taxes imposed on and insuring the improvements.

(4) All amounts expended by the Association in repairing, replacing, and improving the force main/supply lines of any wastewater treatment systems and/or sanitary sewer easements dedicated for such purpose.

H. Each owner of any Lot by acceptance of a deed for the same (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to pay to the Association annual general assessments or charges, and limited common assessments, as hereinafter provided. The annual general assessments and annual limited common assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and lien on the land and, subject to the limitations set forth herein, shall be a continuing lien upon the property against which each



such assessment is made. Furthermore, each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of the Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to a successor in title to a Lot, unless expressly assumed by them, but, subject to the provisions of this Declaration, delinquent assessments shall continue to be a lien upon such Lot.

(1) Until January 1, 2012, the annual general assessment shall be Fifty Dollars (\$50.00) per Lot and the annual limited common assessment shall be Fifty Dollars \$50.00 per Lot.

(2) From and after January 1, 2012, the annual general assessment and annual limited common assessment may be increased upon the vote of a majority of the Board of Directors of the Association by no more than fifteen percent (15%) of the annual general assessment or limited common assessment for the preceding year.

(3) Any increase of the annual general assessment, or limited common assessment, exceeding fifteen percent (15%) of the assessment for the preceding year must be approved by the owners of at least two-thirds (2/3) of the Lots who are voting in person or by proxy at a meeting called for this purpose.

(4) Once the annual general assessment and limited common assessment have been set, notice of the annual general assessment and limited common assessment shall be given to all Lot owners. It is provided, however, that no owner is relieved from the obligation to pay either assessment because of failure to give such notice. After the initial notice of the assessments, no bills for such assessments will be forwarded to any owner but such assessments thereafter shall become due and payable as provided by the Board of Directors.

(5) As provided in the Bylaws, and subject to the restrictions and limitations provided herein, the Board of Directors shall establish an Annual Budget in advance for each fiscal year. Such budget shall project all expenses for the forthcoming fiscal year which may be required for the proper operation, management and maintenance of the Stormwater Management Facilities, the North Carolina Sedimentation and Erosion Control Permits, the "Entrance Sign", if any, situated in any sign easement for such purpose, the force main/supply lines within the sanitary sewer and access easements and the Association, including a reasonable allowance for contingencies and reserves. The budget shall take into account any projected or anticipated income. Upon adoption of such Annual Budget by the Board of Directors, copies of the Budget shall be delivered to each owner together with a statement of the assessments for each Lot as provided herein, based upon such budget; however, the non-delivery of a copy of said Budget shall not affect the liability of any owner for such assessment. The Annual Budget shall be divided by the number of Lots subject to the annual general assessments and limited common assessments at the time of the annual meeting of the members and the quotient shall be the annual general assessment and limited common assessment per Lot for the succeeding fiscal year.

(6) All monies collected by the Association shall be treated as the separate property of the Association and such monies may be applied by the Association to the payment of any expense of operating and managing the Association or the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles and the Bylaws. As monies for any assessment are paid into the Association by any owner, the same may be commingled with monies paid to the Association by the other owners. Although all funds and any increments thereto or profits derived therefrom shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer said owner's membership interest therein, except as an appurtenance of said owner's Lot. When the owner of a Lot shall cease to be a member of the Association by reason of said owner's divestment of ownership of such Lot, by whatever means, the Association shall not be required to account to such owner for any share of the fund or assets of the Association, including any monies which said owner may have paid to the Association, as all monies which any owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Association.

(7) Written notice of any meeting called for the purpose of taking any action requiring a meeting shall be sent to all members not less than thirty (30) days, or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast thirty percent (30%) of the votes of all members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

#### I. Annual general assessments, limited common assessments, and special assessments

shall, except as otherwise provided herein, be fixed at a uniform rate for all Lots to which such assessments apply. The annual general assessments provided for herein shall commence as to each Lot, other than any Lot owned by the Declarant upon which no residential dwelling has been constructed, on the date of recordation of the deed for such Lot in the Office of the Register of Deeds of Onslow County and shall be prorated on a calendar year basis through the date of such recordation. The annual general assessments shall be assessed for each calendar year thereafter and shall be payable annually, with the due date for such payments being as established by the Board of Directors. The limited common assessment, or any special assessment, for the maintenance, repair, restoration and replacement of the force mains/supply lines within the sanitary sewer and access easements shall be fixed at a uniform rate for Lots 29, 46, 47, and 48, in the Subdivision, and such other lots in any future annexed section of the Project with off-site wastewater treatment systems, but shall not be assessed against the Lots in the Subdivision with on-site wastewater treatment systems, unless required by the Tri Party Agreement.

J. The annual general assessment levied by the Association shall be used exclusively to oversee, inspect, maintain and repair the Stormwater Management Facilities; to enforce the provisions of this Declaration relating to the Stormwater Management Facilities, the Permit, the applicable North Carolina Sedimentation and Erosion Control Permit; to pay the expenses of the Association from and after the time, if ever, Declarant transfers the Permit to the Association. The Association's sole functions are to oversee, inspect, maintain and repair the Stormwater Management Facilities; to enforce the provisions of this Declaration relating to the Stormwater Management Facilities, the Permit, the applicable North Carolina Sedimentation and Erosion Control Permits and to oversee, inspect, maintain and repair the sanitary sewer force mains/supply lines for the off-site septic system lots as provided in this Declaration. The powers of the Association may not be expanded beyond those purposes. Nothing herein relieves the owner of a Lot from said owner's obligation to maintain the areas upon said owner's Lot upon which the Stormwater Management Facilities are located as provided herein and not to damage or allow damage to occur to said Stormwater Management Facilities and to comply with the provisions of all applicable North Carolina Sedimentation and Erosion Control Permits.

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

L. General special assessments, limited common assessments and specific special assessments may be levied against Lots for such reasons as are provided in this Declaration, the Articles or the Bylaws, and on such terms as provided by the directors and the members. Upon a two-thirds (2/3) vote of the Directors and a two-thirds (2/3) vote of the owners of Lots who are voting in person or by proxy at a meeting duly called for this purpose, the Association may levy and impose special assessments. The purposes for which special assessments may be levied are limited to providing funds to pay for the oversight, inspection, maintenance and repair of the Stormwater Management Facilities, to enforce the provisions of this Declaration relating to the Stormwater Management Facilities, the Permit and all applicable North Carolina Sedimentation and Erosion Control Permits which exceed the general assessment funds then on hand to pay same and to provide a contingency fund for capital improvements and extraordinary expenses. General special assessments and limited common assessments shall be levied at a uniform rate for all Lots subject to such assessments. Specific special assessments may be assessed against the owner of a Lot after written notice has been given by the Association to the owner of said Lot at the address of the owner appearing upon the records of the Association by United States mail, postage prepaid, that the Stormwater Management Facilities located on said Lot have been damaged by the act or negligent failure to act of said owner or that said owner has failed to comply with all applicable North Carolina Sedimentation and Erosion Control Permits and that, as a result, such Stormwater Management Facilities are in need of repair or replacement in order to comply with the Permit or actions must be taken in order to comply with the applicable North Carolina Sedimentation and Erosion Control Permits and the owner of said Lot has not taken the necessary action to bring the Stormwater Management Facilities located on said owner's Lot into compliance with the Permit or to comply with the provisions of all applicable North Carolina Sedimentation and Erosion Control Permits within thirty (30) days after the mailing of said notice. If said owner commences the necessary action to repair or replace the Stormwater Management Facilities located on said owner's Lot and to bring the Stormwater Management Facilities into compliance with the Permit or to bring the Lot into compliance with the applicable North Carolina Sedimentation and Erosion Control Permits within the thirty (30) day period set forth above, the imposition of a specific special assessment shall be deferred by the Association for the period during which said owner diligently pursues to completion the repair or replacement of the Stormwater Management Facilities located on said Lot or compliance with the applicable North

Carolina Sedimentation and Erosion Control Permits. Specific special assessments shall be limited to the amount of funds actually expended, or in the discretion of the Board of Directors, the amount of funds reasonably estimated by the Board of Directors will be expended, by the Association to repair or replace the Stormwater Management Facilities located upon the Lot or to comply with the applicable North Carolina Sedimentation and Erosion Control Permit applicable to the Lot upon which the specific special assessment is assessed. Special assessments, either general or specific, together with interest, costs and reasonable attorneys' fees, shall be a charge and lien on the land and, subject to the provisions set forth in this Declaration, shall be a continuing lien upon the Lot against which each such assessment is made. The personal obligation of an owner of a Lot for delinquent special assessments, whether general or specific, shall not pass to a successor in title to a Lot unless expressly assumed by the successor, but, subject to the provisions of this Declaration, delinquent special assessments shall continue to be a lien upon such Lot.

M. Any annual general assessment, general special assessment, limited common assessment or specific special assessment, if not paid within thirty (30) days after the date such assessment is due, together with interest at the rate of ten percent (10%) per annum, costs of collection, court costs, and reasonable attorneys' fees shall constitute a lien against the Lot upon which such assessment is levied. The Association may record notice of the same in the Office of the Clerk of Superior Court of Onslow County or file a suit to collect such delinquent assessments and charges. The Association may file Notice of Lis Pendens, bring an action at law against the owner personally obligated to pay the same and/or bring an action to foreclose the lien against the Property. The lien of any assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. No owner may waive or otherwise escape liability for the assessments provided for herein.

N. In the event the Articles of Incorporation and/or Bylaws of the Association are amended to expand the rights and duties of the Association, those amendments shall have no effect on the Lots or the Subdivision unless, by recorded amendment to this Declaration, joined in by Declarant.

#### **ARTICLE XX REMEDIES**

In the case of failure of a Lot owner to comply with the terms and provisions contained in this Declaration, the Articles, or the Bylaws of the Association, the following relief shall be available:

A. The Declarant (whether or not the Declarant is the owner of any Lot), the Association, any Lot owner and any party to whose benefit this Declaration inures, including but not limited to the State of North Carolina or its assignees with respect to the Permit, may proceed at law and in equity to prevent the violation of any term or provision of this Declaration, the Articles and Bylaws and also recover damages for such violation and the court in any such action may award the successful party said party's reasonable expenses and costs in prosecuting such action, including reasonable attorney's fees.

B. The remedies hereby specified are cumulative and this specification of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law, in equity or under any statute. No delay or failure on the part of the Association, the Declarant or an aggrieved party to invoke an available remedy with respect to a violation of any of this Declaration, the Articles and Bylaws shall be held to be a waiver by that party of (or an estoppel of that party to assert) any right available to that party upon the reoccurrence or continuation of said violation or the occurrence of a different violation.

#### **ARTICLE XXI COMPLIANCE WITH DEPARTMENT OF TRANSPORTATION TRAFFIC MAINTENANCE STANDARDS**

Driveway headwalls, fences, mailboxes, newspaper delivery boxes, basketball goals or other roadside obstructions, constructed or placed within the right of way of any street as shown on the recorded plat of the Subdivision in a location or out of materials determined to be a traffic safety hazard by the North Carolina Department of Transportation or the Declarant, shall not be permitted. It shall be the duty of the Owner of

any Lot to remove such obstruction, at the Owner's sole expense, within thirty (30) days following written notification of such objection by the North Carolina Department of Transportation or Declarant.

**ARTICLE XXII**  
**STREET LIGHTING AGREEMENT**

The Declarant reserves the right to subject the real property in this Subdivision to a contract with an electric utility company for the installation of underground electric cables and/or the installation of street lighting, and/or entrance sign lighting, either or all of which may require an initial payment and/or a continuing monthly payment to an electric company by the owner of each dwelling.

**ARTICLE XXIII**  
**ENFORCEMENT**

The Declarant (whether or not the Declarant is the owner of any Lot), any Lot owner and any party to whose benefit this Declaration inures, including but not limited to the State of North Carolina or its assignees with respect to the Stormwater Management Permit, may proceed at law and in equity to prevent the violation or attempted violation of any term, covenant or provision of this Declaration, either to restrain violation or to recover damages for such violation and the court in any such action may award the successful party said party's reasonable expenses and costs in prosecuting such action, including reasonable attorney's fees.

**ARTICLE XXIV**  
**MODIFICATION**

These restrictions are subject to being altered, modified, canceled or changed at any time as to said Subdivision as a whole, or as to any subdivided lot or part thereof, by written document executed by the Declarant or its successors in title and by the owners of not less than sixty seven percent (67%) of the subdivided lots in the Subdivision to which these restrictions apply, and recorded in the Office of the Register of Deeds of Onslow County, North Carolina. If the Declarant owns sixty seven (67%) percent or more of the subdivided lots, the Declarant may alter or amend these covenants without the consent of any other owner. Provided, further, the Declarant also reserves the right to reduce the minimum square footage requirements for dwellings set forth in Article IV hereof in its sole discretion, without the consent or joinder of any other Lot owners, by written document executed by the Declarant, or its successors in title, and recorded in the Office of the Register of Deeds of Onslow County, North Carolina.

**ARTICLE XXV**  
**ANNEXATION OF ADDITIONAL PROPERTY**

The Declarant, for itself and its successors and assigns, hereby expressly reserves the right, but shall in no way be obligated, to expand the real property which is subject to this Declaration without the consent or joinder of any Owner or Owners of any Lot or Lots or person or entities having a lien or security interest in such Lot or Lots, by annexing, from time to time all or any portion of the tract of land known as the Development Area and being more particularly described on Exhibit A, attached hereto and incorporated herein by reference as if fully set forth.

The Declarant may also identify and annex to the Development Area by amendment hereto any other property as Declarant in its sole discretion may determine.

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

**ARTICLE XXVI**  
**SUPPLEMENTAL DECLARATION(S)**

The Declarant shall have the right, from time to time, to record Supplemental Declarations for a Parcel or Parcels of the Development Area which may designate specific use and other restrictions within said Parcel, may create Common Areas within such Parcel for the use of all owners in the Subdivision, as may be expanded, and may create a separate owners association exclusively for such 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 any prior Supplemental Declaration for another Parcel, without the required consent of Owners of all Parcels constituting the then existing Project.

**ARTICLE XXVII**  
**PROVISIONS RELATING TO WETLANDS**

A portion of the Property has been determined to meet the requirements for designation as a wetland. Any subsequent fill or alteration of this area shall conform to the requirements of the federal rules addressing wetland impact noted in the Code of Federal Register at the time of the proposed alteration. The intent of this provision is to prevent additional wetland, and stream impact, so the property owner should not assume that future application for filling or alteration would be approved. The property owner shall report the name of the subdivision in any application pertaining to said rules. This covenant is to run with the land and shall be binding on all parties and all persons claiming under them. The Declarant shall not be liable for any violation of this restriction by any Lot owner or other person.

**ARTICLE XXVIII**  
**TERM**

These Covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these Covenants are recorded, after which such time such Covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said Covenants in whole or in part, with the exception of Article XVI.

**ARTICLE XXIX**  
**SEVERABILITY**

Invalidation of anyone of these covenants by judgment or Court Order shall in no way affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed by its President, with authority duly given by its board of directors, the day and year first above written.

MOSS CREEK DEVELOPMENT, INC., a North Carolina corporation

By: Betty Bullock  
Betty Bullock  
President

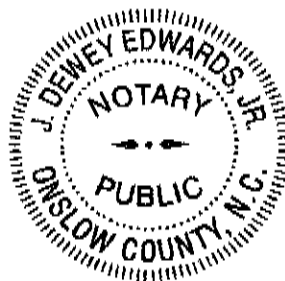
STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

The undersigned, a Notary Public in and for said County and State, does hereby certify that BETTY BULLOCK, known to me, or having provided satisfactory proof her identity, personally came before me this day and acknowledged that she is \_\_\_\_\_ President of MOSS CREEK DEVELOPMENT, INC., a North Carolina corporation, and that with authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by him/her as its \_\_\_\_\_ President.

Witness my hand and official stamp or seal, this 23 day of May, 2011.

J. Dewey Edwards, Jr.  
Notary Public  
Printed Name: J. Dewey Edwards, Jr.

My Commission Expires: July 9, 2011



## Exhibit "A"

Situated in Jacksonville Township, Onslow County, North Carolina and being more particularly described as follows:

BEING all of Tract #1, containing 69.68 acres, and Tract #2, containing 41.12 acres, as shown on a plat entitled, "Exempt Subdivision Plat, Prepared for MOSS CREEK DEVELOPMENT, INC.", dated July 16, 2008, prepared by John L. Pierce & Associates, P.A. and recorded in Map Book 56, Page 88, Slide M-682, in the Office of the Register of Deeds of Onslow County, North Carolina.

Exhibit "B"

Maximum Allowable Built-Upon Area ("BUA")

Lot Numbers:

BUA:

|  |   |                    |
|--|---|--------------------|
| Lots 2, 3, 5 through 10, inclusive, 12 through 22, inclusive, 27, 29, 33, 36, 38, 45, 50, 53, 54, 55, 63, 66, 69 through 80, inclusive, and 82 | - | 6,152 square feet  |
| Lots 1, 22, 23 through 26, inclusive, 28, 31, 32, 35, 37, 40, 41, 42, 44, 46, 47, 48, 52, 56, 57, 59, 60, 61, 64, 65, 67, 68, and 81           | - | 8,299 square feet  |
| Lots 4, 30, 34, 49, 51, 58 and 62  | - | 9,927 square feet  |
| Lot 43   | - | 10,927 square feet |