  
Doc ID: 009136100031 Type: CRP  
Recorded: 08/17/2011 at 11:38:12 AM  
Fee Amt: \$104.00 Page 1 of 31  
Onslow County, NC  
Rebecca L. Pollard Reg. of Deeds  
BK **3639** PG **295-325**

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NORTH CAROLINA  
ONslow COUNTY

**MASTER DECLARATION OF  
COVENANTS AND RESTRICTIONS  
(SF/MULTIPHASE)  
VILLAGE AT FOLKSTONE  
(47F-1-101 et seq.)**

**THIS DECLARATION OF RESTRICTIVE COVENANTS**, is made this 16TH day of AUGUST, 2011, by the **FOSE PROPERTIES, LLC**, a North Carolina Limited Liability Company ("**Declarant**") of Onslow County, North Carolina.

**BACKGROUND STATEMENT**

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

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

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

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

### **DECLARATION**

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

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

**1. DEFINITIONS:**

Section 1. "Association" shall mean and refer to **THE VILLAGE AT FOLKSTONE COMMUNITY SERVICES ASSOCIATION, INC.**, a North Carolina corporation, its successors and assigns, which shall be formed by the Declarant as provided in this Declaration.

Section 2. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners, the public, or both, and specifically shall mean any storm water control or disposal improvements, piers, walkways, streets, if any, which may be constructed. "Common Area" shall specifically include any streets conveyed to the Association which have not yet been accepted by the North Carolina Department of Transportation.

Section 3. "Declarant" shall mean and refer to **FOSE PROPERTIES, LLC**, a North Carolina limited liability company, its successors and assigns.

Section 4. "Declaration" shall mean and refer to this instrument, as may from time to time be amended.

Section 5. "Living Unit" or "Unit" shall mean and refer to any portion of a structure situated upon the Properties designed and intended for use and occupancy as a residence by a single family,

including without limitation detached single family homes, townhouse homes, patio homes and condominium units.

Section 6. "Property" or "Properties" shall mean and refer to any of the real property which is or may be subject to this Declaration or Supplemental Declaration.

Section 7. "Lot" shall mean and refer to any plot of land or condominium unit as defined in N.C.G.S. 47C-1-103, shown upon any recorded subdivision map of the Properties with the exception of the Common Area, and includes any improvements thereon, if any.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties but shall not include those having such interest merely as security for the performance of an obligation.

Section 9. "Parcel" shall mean and refer to a portion or part of real property, together with the improvements located thereon, which becomes subject to this Declaration. This term shall include any additions to the existing Properties as herein provided.

Section 10. "Supplemental Declaration" shall mean and refer to any declaration of covenants, restrictions, easements, charges and liens recorded by the Declarant, or its successors and assigns, which applies to a specific Parcel within the Properties.

Section 11. "Project Property or Area" shall mean the total of the real property incorporated herein and described hereinabove in Exhibit A-1, together with all structures and other improvements thereon, together with such other portions of the Development Area as may from time to time be added to and incorporated in the Project Area by amendment of this Declaration.

Section 12. "Development Area" shall include that property described in Exhibit A, all or part of which may from time to time be submitted to and made subject to the terms of this Declaration.

**2. RETENTION OF DECLARANT RIGHTS:**

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

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

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

Section 2. Declarant hereby reserves all Special Declarant Rights and Development Rights described or set out in N.C.G.S. Section 47F -1-103 (28) and Section 47F-3-103(d). Any or all of such Special Declarant Rights and Development Rights may be exercised as to any portion or all of the Property at any time until Declarant Rights have been terminated according to statute. The transfer of Special Declarant Rights and Development Rights shall be done pursuant to N.C.G.S. Section 47F 3-104.

Section 3. Sales Offices. Other provisions of this Declaration or the Bylaws notwithstanding, Declarant may maintain offices for the sale of Lots and models. Declarant shall have the right to (1) re-locate, discontinue and reestablish within the Project any such offices or models until all Lots have been conveyed to Owners other than a Declarant; and (2) change the use of such offices or models, provided that they shall be used only for sales purposes or models. Notwithstanding anything to the contrary herein, the Declarant's right to use Lots owned or leased by it as sales or models shall continue so long as Declarant owns at least one (1) lot.

Section 4. Declarant Rights Defined: "Special Declarant Rights" or "Declarant Rights" shall include but shall not be limited to, any right (a) to complete improvements indicated on plats and plans filed with the declaration; (b) to exercise any development right; (c) to maintain sales offices, management offices, signs advertising the planned community, and models; (d) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (e) to make the planned community part of a larger planned community or group of planned communities; (e) to make the planned community subject to a master association; or (f) to appoint or remove any officer or Board of Directors member of the association or any master association during any period of declarant control.

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

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

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

**3. SUPPLEMENTAL DECLARATIONS/EXPANSION OF PROPERTIES INTO DEVELOPMENT AREA:** Declarant shall have the right, from time to time, to record Supplemental Declarations for portions ("Parcels") of the Properties which may designate specific use and other restrictions within said Parcel, may create Common Areas within such Parcel for the use only of Owners of Lots in said Parcel, and may create an internal owners association within said Parcel; provided, however, no Supplemental Declaration shall avoid membership in the Association by Owners of Lots in said Parcel, nor shall any Supplemental Declaration modify or amend the terms of this Declaration or of any prior Supplemental Declaration for another Parcel.

**4. COMMON AREAS:**

Section 1. Maintenance: The Association shall be responsible for the exclusive management and control of the Common Areas and all improvements located thereon, except as otherwise may be provided for in a Supplemental Declaration. This paragraph specifically empowers, but does not limit other powers, the Association to control and regulate the hours and periods of operation of all recreational facilities in the development area, and all maintenance of landscaping in the Development area, even if in areas subject to a Sub-association created by amendment to this Declaration or the recording of a Supplemental Declaration. Subject to any statutory requirement, the Association shall have the right to lease any portion of the Common Area to any management or operating entity for purposes consistent with the goals and ends of the owners and Association.

Section 2. Owner's Easement of Enjoyment:

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

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

- (2) the right of the Association to limit the number of guests of members;
- (3) the right of the Association to suspend the right to use the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid and for any infraction of its published rules and regulations;
- (4) the right of the Association to lease, dedicate or transfer all or any part of the Common Area to any management or operating entity, public agency, authority, or utility for such purposes subject to such conditions as may be agreed to by the Association.
- (5) the right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

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

Section 3. Restriction on Alienation: Notwithstanding anything contained herein to the contrary, the Association shall not alienate in any way or transfer all or any part of the Common Areas without the prior approval of all holders of outstanding first priority mortgages against any of the Properties that are subject to this Declaration; provided, however, this restriction shall not be applicable to grants of easements for utilities, storm sewer, sanitary sewer, road right of ways and other conveyances for dedication to the public.

**5. ASSOCIATION AND MANAGEMENT:** Management of the affairs of the Association shall be the right and responsibility of the Board of Directors of the Association provided, however, that subject to NCGS 47F-3-103(d), Declarant shall appoint and remove all members of the Board of Directors and officers, until the end of the period of Declarant control. Declarant Control shall end upon the sale of the last Lot by Declarant in the subdivision.

**5.1 ASSOCIATION/ STREETS/ROADS:**

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

Section 2. The non-state maintained road(s) allowed under the any subdivision regulations and which are a part of this subdivision have been designed and will be built to the standards of said ordinance. It is the intention of the Declarant to dedicate the streets to the State of North Carolina Department of Transportation or a political subdivision of the State of North Carolina or a

governmental entity or authority for ownership and maintenance and Declarant shall make its best efforts and undertake all steps necessary to so dedicate the streets.

The purpose of the association and any assessments imposed by the association shall be as set out elsewhere in this Declaration and specifically include the obligation to maintain in passable condition all roads and streets within the subdivision that may hereinafter be transferred to the Association, until and unless the streets are dedicated and accepted by the State of North Carolina Department of Transportation or a political subdivision of the State of North Carolina or a governmental entity or authority for ownership and maintenance. .

Until conveyance to the Homeowners Association or maintenance is assumed by the State of North Carolina or another entity, streets within the subdivision shall be maintained by the Declarant. In the event dedication is not allowed or accepted by the State of North Carolina or a political subdivision of the State of North Carolina or a governmental entity or authority for ownership and maintenance, then after conveyance to Homeowners Association, streets within the subdivision shall be maintained by the Association. The obligation of the Homeowners Association to maintain the streets and roads in the subdivision shall continue until such time as the North Carolina Department of Transportation or a political subdivision of the State of North Carolina or a governmental entity or authority for ownership and maintenance has accepted said roads into its system.

Prior to conveyance to the Association, Declarant will obtain an Engineer's certification that the roads are built to State of North Carolina Department of Transportation standards for acceptance into the State system.

Section 3. Upon the acceptance of the subdivision streets by the North Carolina Department of Transportation, the Association, if formed, shall be dissolved, unless the Association has been conveyed other property or unless a majority of the members vote, at a Special Meeting of the Association, to not dissolve the Association.

Section 4. Notwithstanding anything to the contrary contained herein, the Declarant shall retain the right and authority, and the Association and all owners of lots subject to this Declaration hereby grant authority to the Declarant and its assigns, the right and power to act on their behalf for the purpose of and in furtherance of the dedication of streets in this subdivision. The Association and lot owners agree that those streets and rights of ways shown on the recorded plats referred to in this Declaration or any amendment hereto may, without further approval or the joinder of the said lot owners, be dedicated to the State of North Carolina Department of Transportation or any political subdivision of the State of North Carolina or any governmental entity or authority created by governmental action for the purpose of, but not limited, holding title to such property for the purpose of roads, streets or utilities.

The Association and the lot owners also agree that any dedication of the streets may be undertaken and may be effected by the Declarant and/ or its assigns. Such act of the Declarant

and/or its assigns, shall have the effect to dedicate those streets and rights of ways shown on the recorded plats referred to in this Declaration or any amendment hereto may, without further approval or the joinder of the Association or said lot owners.

**6. ARCHITECTURAL CONTROL COMMITTEE:**

Section 1. Except for original and initial construction and subsequent modification of improvements by the Declarant on any Lot which such construction is and shall be exempt from the provisions of this provision, no building, wall, fence, landscaping, berm or hedge which act as a fence or privacy inducing structure, pier, dock, ornamentation, or other structure or improvements of any nature shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure and landscaping as may be required by the Architectural Control Committee have been approved in writing by the Architectural Control Committee.

Each building, wall, fence or other structure or improvements of any nature, together with any ornamentation or landscaping, shall be erected, placed or altered upon the premises only in accordance with the plans and specifications and plot plan so approved.

Any change in the appearance of any building, wall, fence or other structure or improvements and any change in the appearance of the landscaping (excepting the planting of flowers and shrubs indigenous to the area), shall be deemed an alteration requiring approval. The Architectural Control Committee shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph.

Section 2. The Architectural Control Committee shall make all efforts to cooperate with the owner or agent in effecting a prompt and reasonable response to any submission. Within 30 days after receipt of all required information, the Architectural Control Committee shall submit in writing to the owner of the lot a response stating whether or not the requested improvements are approved. Unless a response is given by the Architectural Control Committee within 30 days, the plan shall be deemed approved. The response of the Architectural Control Committee may be an approval, a denial, an approval with conditions or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was inadequate and the 30 day time period for response shall only commence upon the receipt of the requested additional information. Conditional approvals may be granted and if approval with conditions is granted and thereafter construction begins, the construction shall be deemed approved by the owner of the lot of the conditions imposed.

Section 3. Refusal of approval of plans, specifications and plot plans or any of them may be based upon any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of the Architectural Control Committee shall deem sufficient. The Architectural Control Committee shall make the following affirmative findings before any plans are approved:



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

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

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

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

Section 4. The paint, coating, stain and other exterior finishing colors on all buildings may be maintained as that originally installed, without prior approval of the Architectural Control Committee, but prior approval by the Architectural Control Committee shall be necessary before any such exterior finishing color is changed.

Section 5. Until such time as the sale of the last numbered lot in the subject property is evidenced by the recordation of a deed therefore, all rights, privilege, powers and authority granted herein to the initial Architectural Control Committee, to whom the specific power to act hereunder is expressly conveyed, shall be exercised by the Declarant, its successors or assigns. The Declarant may assign its powers hereunder to an Architectural Control Committee, but so long as Declarant Control shall exist, the Declarant shall appoint a majority of the Architectural Control Committee. Thereafter, all representatives shall be appointed by the Board of Directors of the Association. Except as set out above, the Architectural Control Committee shall be composed of three (3) owners appointed by the Board and shall serve at the pleasure of the Board.

In the event of the dissolution of Declarant or the failure of Declarant to specifically assign the rights, privileges, powers and authority hereunder prior to the sale of the last numbered lot to the homeowners association or an Architectural Control Committee, or in the event the association has not been formed, then any owner may provide notice to each owner by registered mail of a meeting to be held not less than 30 days thereafter, where the owners may elect, by a majority vote of those present and a quorum having been obtained, an Architectural Control Committee. The said committee shall be composed of three (3) owners and who shall serve until the next meeting. At any time after the initial meeting, the individual owners of record of three (3) lots may call a meeting to be held after 30 days notice by registered mail to all of the other said lot owners of record, and may elect a new Architectural Control Committee, fill any vacancies on the Architectural Control Committee, or remove the members of the existing Architectural Control Committee. A quorum for any meeting of individual lot owners shall be the owners of at least ten percent (10%) of the lots in the subdivision known as the subject property.

Section 6. A majority of the Architectural Control Committee may take any action said Committee is empowered to take, may designate a representative to act for the Architectural Control Committee, and may, upon the approval of the Board of Directors, employ personnel and consultants to act for it. In the event of death, disability or resignation of any member of the Architectural Control Committee, the remaining members shall have full authority to designate a successor. The members of the Architectural Control Committee shall not be entitled to any compensation for services performed pursuant to this covenant. The Architectural Control Committee may establish a fee to cover the expense of reviewing plans and related data at the time plans are submitted for review in order to compensate any consulting architects, landscape architects, urban designers or attorneys.

Section 7. Any Owner may appeal the decision of the Architectural Control Committee provided that all parties involved comply with the decision of the Architectural Control Committee until such time, if any, as the Board of Directors amends, or reverses the Architectural Control Committee's decision. Appeals petitions must be legibly written, state the grounds for appeal and be submitted to the Board of Directors within thirty (30) days of the decision of the Architectural Control Committee. The Board of Directors shall act upon the appeal by amending, reversing or confirming the decision of the Architectural Control Committee within thirty (30) days of receipt of the petition. The Board of Directors' decision shall be by majority vote. Any owner must exhaust this avenue of appeal prior to resorting to a court of law or equity for relief.

Section 8. Submissions for approval may be made to the Architectural Control Committee c/o the Association to any of the following:

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

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

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

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

Section 9. Any requirement for mail service or notice shall be complied with by mailing said notice to the address shown on the county tax records for the respective lot owner.

7. **ASSESSMENTS:**

Section 1. Purpose of Assessments: The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Properties and for the improvements and maintenance, current and capital, of the Common Area, and specifically any storm water control or disposal improvements, and any roads which are or maybe become property of the Association.

Section 2. Creation of the Lien and Personal Obligations of Assessment: All expenses of the association shall be, and for purposes of assessments, the common expense liability shall be assessed against the lots are to be allocated equally among all lots. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed, therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) annual assessments;
- (b) special assessments;
- (c) to the appropriate governmental taxing authority, a pro rata share of ad valorem taxes levied against the Common Area if the Association shall default in the payment therefor for a period of six (6) months, all as hereinafter provided.

The annual and special assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and costs, and reasonable attorneys' fees (as provided in North Carolina General Statutes §6-21.2) incurred by the Association in collecting delinquent assessments shall also be the personal obligation of the person or entity who was the Owner at the time when the assessment became due.

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

Section 3. Determination of Amount of Assessment:

- (a) The initial minimum annual assessment shall be \$150.00 per year per lot for the 2011 and 2012 calendar years. The subsequent year assessments will be based upon a budget determined in part by the operating costs and reserve requirements of anticipated amenities which will become part of the common area of the subdivision and as such the initial minimum assessment does not represent subsequent year assessments to which each lot shall be subject. Assessments shall commence as to each lot beginning on the date of closing from the Declarant to an owner other than the Declarant. So long as Declarant Control exists, the Declarant shall pay no assessments but shall be responsible for any deficit in the operating budget.

Notwithstanding anything to the contrary contained in these Restrictions or amendments thereto, a purchaser who or which shall purchase a lot for the purpose of the construction of a

residence for sale in the ordinary course of said purchaser's business shall pay no assessment until the subsequent resale to a purchaser for the use as a residence.

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

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

Section 4. Collection of Assessments: The first pro rata payment of the balance of the current year assessment shall be due and payable beginning on the day of closing. In addition thereto, at closing, the Declarant shall cause to be collected from the purchaser, the initial "set up" or documentation fee, and an amount equal to two-twelfths of the then current minimum annual assessment for said lot. This shall be used for the sole purpose and use as a working capital fund.

Section 5. Assessment Change: Should the Board of Directors at any time determine, in its sole discretion, that the assessments levied are or may provide to be insufficient to pay the costs of operation and management of the Association, or in the event of emergencies, the Board of Directors shall have the authority to modify existing assessments and levy such additional assessments as it may deem necessary.

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

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

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

In any foreclosure action brought under the power of sale provisions, the Association shall be deemed to be the holder and owner of the obligation secured by this Declaration. The Registered Agent of the Association shall be the Trustee for all purposes of the foreclosure proceeding and the Association shall have the power to appoint a substitute trustee if for any reason the Association desires to replace the trustee, and the said substitute trustee shall succeed to all rights, powers and duties thereof. The Association shall request of the trustee to sell the land subject to the lien at public action for cash, after having first given such notice and advertising the time and place of such sale in such manner as may then be provided by law for mortgages and deeds of trust, and upon such and resales and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey to the purchaser in as full and ample manner as authorized by Law. The Trustee shall be authorized to retain an attorney to represent him in such proceedings. The proceeds of the Sale shall, after the Trustee retains his commission, together with any addition attorney's fees incurred by the Trustee, be applied to the costs of the sale, including but no limited to costs of collection, taxes assessment, costs of recording, service fees, and incidental expenditures, the amount due on any note secured by the property, and any advancements made by the Association in the protection of the security.

Section 7. Effect of Default in Payment of Ad Valorem Taxes of Assessments for Public Improvement by Association: Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements to the Common Area, which default shall continue for a period of six (6) months, each owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in the development. If such sum is not paid by the Owner within thirty(30) days following receipt of notice of the amount due, then such sum shall become a continuing lien subject to the lien of the governmental authority levying said ad valorem taxes on the Lot of the then owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the owner.

Section 8. Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage. Sale or transfer of any Lot shall not affect the assessment line. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

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

Section 1. Residential Use (SF): All lots shall be used exclusively for residential purposes of a single family (which may be part of a multi unit building and which may include separate living quarters for one or more members of the owners' family or relative), except that any lot may be used by the Declarant for a street or roadway. No business, trade, garage sale, moving sale, rummage sale, or similar activity shall be conducted upon a lot without the prior written consent of the Board.

An Owner or occupant residing in a dwelling on a lot may conduct business activities within the dwelling so long as:(i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the dwelling; (ii) the business activity conforms to all zoning requirements for the lot; (iii) the business activity does not involve regular visitation of the dwelling or lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the subdivision; and (iv) the business activity is consistent with the residential character of the subdivision and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the subdivision, as may be determined in the sole discretion of the Board.

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

The leasing of a dwelling or lot shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any lots which it owns within the subdivision, including the operations of a timeshare or similar program.

Notwithstanding the above, any additions to the Project property in the Development Area may be used for other such purposes as may be set out and/or limited in a Supplemental Declaration.

Allowable/Prohibited Structure (SF): No structure shall be erected, altered, placed or permitted to remain on any Lot other than a single, one family dwelling not to exceed three stories in height, which may include living quarters for one or more members of the owners' family or relative, and which may contain living quarters for occupancy by domestic servants of the lot occupant only, and provided that the same are constructed in line with general architectural design and construction standards used as the dwelling itself. The total square footage for any home must be 1400 square feet.

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

No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporary or permanently. No trailer, mobile home, camper or like vehicle shall be allowed on the property at any time, or any other structure which is finished or partially finished at a manufacturing unit or plant and transported for quick assembly and which is designed to be disassembled and relocated shall be allowed. It is specifically the intention and purpose of this covenant to prohibit the location of any manufactured home as defined in NCGS 143-145 and any structure for which a "Label of Compliance" as defined in NCGS 143-145 is issued, including but not limited to those structures which are generally referred to as mobile homes, trailers, relocatable houses, or similar type structures on the property.

"Modular construction" of walls, floor systems, roof trusses and other portions of the structure shall be permitted providing that it is a full floor joist system not supported by chassis or steel frame. Fabrication shall not be limited to the building lot.

This covenant shall not be construed as prohibiting the use of such a structure as a sales/rental model or office or construction site facility.

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

**Section 2. STORMWATER RUNOFF: General Provisions: General Provisions:**

(a) The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8070124 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 State.

Special Provisions (1): In addition to the above, the following restrictions shall apply:

(a) The maximum allowable built-upon area per lot are as follows:

| <b>Lot #</b>  | <b>Max. Built Upon Area Per Lot (SF)</b> |
|---|--|
| 1-14, 19, 21, 22, 24, 26-45, 53, 63-64, 91-95, 97-99, 102-112 | 4400                                     |
| 20  | 3280                                     |
| 23  | 4220                                     |
| 25  | 4355                                     |
| 96  | 4290                                     |

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, and coquina, but does not include raised, open wood decking, or the water surface of swimming pools.

(b) 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.

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

(d) All roof drains shall terminate at least 30' from the mean high water mark.

In addition to the above, restriction if any lots lie within CAMA's AEC:

Lots within CAMA's Area of Environment Concern may have the permitted maximum built-upon area reduced due to CAMA jurisdiction within the AEC. In the case of a lot within CAMA's regulated AEC, where the Division of Coastal Management calculates a different maximum allowable built-upon area for that lot shall be the most restrictive of the two.



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

**Section 2.1 Conservation Areas:** The areas shown as conservation areas on that Plat entitled "The Village at Folkstone, Conservation Area Map, dated March 2008, and recorded in Map Book 62, Page 173, Onslow County Registry, shall be maintained in perpetuity in their natural or mitigated condition. No person or entity shall perform any of the following activities on such conservation area:

- a. Fill, grade, excavate or perform any other land disturbing activities.
- b. Cut, mow, burn, remove or harm any vegetation.
- c. Construct or place any roads, trails, walkways, buildings mobile homes, signs, utility poles or towers or any other permanent or temporary structures.
- d. Drain or otherwise disrupt or alter the hydrology or drainage ways of the conservation area.
- e. Dump or store soil, trash or other waste.
- f. Graze or water animals or use for any agricultural or horticultural purpose.

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

**Section 3. Nuisances:** No noxious, offensive, or illegal activity shall be carried on or conducted upon any Lot nor shall anything be done on any Lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood. All Lots, whether occupied or unoccupied, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted to remain on a Lot. No automobile, other vehicle(s), motorcycle(s) or other similar items shall be repaired or placed "on blocks" or stands except in an enclosed garage. Declarant, or Association, its successors or assigns, reserves the right to enter upon and cut grass, weeds, or undergrowth on any lot or easement, but shall be under no obligation to do so. The Declarant or Association may contract for, and assess to owner, any maintenance necessary to enforce his covenant.

**Section 4. Animals:** Except as specifically allowed elsewhere herein, no animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that household pets may be kept provided that said pet shall not be kept for breeding or commercial purposes. Any such household pet shall not be allowed off the Lot of the Owner of said pet unless said pet is attended and on a leash. Any pet which is not kept inside a home shall be provided a

fenced in area or cage in the rear yard of a lot. Owners shall be solely and absolutely liable for the acts of any pet kept on their Lot. The Association shall specifically have the power and responsibility to designate, based upon temperament, size and/or nature or tendencies, from time to time a list of breeds of animals which shall be prohibited on any lot.

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

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

Section 5. Garbage and Refuse Disposal: Except for construction, disposal and stockpiling of material by the Declarant, no lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be burned or disposed of on any Lot and shall be kept except in sanitary containers approved by the Architectural Control Committee. All equipment for the storage prior to disposal of such material shall be kept in a clean and sanitary condition. The placement of containers shall be approved by the Architectural Control Committee and, in any event, shall be kept in an enclosed area not subject to view from any person, from any direction. The Declarant and Association reserves the right for itself, its successors and assigns, to contract for garbage collection services for each lot in the subdivision and the lot owner shall be responsible for the payment of such garbage services to the company providing the same, or the Association may make such a common expense or expense to a particular owner.

Section 6. Exterior Lights: All light bulbs or other lights installed in any fixture located on the exterior of any dwelling, building or other structure located on any Lot shall be clear or white lights or bulbs. No mercury vapor or similar wide area lighting similar to street lights shall be allowed without prior Architectural Committee approval.

Section 7. Sight Distance at Intersections: No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street

property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 8. Mailboxes: Multiple unit mailboxes may be constructed by the Declarant for the use of a number of owners within certain areas as determined by the Declarant and postal service. No mailboxes shall be installed on any lot or common area without first obtaining approval by the Architectural Control Committee. Application shall be made thereafter to the Architectural Control Committee prior to installation or replacement for approval as to the style, design, color and location. By accepting a deed to any subject property, owner gives the Architectural Control Committee the right to remove any nonapproved mailbox in a reasonable manner; all costs for same shall be paid by owner, and all damages against the Architectural Control Committee are waived.

Section 9. Signs: No sign, billboard, or other advertising of any kind, including without limitation "professionally prepared "for sale" and "for rent" signs, shall be placed or erected on any Lot, right of way or Common Area save and except a professionally prepared "for sale" or "for rent" sign not to exceed six (6) square feet in size. Although approval by the Architectural Control Committee is not required prior to the display of such signs, the Architectural Control Committee may itself remove, have removed, or require the removal of any such sign which in its opinion would not otherwise be allowed under this Declaration. A valid easement shall exist on any Lot for such removal by the Architectural Control Committee or its agents.

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

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

Section 10. Antennas: There shall be no exterior antennas of any kind for receiving and/or sending of T.V., radio or other signals unless same have first been approved by the Architectural Control Committee.

Section 11. Driveways/Parking: All driveways constructed on any Lot shall be paved with concrete (not "black asphalt"). An Owner shall provide a minimum of one (1) paved off-street parking space(s), excluding garage space(s) and shall provide at least one per automobile or other vehicle owned or regularly used at the Lot. On street parking is prohibited except for temporary, short gatherings.

Section 12. Vehicles, Boats, Storage, Travel Trailers, etc (SF): No vehicle without current inspection sticker, vehicle over 7100 pounds empty weight, motor homes, or bus shall be parked

overnight on any lot except in an enclosed garage; provided, however, guests of an owner may so park such vehicle for a period not to exceed seven (7) days each calendar year. A pleasure boat or camper trailer on its trailer may be parked and raw firewood, bicycles, motorcycles, or other items may be stored only on that part of any lot away from the street lying beyond the front line of the house so that it is not viewable from any street. No automobile, other vehicle(s), motorcycle(s) or other similar items shall be repaired or placed "on blocks" or stands except in an enclosed garage.

Section 13. Window Appearance: All draperies or other window dressings viewable from the exterior of a dwelling unit shall be white or off white or in lieu thereof shall have a white lining.

Section 14. Trees: Except as to development or construction by Declarant, or as may be approved by the Architectural Control Committee, no tree four inches (4") in diameter at any location on said tree or ten feet (10') in height shall be cut, removed or intentionally damaged on any Lot unless first approved by Architectural Control Committee.

Section 15. Swimming Pools: Outdoor swimming pools, hot tubs, jacuzzis, and other similar facilities may be located on a lot only after the Architectural Control Committee approval, and shall be screened and fenced. All such improvements shall be subject to approval of and compliance with all governmental laws and regulations.

Section 16. Clotheslines (SF): Exterior clotheslines shall be prohibited, except those located in the backyard, but same should be located with consideration for limiting the view of the clothesline from a street. Location may be subject to rule or regulation by the Association and relocation may be required at anytime to limit the view of a clothesline from a street.

Section 17. Fence Minimum Requirements: Architectural Control Board review requirements must be met prior to construction of any fence. No fence over six (6) feet in height shall be constructed on any lot. No plastic mesh, or wire fences permitted, except for temporary structures. The term fence shall include but not be limited to, a wall, fence, landscaping, berm, or hedge which act as a fence or privacy or security inducing structure.

Section 18. Rental of Units: Owners may lease their units, but provided, however that any lessee shall be bound by the applicable restrictions contained in this Declaration, By Laws and by rules and regulations enacted by the Association, and by such reasonable restrictions on such rentals as may be adopted by the said Board of Directors. The Board of Directors shall have the right to limit or prohibit the rights of the owners to use recreation facilities during the period of rental to non owners.

By his acceptance of a deed of his unit, each unit owner empowers the Association or its designee, as his attorney in fact, to bring a proceeding in summary ejectment to remove any tenant who is in violation of the provisions of this Declaration, the By-Laws, or any rules and regulations adopted by the Board of Directors pursuant thereto. If leased, a unit must be leased in its entirety, and may not be subdivided for this purpose. Nothing contained herein shall be construed, nor shall

the Board of Directors be empowered to create a rental pool, to require the employment of an exclusive rental agent, to fix rental rates, or to require that units be made available for rent. All leases shall provide a minimum effective lease term of thirty (30) days without provisions for early termination, and a copy of any rental management agreement and all leases shall be provided to the Association.

The Association shall specifically have the powers to adopt policies, and rules and regulations to implement policies, relating to rental by owners of units to non owners, either by owners directly or by rental agents, and the use of the common facilities by non owners, including but not limited to, the regulation of pets, trash pickup, access to common areas, the number of occupants of a unit, the number of vehicles permitted to be parked and where such vehicles may be parked, the hours of use of the pool (or other common facilities), the number of pool guests allowed who are non owners, the establishment of fees payable by owners or non owners to offset the cost of providing pool, parking or other passes or identification for non owners, or other administrative costs associated with non owners. The Board of Directors shall have the right to limit or prohibit the rights of the owners to use recreation facilities during the period of rental to non owners.

**8.1 MAINTENANCE OF SINGLE FAMILY STRUCTURES:** The exterior maintenance and repair shall be provided by the owner of each lot. In the event any owner fails to maintain or repair his lot and building thereon the Association shall have the right to provide notice of the owner's duty to maintain and repair and designate specific items to be maintained and repaired. If such maintenance or repair is not completed within fifteen (15) days from the notice, then upon a meeting of the Board, if the Board deems that the maintenance or repair should be undertaken, then the Association shall have the right to so undertake. The Association shall not have, however, any obligation to undertake any such maintenance or repair. The costs of the maintenance or repair shall be an assessment payable by the owner and against the lot maintained or repaired collectable as any other assessment.

General rules of law shall apply regarding liability for property damage due to negligence or willful acts or omissions and all such costs shall be allocated in relation to the person who would be responsible for repair in the absence of the duty of the Association to maintain.

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

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

successors or assigns, reserves the right to make minor boundary line adjustments between lots so long as said adjustment does not exceed ten percent (10%) of the total area of a given lot.

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

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

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

**11. EASEMENTS:**

Section 1. Easements: There is hereby reserved by the Declarant, its successors and assigns, and for the benefit of the Association, the easements, for utility, sight and buffer areas as well as any other easements, as shown on the recorded plats of the Parcels or included within the Supplemental Declarations pertaining to the Parcels. Said easements may be used for the purposes shown on the plat and, in addition thereto, ingress, egress and regress and for the purpose of installing, maintaining, repairing and replacing all utility service lines and systems including, but in no way limited to, those for water, sewer, gas, telephone, electricity and cable television.

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

In addition to the above, there is hereby reserved for the benefit of the Association, an easement over each parcel or lot which may be enclosed by a fence a blanket easement and right of way on and over the ground within a parcel or lot for the purpose of ingress, egress and regress for the purpose of maintenance on any lot and for the purpose of maintaining the grounds and landscaping which may be enclosed by a fence.

Section 2. Easement to Correct Drainage: For a period of two (2) years from the date of conveyance of the first Lot in a Parcel, the Declarant reserves a blanket easement and right of way on, over and under the ground within a Parcel to maintain and correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary. Following such action the Declarant shall restore the affected property to its original condition as near as practical. The Declarant shall give reasonable notice of its intent to take such action to all affected Owners, unless in the opinion of the Declarant an emergency exists which precludes such notice. At the expiration of such two (2) year period, said easement to correct drainage shall automatically be held by the Association.

Section 3. Encroachments: In the event any portion of a Common Area encroaches upon any Living Unit or any Living Unit encroaches on a Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for the encroachment and for the maintenance of same shall exist so long as the encroachment exists.

Section 4. Association Maintenance: The Board of Directors of the Association and the Architectural Control Committee, acting through the Association, its officers, agents, servants and/or employees shall have the right of unobstructed access at all reasonable times to all properties as may be reasonably be necessary for maintenance.

Section 5. Common Areas: Easements are also reserved over those portions of the Common Areas, if any, that may be necessary or required to accommodate overhanging eaves or other cantilevered construction which may encroach upon the common area or the air and light space above such common area.

Section 6. Grant to Others: The Declarant or Association may grant permits, licenses, and easements over any common area or utility easement reserved elsewhere for utilities, roads or other purposes reasonably necessary or useful for the Project maintenance or operation of the Project.

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

**13. COMPLIANCE, ENFORCEMENT AND REMEDIES:**

Section 1. Compliance and Enforcement:

(a) Default and Remedies. A default in or failure to comply with any of the

terms, conditions, obligations, and provisions of the Declaration, the Association Bylaws, the Association Articles of Incorporation, or the rules and regulations, as the same may be amended from time to time, by any Owner or Occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and penalties as set in the Bylaws, sums due for damages, an injunction, or any combination thereof, which relief may be sought by the Association, an aggrieved Owner, or by any person or class of persons adversely affected. Also, if any Owner fails to perform any obligation under the Declaration, the Bylaws, the Articles of Incorporation or such rules and regulations, then the Association may, but is not obligated to, perform the same for the Owner's account, and for such purpose may enter upon his lot or dwelling, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may collect all such sums against the lot owned by such defaulting Owner.

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

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

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

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



(f) **Recovery of Attorneys' Fees and Costs.** In any proceeding arising because of an alleged default by a Owner, the person, class of persons or Association bringing an action against an alleged defaulting Owner shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees and costs as may be allowed by the Court, with interest thereon at the highest rate allowed by law.

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

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

Section 2. Remedies Extended to the State of North Carolina: To ensure that this subdivision is maintained consistent with the laws of the State of North Carolina, and its political subdivision, the State of North Carolina and any political subdivision thereof, are specifically empowered to take such acts necessary by and through its officers to enforce any of these covenants against an owner or the Association. The State of North Carolina and any political subdivision thereof, are specifically made a beneficiary of these covenants.

Section 3. Remedies Extended to Other Regulatory Agencies: These restrictive covenants include provisions that are intended to ensure continued compliance with any conditions of a Clean Water Act authorization issued by the United States of America, U.S. Army Corps of Engineers, and therefore may be enforced by the United States of America. This covenant is to run with the land, and shall be binding on the Owner, and all parties claiming under it.

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

Section 1. Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage.

Section 2. Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot upon which it holds a mortgage.

Section 3. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

Section 4. Any proposed amendment to the project instruments effecting a change in the boundaries of any Lot, ownership of Common Elements, if any, the number of votes in the Association pertaining to any Lot or any proposed change in the restrictions on the properties.

**15. RESERVED.**

**16. AMENDMENT:**

Section 1. Declarant may amend this Declaration in accordance with this Declaration to add additional property to this Declaration.

Section 2. These restrictions are subject to being altered, modified, canceled or changed at anytime as to said subdivision as a whole or as to any subdivided lot or part there by written document executed by Declarant or their successors in title and by the owner of not less than fifty-one percent (51%) of the subdivided lots or parts of said subdivision to which these restrictions apply, and recorded in the office of the Register of Deeds of the County in which this Declaration is recorded.

Section 3. The Declarant, without the consent or approval of any other Owner, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made by, guaranteed by, sponsored by or insured by a governmental or quasi-governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale in such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of the Property, including, without limitation, ecological controls, construction standards, aesthetics and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration (VA), U. S. Department of Housing and Urban Development (HUD), the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association, requiring an amendment as a condition of approval, or suggesting an amendment, shall be sufficient evidence of the approval of such amendment of VA, HUD and/or such corporation or agency and permit Declarant to amend to accord with such letter. No amendment made pursuant to this Section shall be effective until duly recorded in the Office of the Court for Onslow County, North Carolina.

Section 4. Modification of Stormwater Provisions: Any of the provisions relating to Stormwater or other Environmental Restrictions may be modified or terminated to comply with stormwater rules now or hereafter adopted by the State of North Carolina by an instrument in writing executed by Declarant, its successors and assigns, without joinder of any other party or owner.

Section 5. Amendments Proposed by Association. An amendment or amendments to this Declaration may be proposed by the Board of Directors of the Association acting upon a vote of a majority of the Directors, or by the members of the Association owning a majority of the Lots,

whether meeting as members or by instrument in writing signed by them. Upon any amendment or amendments to this Declaration being proposed by said Board of Directors or members, such proposed amendment or amendments shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon call a Special Meeting of the members of the Association for a date not later than sixty (60) days from receipt by him of the proposed amendment or amendments. It shall be the duty of the Secretary to give to each member written or printed notice of such Special Meeting, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form, which notice shall be mailed not less than fourteen (14) days nor more than thirty (30) days before the date set for such Special Meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail addressed to the member at his Post Office address as it appears on the records of the Association, the postage thereon prepaid. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the Meeting, shall be deemed equivalent to the giving of notice to such member. At the meeting, the amendment or amendments proposed must be approved by an affirmative vote of at least sixty-seven percent (67%) of the votes in the Association which are allocated to Lot owners in the Subdivision in order for such amendment or amendments of this Declaration to be adopted. Any such amendment or amendments as adopted shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted. The original or an executed copy of such amendment or amendments, so certified and executed with the same formalities as a deed, shall be recorded in the Register of Deeds Office of Onslow County, North Carolina, such amendment or amendments to specifically refer to the recording data identifying this Declaration. Thereafter, a copy of said amendment or amendments in the form in which the same were placed of record by the officers of the Association shall be delivered to the Owners of all Lots, but delivery of a copy thereof shall not be a condition precedent to the effectiveness of such amendment or amendments. At any meeting held to consider such amendment or amendments, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association prior to such meeting or at such meeting.

Section 6. Amendments by Declarant. A Declarant may amend the Declaration as set forth herein and in the Act without the consent of any other Person or the Association to exercise Development Rights.

Section 7. Amendments Requiring Declarant Consent. During the Declarant Control, this Declaration may not be amended without the prior written consent of the Declarant. Except to the extent expressly permitted by the Act or other provisions of this Declaration (in compliance with the Act), no amendment may create or increase special Declarant Rights, create or increase Development Rights, increase the number of Lots, change the boundaries of any Lot, or change the uses to which any lot is restricted in the absence of unanimous consent of the Lot owners.

**17. GENERAL PROVISIONS:**

Section 1. Duration: The covenants and restrictions set forth herein shall run with and bind the Properties for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall automatically be extended for successive ten (10) year periods unless otherwise terminated by a vote of eighty percent (80%) of the then record Owners of all Lots within the Properties.

Section 2. Severability: Invalidation of any one of the covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Captions: The captions used in this Declaration are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Declaration.

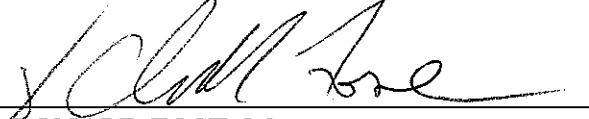
Section 4. Construction: Whenever the context so requires, the use herein of any gender shall be deemed to include the plural and the plural shall include the singular.

Section 5. Litigation: No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the membership and a majority of the Board of Directors. This Section shall not apply, however to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of personal assessments, c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the Declarant or is approved by the percentage votes and pursuant to the same procedures necessary to institute proceedings as provided above.

(SIGNATURES ON NEXT PAGE)

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

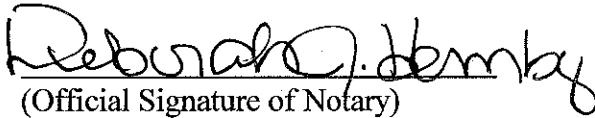
**FOSE PROPERTIES, LLC**

By:   
DONALD FOSE, Manager

NORTH CAROLINA  
COUNTY OF ONSLOW

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: DONALD FOSE, MANAGER

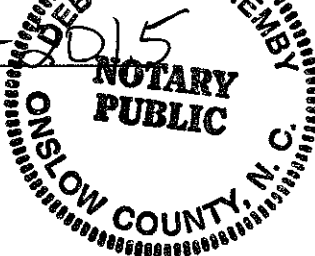
Date: August 16, 2011

  
(Official Signature of Notary)

Deborah J. Hemby Notary Public  
(Notary's printed or typed name)

(Official Seal)

My commission expires: 9-19-2015



## EXHIBIT A (DEVELOPMENT AREA)

Being all of a recombination of lots or parcels as shown in Map Book 51, Page 148, Slide L-1484 as surveyed by Southwind Surveying and Mapping, Inc. consisting of approximately 146.80 acres.

AND

### Boundary

Beginning at an iron, a common corner with S D Padgett (DB 1703; Pg 674), said iron being located from an iron in the western right of way of Old Folkstone Road (NCSR 1518) N26-13-24W 242.18'; thence from the true beginning and continuing with the SD Padgett property S83-32-10W 75.33' to an iron a common corner with David Allen Millis (DB 200, Pg 60); thence N71-57-40W 11.76' to an iron, a common corner with David Stevenson (DB 1655, Pg 270); thence N00-17-57W 462.31' to an iron, a common corner with Robert and Shirley Junot (DB 138, Pg 293); thence N00-36-13W 75.44' to an iron in the Deep Bottom Branch; thence meandering with the Deep Bottom Branch the following courses and distances; N61-21-55W 110.47'; thence N72-16-11W 72.65'; thence S84-53-30W 49.24'; thence N38-50-26W 66.56'; thence N38-50-25W 70.00'; thence N00-07-49E 72.42'; thence N10-00-43E 37.16'; thence N10-00-42E 50.00'; thence N24-48-28E 105.81'; thence N24-44-50W 12.00'; thence N24-44-51 W 60.72'; thence N14-08-54W 49.94'; thence N14-08-53W 58.00'; thence N28-43-16W 56.96'; thence N28-43-16W 50.00'; thence N10-15-21W 101.97'; thence N37-27-11W 50.45'; thence N37-27-11W 35.61'; thence N51-53-10W 84.40'; thence N37-15-07W 109.67; thence N03-56-18W 28.33'; thence N41-22-04W 94.28' to an iron in the intersection of the run of Permeta Branch, a common corner with Steven and Delia Stackleather (DB 1451, Pg 354) and North Topsail Utilities, Inc. (DB 1605, Pg 490); thence leaving Deep Bottom Branch and continuing with the run of Permeta Branch the following courses and distances; N50-08-24E 43.41'; thence N32-58-53E 53.72'; thence N33-06-10E 43.22'; thence N41-37-27E 79.95'; thence N52-35-09E 95.30'; thence N38-59-17E 91.53'; thence N29-42-07E 126.85'; thence N66-10-26E 75.51'; thence N80-24-00E 73.41'; thence N50-55-15E 104.36'; thence N81-51-22E 48.76' thence N85-00-04E 71.34'; thence N83-44-29E 58.00', a common corner with Padgett S D (DB 1703, Pg 674); thence leaving the run of Permeta Branch and continuing with the Padgett property S36-32-55E 22.28' to an iron; thence S36-32-55E 514.79' to an iron; thence N74-52-34E 172.74' to an iron; thence N71-23-48E 95.67 to an iron; thence S19-10-09W 1875.16' to an iron, a common corner with the east side of a 50' access easement (MB 39, Pg 74); thence S18-57-01W 53.13' to an iron; thence N86-11-37W 14.00' to an iron in the west side of the aforementioned 50' access easement and the point and place of beginning, containing 32.57 acres +/-.

### NON EXCLUSIVE

#### 50' ACCESS EASEMENT

Beginning at an iron on the western right of way of Old Folkstone Road (NCSR 1518), said iron being located from an iron on the right of way of Old Folkstone Road, a common corner with David Allen Millis (DB 200, Pg 60) and S D Padgett (DB 1703, Pg 674); thence continuing with the right of way N45-16-07E 93.94' to an iron; thence N44-57-32E 38.25' to an iron; thence N44-49-09E 88.28'; thence from the true beginning N26-13-24W 242.18' to an iron in the Charles T. Owens property; thence continuing with the Owens property S86-11-37E 14.00' to an iron; thence N18-57-01E 53.13' to an iron; thence leaving the Owens property S26-15-21E 255.62' to an iron on the western right of way of Old Folkstone Road; thence continuing with the right of way S44-58-27W 52.76' to the point and place of beginning.

Boundary and 50' Access Easement being located in Stump Sound Township, Onslow County, North Carolina according to a survey for Deuce Investments, Inc., prepared by Southwind Surveying and Engineering, Inc., dated 11-30-06.

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

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

**BEING all of that property as shown on that plat entitled "The Village at Folkstone, Phase 1" as recorded in Map Book 62, Page 104, of the Onslow County Public Registry.**

SF MULTIPH CSA ROAD ONLY 032008 modified  
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