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Onslow County, NC
Rebecca L. Pollard Reg. of Deeds
BK **3517** PG **188-209**

Prepared by: FRANK W. ERWIN, ATTORNEY
Erwin, Simpson & Stroud, Attorneys, P.L.L.C.

NORTH CAROLINA

ONSLow COUNTY

**MASTER DECLARATION OF
COVENANTS AND RESTRICTIONS**
(SF/CSA-streets)
BLUE CREEK FARMS SECTION II-D
(47F-1-101 et seq.)

THIS DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS, made the 2ND day of DECEMBER, 2010, by FOSE PROPERTIES, LLC, a limited liability company organized and existing under and by virtue of the laws of the State of North Carolina, hereinafter called "Declarant."

BACKGROUND STATEMENT

The Declarant is the owner of the real property described in Paragraph 1 of this Declaration and is desirous of subjecting said real property to the protective covenants hereinafter set forth, each and all of which is and are for the benefit of such property and for each owner thereof, and shall inure to the benefit of and pass and run with said property, and each and every lot or parcel thereof, and shall apply to and bind the successors in interest and any owner thereof.

NOW, THEREFORE, Declarant hereby declares that the real property in and referred to in Paragraph 1 hereof is and shall be held, transferred, sold and conveyed subject to the protective covenants set forth below:

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1. DESCRIPTION OF REAL 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 County of Onslow, State of North Carolina, and is more particularly described as follows:

BEING all of those numbered lots as shown on that plat entitled "FINAL PLAT BLUE CREEK FARMS SECTION II-D" as recorded in Map Book 61 , Page 38, of the Onslow County Public Registry.

2. DEFINITIONS:

Section 1. "Association" shall mean and refer to a non profit association, its successors and assigns, which shall be formed by the Declarant as provided in this Declaration.

Section 2. "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, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinafter described, and such additions thereto as hereafter be brought within the jurisdiction of the Association, and specifically includes all of that subdivision known generally as BLUE CREEK FARMS SECTION II-D.

Section 4. "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 5. "Lot" shall mean and refer to any plot of land shown upon any record subdivision map of the Properties with the exception of the Common Area, and includes any improvements thereon, if any.

Section 6. "Declarant" shall mean and refer to FOSE PROPERTIES, LLC, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

2.1 WETLANDS AND CONSERVATION SPECIAL PROVISIONS:

The property subject to this Declaration is subject to a Conservation Declaration recorded in Book 3137, Page 672, Onslow County Registry and shown on that plat recorded in Map Book 56, Page 202, Onslow County Registry. It shall be the responsibility of each owner, prior to alteration of any lot, to determine if any Lot shall have been determined to meet the requirements

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for designation as a regulatory wetland. Any subsequent fill or alteration of this wetland shall conform to the requirements of state wetland rules adopted by the State of North Carolina in force at the time of the proposed alteration. The intent of this deed restriction is to prevent additional wetland fill, so the property Owner should not assume that a future application for fill will be approved. The property Owner shall report the name of the subdivision, in any application pertaining to wetland rules. This covenant is intended to insure the continued compliance with wetland rules adopted by the State of North Carolina therefore benefits may be enforced by the state of North Carolina. This covenant is to run with the land and shall be binding on all parties and all persons claiming under them.

3. GENERAL RESTRICTIONS:

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

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

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

Section 2. Allowable/Prohibited Structure: No structure shall be erected, altered, placed or permitted to remain on any Lot other than a single, one family dwelling not to exceed three stories in height, (which may include separate living quarters for one or more members of the owners' family or relative), a private garage which may contain living quarters for occupancy by domestic

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servants of the lot occupant only, provided that the same are constructed in line with general architectural design and construction standards used as the dwelling itself. Each dwelling shall contain a minimum of 1300 heated 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.

Section 3. Building Location: No building, residence, garage or other permitted accessory building shall be located on any lot nearer to the front line, any side street line, interior or rear lot line, than as shown on the recorded plat. For the purpose of this covenant, eaves, steps, open porches, and carports shall not be considered as a part of a building provided, however, that 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 ten percent (10%) 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.

Section 4. 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, 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 may contract for, and assess to owner, any maintenance necessary to enforce his covenant.

Section 5. Animals: 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

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pet shall not exceed 130 pounds in weight and are not 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. 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.

Section 6. 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 burned or disposed of on any Lot and shall be kept 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 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.

Section 7. 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 Control Committee approval.

Section 8. 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 twenty-five (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 9. Mailboxes: All mailboxes shall retain the same style, design, color and location of the mailbox as originally provided at construction of any residence. The Architectural Control Committee reserves the right to approve the style, design, color and location prior to any original installation or replacement. Application shall be made to the Architectural Control Committee prior to installation or replacement. 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.

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Section 10. 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 paragraph 6 of this Declaration. A valid easement shall exist on any Lot for such removal by the Architectural Control Committee or its agents. Provided, however, nothing shall prohibit or limit in any manner "construction" signs designating the job site and builder which may be placed upon a Lot during the period of the construction of a residential dwelling on the Lot but must be immediately removed upon final completion of such construction. Notwithstanding the above, any additions to the Project Property in the Development area may be further limited in regard to signs, billboards or advertising as set out in any Supplemental Declaration. Nothing herein shall prohibit any sign erected by the Declarant or its assigns.

Section 11. Antennas: There shall be no exterior antenna 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. In any event, it shall not be viewable from any other lot.

Section 12. Driveways/Parking: All driveways constructed on any Lot shall be paved with either asphalt or concrete. 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 and regularly used at the Lot. On street parking is prohibited except for temporary, short gatherings.

Section 13. Resubdivision: 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, any recombined Lots shall be considered a single Lot upon recordation of a plat so showing in the office of the Register of Deeds, but the combining of lots shall not reduce the number of lots for the purpose of assessments and the assessments shall be pro rated based upon the area of the recombined lots.

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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 Carteret County, there shall be no further dues or assessments owed from the date of such recordation; however, any dues prepaid shall not be reimbursed.

Section 14. Vehicles, Boats, Storage, Travel Trailers, etc: No vehicle without current inspection sticker shall be parked overnight on any lot except in an enclosed garage. Any vehicle over 7100 pounds empty weight, camper trailer, motor homes or bus, a pleasure boat on its trailer may be parked and raw firewood, bicycles, motorcycles, or other items may be parked or stored only on that part of any lot away from the street lying beyond the front line of the. 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 15. 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 16. 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 17. 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 and compliance with all governmental laws and regulations.

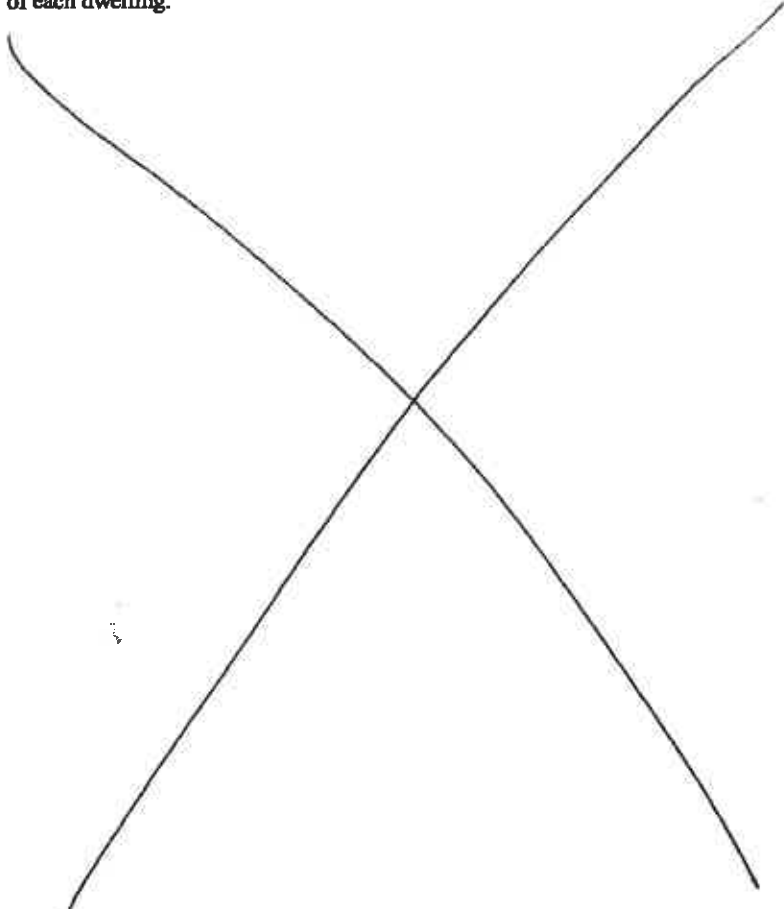
Section 18. Clotheslines: Clotheslines shall be not more than six (6) feet in height from the ground and shall not be viewable from the street, or shall be surrounded by a privacy fence approved by the Architectural Control Committee.

Section 19. Fence Minimum Requirements: No fences over six (6) feet in height shall be constructed on any lot. No fence shall be erected between the rear of any building and the street right of way. Any portion of any fence which can be viewed from the street right of way shall be of an ornamental nature. The term fence shall include but not be limited to, a wall, fence, landscaping,

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berm, or hedge which act as a fence or privacy or security inducing structure. Architectural review requirements must be met prior to construction of any fence.

Section 20. Street Lighting Agreement: The developer 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, either or both which may require an initial payment and/or a continuing monthly payment to an electric utility company by the owner of each dwelling.



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4. WETLANDS AND CONSERVATION SPECIAL PROVISIONS:

It shall be the responsibility of each owner, prior to alteration of any lot, to determine if any Lot shall have been determined to meet the requirements for designation as a regulatory wetland. Any subsequent fill or alteration of this wetland shall conform to the requirements of state wetland rules adopted by the State of North Carolina in force at the time of the proposed alteration. The intent of this deed restriction is to prevent additional wetland fill, so the property Owner should not assume that a future application for fill will be approved. The property Owner shall report the name of the subdivision, in any application pertaining to wetland rules. This covenant is intended to insure the continued compliance with wetland rules adopted by the State of North Carolina therefore benefits may be enforced by the state of North Carolina. This covenant is to run with the land and shall be binding on all parties and all persons claiming under them.

5. ASSOCIATION/STREETS/ROADS:

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

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

Section 3. Upon the acceptance of the subdivision streets by 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, 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.

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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 for by governmental action for the purpose of, but not limited, holding title to such property for the purpose of roads, streets or utilities.

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

The Declarant shall maintain the roads, streets and parking areas (not located on any lot) until the roads, streets and parking areas as "common areas" or designated as "private streets/roads/parking" or other such similar designation shall have been accepted by the North Carolina Department of Transportation or a political subdivision of the State of North Carolina or a governmental entity or authority or have been deeded to the association.

5.1. 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, at the earlier of:

- (1) The sale of the last Lot by Declarant in the subdivision.
- (2) On that date which is seven (7) years from the date of the recording of this document.

6. COVENANTS FOR MAINTENANCE ASSESSMENTS:

Section 1. 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:

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

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

Section 2. 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 3. Minimum Annual Assessment: The initial minimum annual assessment shall be \$ 0 (zero) per year. So long as there exists Declarant Control, the Declarant shall pay no dues or assessments but in lieu thereof the Declarant covenants and agrees to defray such deficit as may be required for maintenance up to the amount of the current operating budget. Notwithstanding anything to the contrary contained herein, upon the conveyance of any road or other property to the Association, the Declarant or the Association shall thereafter have the right to set a beginning assessment of not more than \$200.00 per year per lot.

Section 4. Collection of Assessments: The Board of Directors shall fix the amount of the assessment against each lot at least thirty (30) days in advance of the annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. 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.

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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 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 Article 8 of Chapter 44 of the North Carolina General Statutes. No Owner may waive or otherwise escape liability for the assessments provided for herein by the non-use of the Common Area or abandonment of his dwelling unit or site.

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

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

In any foreclosure action brought under the power of sale provisions, the Association shall be deemed to be the holder and owner of the obligation secured by this Declaration. The Registered Agent of the Association shall be the Trustee for all purposes of the foreclosure proceeding and the Association shall have the power to appoint a substitute trustee if for any reason the Association desires to replace the trustee, and the said substitute trustee shall succeed to all rights, powers and duties thereof. The Association shall request of the trustee to sell the land subject to the lien at public auction for cash, after having first given such notice and advertising the time and place of such sale in such manner as may then be provided by law for mortgages and deeds of trust, and upon such and resales and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey to the purchaser in as full and ample manner as authorized by Chapter 45. The Trustee shall be authorized to retain an attorney to represent him in such proceedings. The proceeds of the Sale shall, after the Trustee retains his commission, together with any addition attorney's fees incurred by the Trustee, be applied to the costs of the sale, including but no limited to costs of collection, taxes assessment, costs of recording, service fees, and incidental expenditures, the amount due on any note secured by the property, and any advancements made by the Association in the protection of the security.

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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 lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof

Section 9. Rights of Mortgagees: (a) Notice of action: A holder or insurer of a mortgage, upon written request to the Owners 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:

- (1) Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage.
- (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.
- (3) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owners Association.
- (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 Owners' Association pertaining to any Lot or any proposed change in the restrictions on the properties.

7. ARCHITECTURAL CONTROL COMMITTEE:

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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. (a) 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.

(b) Action of the Architectural Control Committee may be based upon any reasonable ground, including aesthetic grounds. Requirements of any governmental authority shall not be considered by the Committee.

(c) The Architectural Control Committee shall make the following affirmative findings before any plans are approved:

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

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

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

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

Section 3. 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 4. 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, privileges, 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 Declarant, its successors or assigns. 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 in the subdivision known as the subject property, 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 5. 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

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review in order to compensate any consulting architects, landscape architects, urban designers or attorneys.

Section 6. Any requirement for registered mail service shall be complied with by mailing said notice to the address shown on the county tax records for the respective lot owner.

8. EASEMENTS:

Section 1. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear ten (10) 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 a 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.

Section 2. The grantor reserves for itself, its successors or assigns, an easement and right at any time in the future to grant a right of way under, over and along ten (10) feet off 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, drainage or other utilities including water and sewer services.

Section 3. 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.

9. OWNER'S EASEMENT OF ENJOYMENT:

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

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

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(c) the right of the Association to suspend the voting right and to use the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(d) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by fifty-one percent (51 %) of each class of members agreeing to such dedication or transfer has been recorded.

(e) the right of individual Owners to the exclusive use of parking spaces as provided in this article.

(f) 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.

Section 2. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

10. STORMWATER RUNOFF: GENERAL PROVISIONS:

(a) The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 080402 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 concurrences of the Division of Water Quality.

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

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(a) The maximum allowable built-upon area per lot is as set out and described on the attached Exhibit A.

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) The property may not be further subdivided and the property may not contain more than the permitted number of lots or built-upon area.

(c) 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.

(d) For those lots within CAMA's Area of Environmental Concern, where DCM calculates a different maximum lot built-upon area, the governing lot BUA shall be the most restrictive of the two amounts.

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

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

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 or assigns.

11. **GENERAL PROVISIONS:**

Section 1. **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 (20) years from the date these covenants are recorded, after which time such covenants shall be automatically extended for successive periods of ten (10) years.

Section 2. **Enforcement:** In the event of a violation or breach of any of these restrictions, covenants, agreements and conditions by any person or concern claiming by, through or under the undersigned, or by virtue of any judicial proceedings, the Association, its successors and assigns and the owners of the number lots in the subdivision, or any of them, jointly or severally, shall behave the right to proceed at law or in equity to compel compliance with the terms thereof or to prevent the

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violation or breach of any of them. Costs and reasonable attorney fees shall be recoverable by the Association as part of any judgment or order to enforce these Restrictive Covenants. The failure to enforce any right, reservation, restriction or condition contained herein, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

Section 3. 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, the State of North Carolina is 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 is specifically made a beneficiary of these covenants.

Section 4. Modification of Restrictive Covenants: General. 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 during the first twenty (20) year period by written document executed by the Declarant or their successors in title and by the owner of not less than ninety percent (90%) or more of the subdivided lots, the Declarant may alter or amend these covenants without consent of anyone. After the expiration of the initial twenty (20) year period, 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 not less than seventy-five percent (75%) of the Lot Owners, and recorded in the office of the Register of Deeds of the County in which this Declaration is recorded.

Section 5. Litigation: No judicial or administration proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five (75%) percent 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.

Section 6. Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 7. Variances: The Association may allow reasonable variances and adjustments of the restrictions set forth in this Declaration 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.

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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  (SEAL)
DONALD G. FOSE, JR., MANAGER

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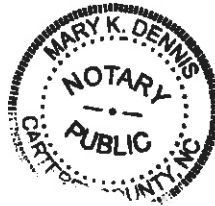
~~Onslow County~~ *Carteret*
North Carolina

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 above: DONALD G. FOSE, JR., Manager

Date: 12-6-10

Mary K Dennis
(Official Signature of Notary)

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



(Official Seal)
My commission expires: 6-24-12

K:\FOSE\BLUECREEK FARMS\RCS\RCS SEC 2-B ROAD ONLY 101608 REV121008
R14438\RCS 997\OC393 rev 102709fwe\012809dh\082609
K:\FOSE\BLUECREEK FARMS\RCS\RCS SEC2-C ROAD ONLY 032410\rev041210
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EXH
IBIT
A

Lot #	Lot Size (sq ft)	Allowable BUA (sq ft)
1	60509	14084
2	38007	9079
3	63316	14737
4	65406	12886
5	31444	7319
6	32129	7478
7	21822	5079
8	21322	4983
9	25823	6011
10	68440	16163
11	52252	12162
12	49397	11498
13	23988	5583
14	45280	10539
15	53049	12348
16	51251	11829
17	87320	20325
18	55125	12831
19	86451	20122
20	44527	10364
21	88285	20084
22	44947	10482
23	85137	19817
24	89577	20850
25	35107	8172
26	48655	10859
27	26090	5840
28	33316	7755
29	32904	7659
30	52883	12309
31	29294	6819
32	27762	6462
33	26573	6185
34	30100	7008
35	33955	7903
36	48864	11374
37	29809	6892
38	80376	18708
39	44120	10289
40	38158	8882
41	44715	10408
42	34782	8096
43	27396	6377
44	25285	5881
45	28204	6798
46	26539	6177
47	35173	8187

Lot #	Lot Size (sq ft)	Allowable BUA (sq ft)
48	69563	16192
49	47102	10864
50	73815	17181
51	96374	22189
52	158378	36398
53	43039	8780
54	31259	6216
55	41417	7807
56	30567	5888
57	40789	10366
58	32141	8118
59	32817	10059
60	34234	7968
61	57323	13343
62	62584	14567
63	64289	14959
64	82171	19128
65	82897	14289
66	50876	8844
67	61112	15225
68	114518	32355
69	82163	19124
70	85646	19935
71	18173	4230
72	33263	7742
73	53298	12408
74	53284	12402
75	62940	14650
76	182486	42476
77	89777	20897
78	58512	13619
79	108965	25596
80	44139	10274
81	32575	7582
82	33707	7846
83	46095	10729
84	34827	8106
85	58884	13662
86	70973	16520
87	46860	10807
88	44770	10421
89	42819	9920
90	67009	15597
91	28389	6138
92	28122	6548
93	48886	10867
94	54008	12571
95	61487	14307
96	62691	14582
	5047787	1172206

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