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

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**DECLARATION OF RESTRICTIVE AND
 PROTECTIVE COVENANTS FOR
 SOUTHWEST COMMONS (the "Declaration")**

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

STATE OF NORTH CAROLINA
 COUNTY OF ONSLOW

THIS DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS, made this the 10th day December, 2010 by **SOUTHWEST COMMONS, LLC**, a North Carolina limited liability company, hereinafter called "Declarant",

WITNESSETH:

THAT WHEREAS, the Declarant is the owner of all the real property described in Article I of this Declaration, except Lot 6, 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; and

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

**ARTICLE I
SUBJECT PROPERTY**

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

BEING all that real property as shown and described on that certain map entitled, "Final Plat, Planned Residential Development of Southwest Commons Phase I", dated May 27, 2010, prepared by Charles F. Riggs and recorded in Map Book 60, Pages 52 - 52C, Slide M-1606 (four sheets), in the office of the Register of Deeds of Onslow County, North Carolina, hereinafter referred to as the "Property" or "Subdivision".

**ARTICLE II
DEFINITIONS**

- Section 1. Association shall mean and refer to "SOUTHWEST COMMONS HOA, INC.", its successors or assigns.
- Section 2. Board shall mean and refer to the Board of Directors of the Association.
- Section 3. Common Expenses shall mean and refer to :

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

b. all amounts expended by the Association in accordance with Article XVI in holding and being responsible for compliance with the obligations of the North Carolina Sedimentation and Erosion Control Permit and Stormwater Management Permit No. SW8 091005, as may be amended, and overseeing, supervising, administering, managing, repairing, replacing and insuring all Stormwater Management Facilities located within the Property as required by this Declaration and all amounts expended in enforcing the provisions of the Permit;

c. all amounts expended by the Association for the maintenance, repair and replacement of any sign or other improvements, excluding improvements in Limited Common Area, but including the amounts required to maintain compliance with the North Carolina Erosion and Sedimentation Control permit.

Section 4. Declaration shall mean the covenants, conditions, restrictions and easements and all other provisions set forth in this entire document, as may from time to time be modified or amended.

Section 5. Declarant shall mean and refer to SOUTHWEST COMMONS, LLC, a North Carolina limited liability company, or any successor in title or any successor in interest of SOUTHWEST COMMONS, LLC to all of the Property then owned by SOUTHWEST COMMONS, LLC, or if it is provided in writing by the Declarant that the successor in title or successor in interest is to assume the rights and obligations of Declarant, then to any successor in title or successor in interest to any portion of the Property then subject to this Declaration.

Section 6. Limited Common Area shall mean those portions of the Property designated on any recorded map or plat of the Property, or any portion thereof, for the exclusive benefit and use and disposal and treatment of sanitary sewer of specifically designated Lots. Initially there shall be two (2) Limited Common Areas designated as "Offsite Septic Fields for Lots 1 & 7 - 10 (LPP System)" hereinafter sometimes referred to as "Limited Common Area - I", and "Offsite Septic Fields for Lots 3 - 5 (LPP System)" hereinafter sometimes referred to as "Limited Common Area - II", for the exclusive use and benefit of disposal and treatment of sanitary sewer from Lots 1, 7, 8, 9 and 10 as to Limited Common Area - I, and Lots 3, 4 and 5 as to Limited Common Area - II, as shown on the plat described in Article I.

Section 7. Limited Common Expenses shall mean and refer to those costs and expenses reasonably or necessarily required for the maintenance, repair and/or replacement of structures, facilities and other improvements situated on or under any Limited Common Area which provides sanitary sewer services for such Lot. Separate Limited Common Expenses shall be payable and collected from the owners of the Lots whose sanitary sewer is disposed of and treated on the respective Limited Common Areas. The owner of any Lot whose sanitary sewer wastewater treatment system **is not** located in the Limited Common Area for which such expenses may be incurred **shall not** be liable for payment of such expenses, except as may be required by the Association as a special assessment for the owners of all Lots in the Subdivision pursuant to that certain Septic System Agreement and Easement recorded immediately after this Declaration.

Section 8. Lot shall mean any separately described parcel of land, other than streets, roadways, Limited Common Area, off-site sanitary sewer areas, reserved areas, or areas designated as easements, shown on any recorded subdivision map of the Property.

Section 9. Permit shall mean the State of North Carolina Stormwater Management Permit Number SW8 091005, as issued and modified by the Division of Water Quality under NCAC 2H.1000, and any subsequent modification thereto or other stormwater management permit hereafter issued for any property annexed to the Subdivision by the Declarant.

ARTICLE III **PURPOSES**

No Lot or Lots shall be put to any use other than for residential purposes, except that any Lot, including "Reserved By Owner" or Common Area lot, which is owned by Declarant may be used by the Declarant for a street or roadway or off-site sanitary sewer disposal system.

ARTICLE III **LAND USE AND BUILDING TYPE**

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

covenant shall not be construed as prohibiting the use of a new single family dwelling as a model home for sales purposes.

ARTICLE IV
DWELLING QUALITY AND SIZE

The ground floor area of the main structure, exclusive of one-story porches and garages, shall be not less than 1,000 square feet for a one-story dwelling, nor less than 750 square feet for a dwelling of more than one story. All exterior colors of the structure (i.e. exterior walls, window frames, soffit and shingles) and mailbox designs must be approved by the Declarant or its assign prior to construction.

ARTICLE V
BUILDING LOCATION

No building shall be located on any corner lot nearer to the front line or any side street line than as shown on the recorded plat. No building shall be located with respect to interior side lot lines so as to be nearer than 8 feet to either such line. No dwelling shall be located on any interior lot nearer to the front lot line than as shown on the recorded plat nor nearer than 15 feet to the rear lot line, and no garage or other permitted access or building shall be located nearer than 15 feet to the rear lot line. For the purposes of this covenant, eaves, steps, open porches, and carports shall not be considered as part of a building provided, however, 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 (10.0%) in the location of a building on the lot with respect to the minimum set back lines shall not be considered a violation of this covenant.

ARTICLE VI
NUISANCES AND MAINTENANCE OF OFF-SITE SANITARY SEWER DISPOSAL AREAS

No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

The Owner of any off-site sanitary sewer wastewater treatment and disposal area lot designated with the suffix "A", if any, shall maintain such lot in a clean and sightly manner, including, but not limited to mowing of same and removal of trash, rubbish and debris, and in compliance with the sanitary sewer permit issued by the Onslow County Health Department.

ARTICLE VII
EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear ten feet of each lot. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

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

ARTICLE VIII
LIVESTOCK AND POULTRY

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

ARTICLE IX
BUILDING PLANS AND SPECIFICATIONS

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

ARTICLE X
ERECTION OF FENCES

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

ARTICLE XI
GARBAGE AND REFUSE DISPOSAL

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

ARTICLE XII
SIGHT DISTANCE AT INTERSECTION

No fences, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply upon any lot within 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 distance of such intersection, unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

ARTICLE XIII
TEMPORARY STRUCTURES

No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding temporarily or permanently. No trailer, mobile home, or camper shall be parked on any lot at any time for any purpose, nor shall any recreational vehicle be allowed to remain on any lot at any time for any purposes, unless it is parked behind the main dwelling structure or placed inside the carport or garage.

ARTICLE XIV
DRAINAGE

All driveways shall have drainage tile in the street ditches installed and sized in accordance with the N.C. State Highway recommendations.

ARTICLE XV
MISCELLANEOUS RESTRICTIONS

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

ARTICLE XVI
STORMWATER MANAGEMENT

(A) The following covenants and restrictions set forth in this Article XVI are intended to insure continued compliance with State Stormwater Management Permit Number SW8 091005, as issued by the Division of Water Quality under NCAC 2H.1000.

(B) The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Stormwater Management Permit.

(C) The covenants set forth in this Article XVI pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality.

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

(E) The maximum allowable built-upon area ("BUA") per Lot is 5,800 square feet. This allotted amount includes any built-upon area constructed within the Lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking or the water surface of swimming pools.

(F) In case of a Lot within CAMA's regulated Area of Environmental Concern, where the Division of Coastal Management calculates a different maximum allowable built-upon area for any Lot described herein, the governing maximum built-upon area for that Lot shall be the most restrictive of the two.

(G) Filling in or piping of any vegetative conveyances (such as ditches, swales, etc.) associated with the development, except for the minimum amount necessary under driveways to provide access to lots and the minimum amount necessary to direct runoff beneath an impervious surface such as a road, is strictly prohibited by any person.

(H) Each Lot will maintain a minimum (50) foot wide vegetated buffer adjacent to impounded structures, rivers, streams, and tidal waters.

(I) All roof drains shall terminate at least fifty (50) feet from the normal pool of impounded structures, the bank of each side of rivers and streams, and the mean high water line of tidal waters.

(J) Built upon area in excess of the permitted amount requires a state stormwater permit modification prior to construction.

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

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

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

ARTICLE XVII
RESERVATION OF EASEMENTS AND RIGHTS BY DECLARANT

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

a. A perpetual easement for ingress, egress, regress, access, the installation and maintenance of utilities, including, but not limited to septic system and sanitary sewer easements, further subdivision, and the right to dedicate to public use, over, under and upon all streets and drainage and utility easements shown on any recorded map of the Property or lying within the Subdivision and the water and sewer easements lying within the Subdivision;

b. The right to grant easements for the purposes of ingress, egress, regress, access, the installation, use and maintenance of utilities and further subdivision, or annexation, over, under and upon (i) all streets shown on any recorded map of the Property and (ii) the drainage and utility easements and easements for the water and sewer systems located within the Property, to any property outside the Subdivision and Property to which Declarant deems the grant of such easements desirable, whether or not the property to which the easements are granted is owned by Declarant;

c. A perpetual easement over, under and upon all streets and drainage and utility easements shown on any recorded subdivision map of the Property for the purpose of establishing,

constructing and maintaining any underground utility, conduits and wires for telephone, electric power and other purposes and of laying, installing and maintaining facilities for sewage, potable and non-potable water, gas, storm drainage and other utilities therein. This reservation shall not be construed as an obligation of Declarant to provide or maintain any such activity or services;

d. A perpetual access easement over, under and upon the Lots to trim, cut and remove any trees and brush necessary for the installation, operation and maintenance of utility lines, gas, water and sewer mains and other services for the convenience of the property owners and appurtenances thereto;

e. A perpetual and exclusive easement for the installation and maintenance of radio and television transmission cables within the rights-of-way and easement areas reserved and defined above.

ARTICLE XVIII

OWNER'S MAINTENANCE OBLIGATIONS AND RIGHT OF DECLARANT AND ASSOCIATION TO PERFORM CERTAIN MAINTENANCE.

A. On each Lot, the rights-of-way and easement areas reserved by Declarant or dedicated to public utilities purposes, and all Septic Supply Line, Access, Septic Field Easements and components of the Sanitary Sewer Treatment and Disposal Systems for Lots 1, 7, 8, 9 and 10, and Lots 3, 4 and 5, shall be maintained continuously by the Lot owner and no structure, plantings or other material shall be placed or permitted to remain, or other activities undertaken which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of the flow of water through drainage channels in the easements, or which damage or interfere with established slope ratios or which create erosion problems. It is provided, however, that where the existing location of an easement or drainage channel reserved in this Declaration or shown on any recorded subdivision map of the Property would hinder the orderly development of the Lot on which the easement is located, the easement or drainage channel may be relocated by Declarant. Improvements within such areas also shall be maintained by the Lot owner except for those for which a public authority or utility is responsible.

B. In the event the owner of any Lot shall fail to maintain the Lot and/or the improvements situated thereon in a manner in keeping with this Declaration, in addition to any other rights set forth herein or provided by law, the Declarant and the Association shall have the right, but not the obligation, through their agents and employees, to enter upon said Lot and clear, clean, repair, maintain and restore the Lot, the exterior of any building and any other improvements erected thereon. There is included in the authority herein granted the power to clear Lots of undergrowth, rubbish, debris, weeds or grass. In the event the owner of any Lot shall damage, or through negligent failure to act, allow damage to occur to any Septic System/Access Easement, or Stormwater Management Facilities located on said owner's Lot or fail to comply with all applicable North Carolina Sedimentation and Erosion Control Permits, in addition to any other rights set forth herein or provided by law, the Declarant, and the Association shall have the right, but not the obligation, through their agents and employees, to enter upon said Lot and clear, clean, repair, maintain and restore the Septic System Easement and all components therein, or Stormwater Management Facilities and to bring the Lot into compliance with the applicable North Carolina Sedimentation and Erosion Control Permits. There is included in the authority herein granted the power to clear Lots of undergrowth, rubbish, debris, weeds or grass.

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

ARTICLE XIX

SOUTHWEST COMMONS HOA, INC.

A. The SOUTHWEST COMMONS HOA, Inc. (the "Association") has been or will be formed at the direction of the Declarant pursuant to the rules and requirements of the Nonprofit Association Act (Chapter 55A) of the General Statutes of North Carolina as an association of the owners of the Lots. Its purposes are to oversee, inspect, maintain, repair and replace the Stormwater Management Facilities

constructed pursuant to the Permit; to enforce the provisions of the Permit; to enforce each Lot owner's obligations with respect to the Stormwater Management Facilities pursuant to this Declaration; to enforce each Lot owner's obligations with respect to all applicable North Carolina Sedimentation and Erosion Control Permits; said authority to be exercised, if and only if, and when and only when, Declarant transfers the Permit to the Association. The Association shall have no authority with respect to the Lots located in the Subdivision until such time as Declarant transfers such rights to the Association.

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

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

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

D. Each membership in the Association shall relate to and have a unity of interest with an individual Lot which may not be separated from the ownership of said Lot. The books and all supporting documentation, the Declaration, the Articles, the Bylaws, and all amendments thereto shall be available for examination by all Lot Owners, and their lenders or their lenders' agents during normal business hours at the principal office of the Association.

E. The Association shall have two (2) classes of members. The first class of members shall be the owners of any Lot in the Subdivision, and they shall be entitled to one vote for each Lot owned; provided, however, when more than one person holds an interest in any Lot, all such persons shall be members; however, the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote or any fraction of a vote be cast with respect to any Lot. The second class of members shall be the owners of any Lot whose sanitary sewer wastewater treatment and disposal system is located in the Limited Common Area.

F. The Declarant shall, at its sole cost and expense, initially construct all Sanitary Sewer Treatment and Disposal Systems pursuant to the authorizations and permits issued by the Onslow County Health Department and all Stormwater Management Facilities required to be located upon the Lots and Property or upon any property annexed into the Subdivision by the Declarant to the standards required by the applicable Permit. Upon completion of the construction of said Stormwater Management Facilities located in Subdivision, the Declarant shall transfer the applicable Permit to the Association and the Association shall accept the transfer of the applicable Permit from the Declarant upon the earlier to occur of (i) the date the North Carolina Department of Environment and Natural Resources allows such transfer to occur; or, (ii) the date upon which at least fifty percent (50%) of the Lots in the entire Subdivision are conveyed to owners other than Declarant. Prior to any such transfer, the Stormwater Management Facilities for the respective Subdivision section, including any property annexed by Declarant into the Subdivision, shall be certified, either by state inspection or by a licensed engineer, as being in compliance with the applicable Permit prior to such assignment or transfer. The Association shall indemnify and hold Declarant harmless from any loss, cost, claim, fee, fine, suit, damage or expense, including reasonable attorneys' fees, incurred by Declarant in the defense of any action against Declarant as the holder of the Permit occurring after Declarant tenders transfer of the Permit to the Association following the approval of such transfer by the North Carolina Department of Environment and Natural Resources and the certification of compliance as set forth above. Further, Declarant may bring an action for specific performance of the obligations of the Association pursuant to this paragraph. From and after the transfer of the Permit from the Declarant following the approval of the North Carolina Department of Environment and Natural Resources, the oversight, supervision, management and administration of the Permit shall be the sole responsibility of the Association. The Association's duties with regard to the Permit shall be carried out in accordance with the terms and conditions of this Declaration, the Articles, the Bylaws and the Permit. The Association hereby is granted and conveyed an easement over, under and upon each Lot and future lots in the Subdivision for the purpose of access to and inspection, maintenance, repair and replacement of all Stormwater Management Facilities located upon each Lot and future subdivided

lot. In the event, the Declarant annexes additional property into the Subdivision and transfers the applicable Permit to the Association, the Association shall have, and hereby is granted and conveyed, an easement over, under and upon each annexed Lot for the purpose of access to and inspection, maintenance, repair and replacement of all Stormwater Management Facilities located upon each annexed lot.

G. The expenses of the Association shall include:

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

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

(iii) All amounts expended by the Association in operating, administering, managing, repairing, replacing, improving, paying all taxes imposed on and insuring the improvements, including landscaping, situated in any Sign Easement.

(iv) All amounts expended by the Association for the maintenance, repair, replacement and improvement of the Sanitary Sewer Treatment and Disposal Systems and Limited Common Area.

H. Each owner of any Lot by acceptance of a deed for the same (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to pay to the Association annual general assessments or charges as hereinafter provided, and the owner of any Lot whose sanitary sewer system is located in a Limited Common Area covenants and agrees to pay to the Association annual special limited assessments or charges as hereinafter provided. The annual general assessments and special limited assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and lien on the land and, subject to the limitations set forth herein, shall be a continuing lien upon the property against which each such assessment is made. Furthermore, each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of the Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to a successor in title to a Lot, unless expressly assumed by them, but, subject to the provisions of this Declaration, delinquent assessments shall continue to be a lien upon such Lot.

(i) Until January 1, 2011, the annual general assessment shall be Fifty Dollars (\$50.00) per Lot.

(ii) From and after January 1, 2011, the annual general assessment may be increased upon the vote of a majority of the Board of Directors of the Association by no more than fifteen percent (15%) of the annual general assessment for the preceding year.

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

(iv) Special limited assessments shall be separately allocated to and payable by the owners of Lots whose sanitary sewer systems are located in a Limited Common Area and shall be in such amounts as are reasonably or necessarily required to maintain, repair or replace the improvements in such Limited Common Area. Until January 1, 2011, the annual special limited assessment shall be Fifty Dollars (\$50.00) per Lot. From and after January 1, 2011, the annual special limited assessment may be increased upon the vote of a majority of the Board of Directors of the Association by no more than fifteen percent (15%) of the annual special limited assessment for each class of members for the preceding year. Any increase of the annual special limited assessment exceeding fifteen percent (15%) of the annual special limited assessment for any class of members for the preceding year must be approved by the owners of at least two-thirds (2/3) of the owners of Lots in the class of members for which the increase is proposed, who are voting in person or by proxy at a meeting called for that purpose.

(v) Once the annual general assessment or special limited assessment has been set, notice of the annual general assessment shall be given to all Lot owners and notice of any special limited assessment shall be given to those owners of Lots whose sanitary sewer systems are located in the Limited Common Area in which such maintenance, repair or replacement is required. It is provided, however, that no Owner is relieved from the obligation to pay the assessment because of failure to give such notice.

After the initial notice of the assessment, no bills for such assessment will be forwarded to any owner but such assessment thereafter shall become due and payable as provided by the Board of Directors.

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

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

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

I. Annual general assessments, and special assessments shall, except as otherwise provided herein, be fixed at a uniform rate for all Lots. Annual special assessments shall, except as otherwise provided herein, be fixed at a uniform rate for the Lots constituting that portion of the class of members for which the special assessment is made.

J. The annual general assessments provided for herein shall commence as to each Lot, other than any Lot owned by the Declarant upon which no residential dwelling has been constructed, on the date of recordation of the deed for such Lot in the office of the Register of Deeds of Onslow County and shall be prorated on a calendar year basis from the date of such recordation. The annual general assessments shall be assessed for each calendar year thereafter and shall be payable annually, with the due date for such payments being as established by the Board of Directors. The annual special assessments provided for herein shall commence as to each Lot, other than any Lot owned by the Declarant upon which no residential dwelling has been constructed, on the date of recordation of the deed for any Lot which is subject to the special assessment for that class of members.

K. The annual general assessment levied by the Association shall be used exclusively to oversee, inspect, maintain and repair the Sanitary Sewer Systems, Stormwater Management Facilities and Sign & Utility Easement area; to enforce the provisions of this Declaration relating to the Stormwater Management Facilities, the Permit, the applicable North Carolina Sedimentation and Erosion Control Permit; to pay the expenses of the Association from and after the time, if ever, Declarant transfers the Permit to the Association. The Association's sole function is to oversee, inspect, maintain and repair the Stormwater Management Facilities; to enforce the provisions of this Declaration relating to the Stormwater Management Facilities, the Permit, the applicable North Carolina Sedimentation and Erosion Control Permits. The powers of the Association may not be expanded beyond those purposes. Nothing herein relieves the owner of a Lot from said owner's obligation to maintain the areas upon said owner's Lot upon which the Stormwater Management Facilities are located as provided herein and not to damage or allow damage to occur to said

Stormwater Management Facilities and to comply with the provisions of all applicable North Carolina Sedimentation and Erosion Control Permits.

The annual special limited assessment levied by the Association shall be used exclusively to oversee, inspect, maintain, replace and repair the sanitary sewer wastewater treatment and disposal systems and Limited Common Area for each class of members for which the special limited assessment is collected.

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

M. General special assessments, special limited assessments and specific special assessments may be levied against Lots for such reasons as are provided in this Declaration, the Articles, the Bylaws, or the Septic System Agreement and Exclusive Easement and on such terms as provided by the directors and the members. Upon a two-thirds (2/3) vote of the Directors and a two-thirds (2/3) vote of the owners of Lots who are voting in person or by proxy at a meeting duly called for this purpose, the Association may levy and impose special assessments. The purposes for which special assessments may be levied are to providing funds to pay for the oversight, inspection, maintenance and repair of the Sanitary Sewer Systems, including maintenance of the Limited Common Areas, and Stormwater Management Facilities, to enforce the provisions of this Declaration relating to the Stormwater Management Facilities, the Permit and all applicable North Carolina Sedimentation and Erosion Control Permits which exceed the general assessment funds then on hand to pay same and to provide a contingency fund for capital improvements and extraordinary expenses. General special assessments shall be levied at a uniform rate for all Lots. Specific special assessments may be assessed against the owner of a Lot after written notice has been given by the Association to the owner of said Lot at the address of the owner appearing upon the records of the Association by United States mail, postage prepaid, that the Stormwater Management Facilities located on said Lot have been damaged by the act or negligent failure to act of said owner or that said owner has failed to comply with all applicable North Carolina Sedimentation and Erosion Control Permits and that, as a result, such Stormwater Management Facilities are in need of repair or replacement in order to comply with the Permit or actions must be taken in order to comply with the applicable North Carolina Sedimentation and Erosion Control Permits and the owner of said Lot has not taken the necessary action to bring the Stormwater Management Facilities located on said owner's Lot into compliance with the Permit or to comply with the provisions of all applicable North Carolina Sedimentation and Erosion Control Permits within thirty (30) days after the mailing of said notice. If said owner commences the necessary action to repair or replace the Stormwater Management Facilities located on said owner's Lot and to bring the Stormwater Management Facilities into compliance with the Permit or to bring the Lot into compliance with the applicable North Carolina Sedimentation and Erosion Control Permits within the thirty (30) day period set forth above, the imposition of a specific special assessment shall be deferred by the Association for the period during which said owner diligently pursues to completion the repair or replacement of the Stormwater Management Facilities located on said Lot or compliance with the applicable North Carolina Sedimentation and Erosion Control Permits. Specific special assessments shall be to the amount of funds actually expended, or in the discretion of the Board of Directors, the amount of funds reasonably estimated by the Board of Directors will be expended, by the Association to repair or replace the Stormwater Management Facilities located upon the Lot or to comply with the applicable North Carolina Sedimentation and Erosion Control Permit applicable to the Lot upon which the specific special assessment is assessed. Special assessments, either general or specific, together with interest, costs and reasonable attorneys' fees, shall be a charge and lien on the land and, subject to the provisions set forth in this Declaration, shall be a continuing lien upon the Lot against which each such assessment is made. The personal obligation of an owner of a Lot for delinquent special assessments, whether general or specific, shall not pass to a successor in title to a Lot unless expressly assumed by the successor, but, subject to the provisions of this Declaration, delinquent special assessments shall continue to be a lien upon such Lot.

N. Any annual general assessment, special assessment, general special limited assessment or specific special assessment, if not paid within thirty (30) days after the date such assessment is due, together with interest at the rate of ten percent (10%) per annum, costs of collection, court costs, and reasonable attorneys' fees shall constitute a lien against the Lot upon which such assessment is levied. The Association may record notice of the same in the Office of the Clerk of Superior Court of Onslow County or file a suit to collect such delinquent assessments and charges. The Association may file Notice of Lis Pendens, bring an action at law against the owner personally obligated to pay the same and/or bring an action to foreclose the lien against the Property. The lien of any assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu therefor, shall

extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. No owner may waive or otherwise escape liability for the assessments provided for herein.

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

ARTICLE XX REMEDIES

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

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

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

ARTICLE XX

PROVISIONS RELATING TO WETLANDS/ CONSERVATION AREAS

Portions of the Property have been designated as Section 404 Wetlands, as defined in the United States Code, and delineated on the subdivision map described in Article I, hereof. These areas shown on the plat of the Property as Wetlands are conservation areas and 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 areas:

- (i) fill, grade, excavate or perform any other land disturbing activities;
- (ii) cut, mow, burn, remove, or harm any vegetation;
- (iii) construct or place any roads, trails, walkways, buildings, mobile homes, signs, utility poles or towers, or any other permanent or temporary structures;
- (iv) drain or otherwise disrupt or alter the hydrology or drainage ways of the conservation area;
- (v) dump or store soil, trash or other waste;
- (vi) 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, SAW-2009-01824, 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 Declarant and all parties claiming under it.

This covenant cannot be amended without the express written consent of the U.S. Army Corps of Engineers, Wilmington District.

ARTICLE XXII

COMPLIANCE WITH DEPARTMENT OF TRANSPORTATION TRAFFIC MAINTENANCE STANDARDS

Driveway headwalls, fences, mailboxes, newspaper delivery boxes, basketball goals or other roadside obstructions, constructed or placed within the right of way of any street as shown on the recorded plat of the subdivision in a location or out of materials determined to be a traffic safety hazard by the North Carolina Department of Transportation or the Declarant, shall not be permitted. It shall be the duty of the Owner of any Lot to remove such obstruction, at the Owner's sole expense, within thirty (30) days following written notification of such objection by the North Carolina Department of Transportation or Declarant.

ARTICLE XXIII

STREET LIGHTING AGREEMENT

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

ARTICLE XXIV

ENFORCEMENT

Enforcement shall be by proceedings at law or in equity against any person or person violating or attempting to violate any covenant, either to restrain violations or to recover damages.

ARTICLE XXV

MODIFICATION

These restrictions are subject to being altered, modified, canceled or changed at any time as to said subdivision as a whole, or as to any subdivided lot or part thereof, by written document executed by the Declarant or its successors in title and by the owners of not less than sixty percent (60%) 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 Onslow County, North Carolina. If the Declarant owns sixty (60%) percent or more of the subdivided lots, the Declarant may alter or amend these covenants without the consent of any other owner.

ARTICLE XXVI

ANNEXATION

Additional real property adjacent to the Property, or any subsequently annexed real property, may be annexed to the Property by the Declarant whether or not the Declarant owns any Lot, without the consent of any Owner, provided that the owners of any lots within the area annexed shall be obligated to pay the annual general assessment, any special assessment and any applicable special limited assessment.

ARTICLE XXVII

TERM

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

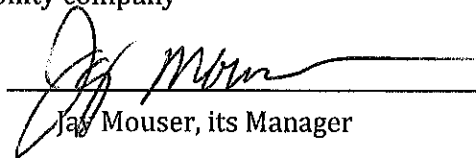
ARTICLE XXVIII

SEVERABILITY

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

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed by its President, with authority duly given by its board of directors, and Whatley has/have hereto set their hands and seals, the day and year first above written.

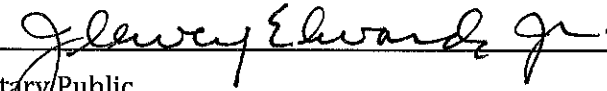
SOUTHWEST COMMONS, LLC, a North Carolina limited liability company

By: 
Jay Mouser, its Manager

STATE OF NORTH CAROLINA
COUNTY OF ONSLOW

The undersigned, a Notary Public in and for said County and State, does hereby certify that JAY MOUSER personally came before me this day and acknowledged that he is the Manager of SOUTHWEST COMMONS, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed in its name by him/her as its Manager for the purposes set forth herein and in the capacity indicated.

Witness my hand and official stamp or seal, this 10th day of December, 2010.


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

My Commission Expires:
July 9, 2011

