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**MASTER DECLARATION OF RESTRICTIVE AND PROTECTIVE  
COVENANTS AND EASEMENTS FOR VISTA CAY VILLAGE  
AND VISTA CAY VILLAGE, SECTION I**

Prepared by and return to:  
Gaylor Edwards & Vatcher, P.A., 219 New Bridge Street, Jacksonville, NC 28540

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

31<sup>st</sup> THIS DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS AND EASEMENTS, made this the 31 day of March, 2009, by ONLINE BUILDERS, INC., a North Carolina corporation, hereinafter called "Declarant", and DAVID V. HULL, and FAIRY KAY QUERRY, the owners of Lots 8 and 9 of Vista Cay Village Section I, respectively, who join in the execution of this Declaration to subject their lots to the covenants, restrictions, and easements set forth herein;

**WITNESSETH:**

THAT WHEREAS, the Declarant is the owner of the Real Property described in Article I of this Declaration (except Lots 8 and 9 Vista Cay Village, Section I) and is desirous of subjecting said real property, together with any future subdivision thereof, to the protective covenants and easements 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, the Declarant hereby declares that the real property in and referred to in Article I hereof 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 Swansboro, County of Onslow, State of North Carolina, and is more particularly described as follows:

BEING all that approximately 71.92 acre tract of land as shown on an unrecorded Preliminary Plat of Vista Cay Village, A Planned Residential Development, dated 5/08/07, prepared by Parker & Associates, Inc., a copy of which is attached hereto, marked Exhibit "A", and being also described as Tract One, Tract Two, Parcel A and Tract Two, Parcel B in a deed of conveyance to the Declarant recorded in Book 2596, Page 910, in the office of the Register of Deeds of Onslow County, North Carolina, being hereinafter sometimes referred to as the "Property" or "The Vista Cay Village Development".

The initial subdivision of the Property which is subject to this Declaration is more particularly described as follows:

BEING all that property as shown on a plat entitled "Final Plat, VISTA CAY VILLAGE, SECTION I", dated 04/08/08, prepared by John Parker & Associates, Inc. and recorded in Map Book 55, Page 143, Slide M-497, in the office of the Register of Deeds of Onslow County, North Carolina (the "Recorded Plat"), being sometimes hereinafter referred to as the "Subdivision".

**ARTICLE II  
DEFINITIONS**

Section 1. Association shall mean and refer to "The Vista Cay Village HOA, Inc.", its successors or assigns.  
Section 2. Board shall mean and refer to the Board of Directors of the Association.  
Section 3. Common Area shall mean and refer to all real and personal property now, or hereafter, owned by the Association for the common use and enjoyment of all of the Owners. The Common Area to be conveyed to the Association prior to the conveyance of the first Lot shall consist of all the areas designated as "Common Area, Community Boat Storage" and "Common Area, Open Space" as shown on the map attached hereto, marked Exhibit "A".

Section 4. Common Elements shall mean those facilities, improvements, structures, grading modification, pond, object or device for the common use, enjoyment or benefit of all the Owners situated on or within the Common Area, specifically including, but not limited to: (i) the subdivision identification sign(s), and (ii) the security lighting.

Section 5. Common Expenses shall mean and refer to :

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

b. all amounts expended by the Association in accordance with Article XVI in holding and being responsible for the obligations of the Stormwater Management Permit SW8 070630 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, including the landscaping thereof, within the Common Area, Open Space described on the map attached hereto, marked Exhibit "A".

Section 6. 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 7. Declarant shall mean and refer to Online Builders, Inc., a North Carolina corporation, or any successor in title or any successor in interest of Online Builders, Inc. to all of the Property then owned by Online Builders, Inc., or if it is provided in writing by the Declarant that the successor in title or successor in interest is to assume the rights and obligations of Declarant, then to any successor in title or successor in interest to any portion of the Property then subject to this Declaration.

Section 8. Lot shall mean any separately described parcel of land, other than streets, roadways or areas designated as easements, shown on any recorded subdivision map of the Property.

Section 9. Owner shall mean and refer to the record owner, whether one or more persons, of the fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation, and further excluding any contractor or builder holding title to such Lot solely for the purpose of constructing a residence thereon for resale or reconveyance.

Section 10. Permit shall mean the State of North Carolina Stormwater Management Permit number SW8 070630 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 as shown on the map described in Article I shall be put to any use other than for residential purposes, except that any lot which is owned by Declarant may be used by the Declarant for a street or roadway.

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

The ground floor area of the main structure, exclusive of one-story porches and garages, shall be not less than 1,200 square feet for a one-story dwelling, nor less than 700 square feet for a dwelling of more than one story. All dwellings shall be wood frame construction with brick or block foundations, with brick, vinyl or cement siding exterior walls, and architectural shingled roofs. No masonry, cinder block, or concrete block shall be permitted for any exposed exterior surface of any dwelling, except vinyl shack shall be permitted on the gables. Except as herein provided, cement siding or brick shall be the required materials for the exterior walls of all dwellings.

### **ARTICLE VI** **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 25 feet to the rear lot line, and no garage or other permitted access or building shall be located nearer than 25 feet to the

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Section 5. Common Expenses shall mean and refer to :

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

b. all amounts expended by the Association in accordance with Article XVI in holding and being responsible for the obligations of the Stormwater Management Permit SW8 070630 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, including the landscaping thereof, within the Common Area, Open Space described on the map attached hereto, marked Exhibit "A".

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Section 8. Lot shall mean any separately described parcel of land, other than streets, roadways or areas designated as easements, shown on any recorded subdivision map of the Property.

Section 9. Owner shall mean and refer to the record owner, whether one or more persons, of the fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation, and further excluding any contractor or builder holding title to such Lot solely for the purpose of constructing a residence thereon for resale or reconveyance.

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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 residential 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.

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The ground floor area of the main structure, exclusive of one-story porches and garages, shall be not less than 1,200 square feet for a one-story dwelling, nor less than 700 square feet for a dwelling of more than one story. All dwellings shall be wood frame construction with brick or block foundations, with brick, vinyl or cement siding exterior walls, and architectural shingled roofs. No masonry, cinder block, or concrete block shall be permitted for any exposed exterior surface of any dwelling, except vinyl shack shall be permitted on the gables.

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ARTICLE XV  
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 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, except as hereinafter provided. Any change or amendment to Article XVI, below, shall require the written consent of the North Carolina Department of Environment and Natural Resources, Division of Water Quality.

ARTICLE XVI  
STORMWATER MANAGEMENT

(A) The allowable built-upon area, in square feet, per lot is specified on Exhibit "B", attached hereto and incorporated by reference, under the column entitled "LOT BUA". These allotted amounts include any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate and coquina, but does not include raised, open wood decking or the water surface of swimming pools.

(B) Filling in or piping of any vegetative conveyances (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.

(C) Lots within CAMA's Area of Environmental Concern ("AEC") may have the permitted built-upon area reduced due to CAMA jurisdiction within the AEC.

(D) All permitted runoff from any outparcels or future development shall be directed into the permitted stormwater control systems. The connections to the stormwater control system shall be performed in a manner that maintains the integrity and performance of the system as permitted.

(E) Each lot will maintain a thirty (30) foot wide vegetated buffer between all impervious areas and surface waters.

(F) All roof drains shall terminate at least thirty (30) feet from the mean high water mark of any navigable stream.

The covenants and restrictions set forth in this Article XVI is intended to ensure continued compliance with State Stormwater Management Permit Number SW8 070630, as modified, issued by the Division of Water Quality and may not be changed or deleted without the consent of the State of North Carolina.

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, for installation and maintenance of utilities, including water and sewer services, drainage facilities and access, those easements shown on any recorded subdivision map of the Property, or subsequently annexed property, 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 further reserves the right to subject the Property, including any subdivision thereof, 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.

In addition to the foregoing easements, the Declarant reserves for itself, its successors and assigns, the following additional easements and rights:

a. A perpetual easement for ingress, egress, regress, access, the installation and maintenance of utilities, 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, 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, poles, conduits, pipes and other equipment necessary or useful for furnishing electric power, gas, telephone service, 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 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 Stormwater Management Facilities located on said owner's Lot or fail to comply with all applicable North Carolina Sedimentation and Erosion Control Permits, in addition to any other rights set forth herein or provided by law, the Declarant, and the Association shall have the right, but not the obligation, through their agents and employees, to enter upon said Lot and clear, clean, repair, maintain and restore the Stormwater Management Facilities and to bring the Lot into compliance with the applicable North Carolina Sedimentation and Erosion Control Permits. There is included in the authority herein granted the power to clear Lots of undergrowth, rubbish, debris, weeds or grass.

The costs of the maintenance or repair authorized by this Article shall be considered the legal obligation of the Lot Owner. The Declarant, or the Association, as applicable, may maintain an action in court having jurisdiction for such costs, together with all collection costs, including reasonable attorney's fees, and expenses incurred in pursuing such action. The costs shall not constitute a lien on said Lot, unless and until the final judgment of such court 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

##### THE VISTA CAY VILLAGE HOA, INC.

a. Common Area Maintenance and Compliance with Permit. The The Vista Cay Village 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) and North Carolina Planned Community Act (Chapter 47F) of the General Statutes of North Carolina as an association of the Owners of the Lots. Its purposes are:

(i) except as otherwise provided herein, to maintain and keep in good repair all portions of the Common Area, together with improvements thereon and Common Elements, now existing or hereafter constructed or installed;

(ii) to oversee, inspect, maintain, repair and replace the Stormwater Management Facilities constructed pursuant to the Permit;

(iii) to enforce the provisions of the Permit;

(iv) to enforce each Lot Owner's obligations with respect to the Stormwater Management Facilities pursuant to this Declaration;

(v) to enforce each Lot Owner's obligations with respect to all applicable North Carolina Sedimentation and Erosion Control Permits.

Enforcement of the Permit requirements 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 The Vista Cay Village Development until such time as Declarant transfers such rights to the Association.

b. Future Annexation. The Declarant shall have the right, but not the obligation, to annex into

the The Vista Cay Village Development 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. Membership and Voting Rights. Each Owner of each Lot within the The Vista Cay Village Development shall be a member of the Association. 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.

The Association shall have two classes of voting membership:

Class A: Initially, the Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any Lot, all such Persons shall be members. Provided, however, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. If multiple owners of a Lot cannot provide written verification of the authority of a designated individual to cast their vote, then no vote may be cast by that particular Lot Owner.

Class B: The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events:

- (i) at such time as seventy-five percent (75.0%) of the Lots have been sold and are occupied by permanent residents thereof; or
- (ii) ten (10) years from the date of recordation of this Declaration; or
- (iii) when, in its discretion, the Declarant so determines.

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 that for so long as each is an owner of a Lot within the Subdivision or The Vista Cay Village Development, each will perform all acts necessary to remain in good and current standing as a member of the Association.

d. Property Rights:

(i) Members' Easement of Enjoyment. Subject to the provisions herein, every member of the Association shall have a right and easement of use and enjoyment in and to the Common Area, including, without limitation, the right of vehicular and pedestrian access, ingress and egress, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

(1) the right of the Association to adopt and publish rules and regulations governing the use of the Common Area, including, but not limited to, the right of the Association to levy fines against Owners for misconduct, abuse or other inappropriate activities relating to or occurring on the Common Area, which fines shall become a lien on the Owner's Lot in the same manner as are assessments as set forth herein;

(2) the right of the Association (i) to borrow money for the purpose of improving the Common Area, or any portions thereof, or constructing, repairing or improving any facilities located or to be located thereon, and (ii) upon the assent of two-thirds of the Class A members and the Class B member, if any, for improvements to the Common Area to give as security a mortgage or deed of trust conveying all or any portion of the Common Area; the lien and encumbrance of any such mortgage, however, shall be subject and subordinate to all rights, interests, easements and privileges herein reserved or established for the benefit of the Declarant, any Owner, or the holder of any mortgage, irrespective of when executed, given by the Declarant.

(3) 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 and 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 two-thirds (2/3) of each class of members, agreeing to such dedication or transfer, has been recorded;

(4) the easements reserved as set forth in this Declaration.

(ii) Declaration of Use. Any Owner may delegate, in accordance with the By-Laws, his/her right or use and enjoyment in and to the Common Area, together with the improvements thereon to the members of his/her family, tenants, guests and invitees, subject to such rules, regulations and fees as may be established from time to time by the Association.

e. Stormwater Facilities and Permit. The Declarant shall, at its sole cost and expense, initially construct all Stormwater Management Facilities required to be located upon the Lots and Property or upon any property annexed into the The Vista Cay Village Development by the Declarant to the standards required by the applicable Permit. Upon completion of the construction of said Stormwater Management Facilities located in The Vista Cay Village Development, 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 The Vista Cay Village Development 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 The Vista Cay Village Development 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. Creation of Lien and Personal Obligation for Assessments. 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. The annual general 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.

h. Purpose of Assessments. The assessments levied by the Association shall be used

to pay the expenses of the Association for:

(i) All amounts expended by the Association to promote the health, safety,

pleasure and welfare of the Owners of the Lots, including, without limitation, the maintenance and repair of the Common Area, Common Elements and any entrance areas within The Vista Cay Village Development and improvements thereon. The maintenance of services furnished by the Association, the purchase of insurance by the Association and the establishment and maintenance of a reasonable reserve fund or funds.

(ii) 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 The Vista Cay Village Development 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.

(iii) 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.

i. Computation of Annual Assessment. The initial annual assessment for the Common

Area and compliance with the Permit shall be in the amount of \$200.00 per Lot, with the Owner's first assessment (or pro rata portion thereof) to be paid upon the closing of the sale and purchase of the Owner's Lot, or such other time thereafter as may be set by the Declarant. The due dates shall be established by the Declarant until there is no longer a Class B membership and then by the Board. The annual 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 Declarant, contractors and builders holding title to any Lot or Lots solely for the purpose of sale, or constructing a residence thereon for resale or reconveyance likewise, shall not be obligated to pay any assessment. The annual assessment shall not be increased by more than fifteen percent (15.0%) above the previous year's annual assessment without the prior approval of a greater increase by a majority of the members of the Association at a duly called annual or special meeting. Once the annual assessment has been set, notice of the annual assessment shall be given to all Lot Owners. 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.

At such time as the annual assessment is proposed to be changed from the initial annual assessment amount, the budget and the proposed annual assessment to be levied against each Lot shall be delivered to each Owner no later than ten (10) days prior to such annual or special meeting. The annual assessments shall be equally divided among the Lots. The budget and the annual assessment shall become effective, unless disapproved at the annual meeting by either: (i) the Declarant, so long as there is a Class B membership, or (ii) a vote of a majority of the Owners voting in person or by proxy at such meeting with a quorum (as established by the By-Laws of the Association) being present. In the event the proposed budget is not approved or the Board of Directors fails for any reason to determine the budget for the succeeding year, then until a new budget has been established as provided herein, the budget and annual assessment in effect for the then current year shall continue for the succeeding year. If any budget at any time proves to be inadequate for any reason, the Board may call a meeting of the Association for the approval of a special assessment.

The Association shall, upon demand, and for a reasonable charge, not to exceed twenty-five dollars (\$25.00), 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 specified Lot shall be binding upon the Association as of the date of issuance. If the Association fails to respond to any such request, any lien outstanding shall be deemed to have been extinguished. All such requests shall be sent to the Association in the same manner as provided for notices.

j. Special Assessments. General special assessments and specific special assessments may be levied against Lots for such reasons as are provided in this Declaration, the Articles or the Bylaws, and on such terms as provided by the directors and the members. Upon a two-thirds (2/3) vote of the Directors and a two-thirds (2/3) vote of the Owners of Lots who are voting in person or by proxy at a meeting duly called for this purpose, the Association may levy and impose special assessments. The purposes for which special assessments may be levied are limited to providing funds to pay for: (i) the maintenance and repair of the Common Area, Common Elements and any entrance areas within The Vista Cay Village Development and improvements thereon, (ii) the maintenance of services furnished by the Association, (iii) the purchase of insurance by the Association, (iv) the oversight, inspection, maintenance and repair of the Stormwater Management Facilities, (v) 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 Common Area, Common Element, or 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 Common Area, Common Element or 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 damaged Common Area, Common Element or 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 damaged Common Area, Common Element or Stormwater Management Facilities located on said Lot or compliance with the applicable North Carolina Sedimentation and Erosion Control Permits. Specific special assessments shall be limited to the amount of funds actually expended, or in the discretion of the Board of Directors, the amount of funds reasonably estimated by the Board of Directors will be expended, by the Association to repair or replace the Common Area, Common Element or 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.

k. Notices. 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 ten (10) 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 (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

l. Rate of Assessments. Annual general assessments and special assessments shall, except as otherwise provided herein, be fixed at a uniform rate for all Lots.



m. Effect of Nonpayment of Assessments: Remedies of the Association. Any annual general assessment, general special 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, costs and fees. 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 Lot.

The lien of any assessment provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. 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 deed of trust or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. No Owner may waive or otherwise escape liability for the assessments provided for herein.

n. Commingleing of Monies by Association. 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.

o. Amendment of Articles and Bylaws. 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 for so long as the Declarant owns any Lot.

#### ARTICLE XX REMEDIES

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

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

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

#### ARTICLE XXI

##### PROVISIONS RELATING TO WETLANDS

Portions of the Property have been classified and designated as "wetlands" as shown or may be shown on recorded maps of the Property, or portions thereof. No disturbance, including, but not limited to digging, filling or removal of the soils within the "wetlands" areas shall be performed without the prior approval of the United States Army Corps of Engineers, Wilmington, NC District.

#### ARTICLE XXII

##### COMPLIANCE WITH DEPARTMENT OF TRANSPORTATION TRAFFIC MAINTENANCE STANDARDS

Driveway headwalls, fences, mailboxes, newspaper delivery boxes or other roadside obstructions, constructed 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. In the event any Owner fails to remove an obstruction within the thirty (30) day period following receipt of notice of the objection, Declarant shall be entitled, but not obligated, to remove the obstruction and recover the expense and cost, including reasonable attorney's fees, incurred in the removal.

ARTICLE XXIII  
ENFORCEMENT

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

ARTICLE XXIV  
MODIFICATIONS

The terms, conditions, restrictions and provisions of this Declaration 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 Owner of not less than sixty-seven percent (67%) of the subdivided Lots or parts of said subdivision to which this Declaration applies, and recorded in the Office of the Register of Deeds of Onslow County, North Carolina. If the Declarant owns sixty-seven (67%) percent or more of the subdivided Lots, the Declarant may alter or amend these covenants without consent of anyone. Provided, however, the provisions of Article XVI cannot be amended or modified without the express written consent of the State of North Carolina.

ARTICLE XXV  
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 in its name by its President, with authority duly given by its boards of directors, the day and year first above written.

ONLINE BUILDERS, INC., a North Carolina corporation

By:   
Robert Christopher Query, its President

  
David V. Hull (SEAL)


  
Fairy Kay Query (SEAL)

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

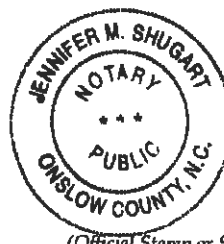
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

ROBERT CHRISTOPHER QUERRY

Date: April 14, 2009

  
(Official Signature of Notary)

Jennifer M Shugart  
(Notary's printed or typed name)



(Official Stamp or Seal)

My commission expires: 10/24/2011

STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

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

DAVID V. HULL

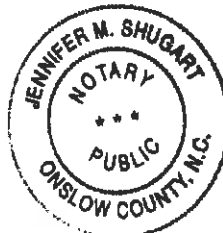
Date: April 6<sup>th</sup>, 2009

Jennifer M. Shugart

(Official Signature of Notary)

Jennifer M Shugart

(Notary's printed or typed name)



(Official Stamp or Seal)

My commission expires: 10/24/2011

STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

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

FAIRY KAY QUERRY

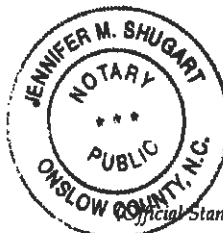
Date: April 6<sup>th</sup>, 2009

Jennifer M. Shugart

(Official Signature of Notary)

Jennifer M Shugart

(Notary's printed or typed name)



(Official Stamp or Seal)

My commission expires: 10/24/2011

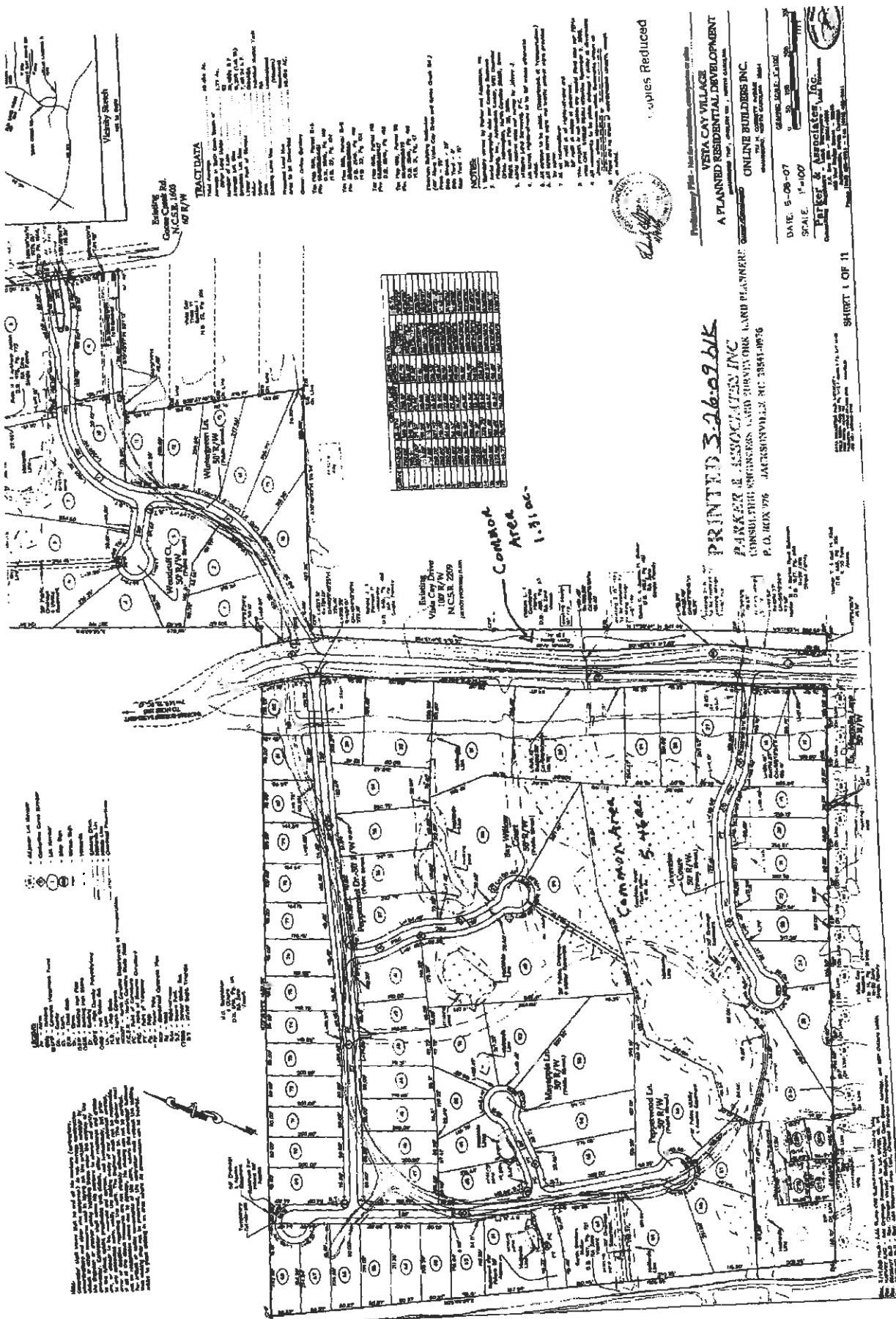


Exhibit "B" (page 1 of 2)

Sheet1

**Vista Cay Village Lot BUA**

LOT #	Area (acre)	LOT BUA
1	0.67	6637
2	0.43	4223
3	0.87	<del>8147</del>
4	0.52	5192
5	0.85	8370
6	0.79	7849
7	1.33	13146
8	1.11	10954
9	0.85	8392
10	0.49	4808
11	0.44	4399
12	0.45	4439
13	0.5	4975
14	0.67	6610
15	0.66	6558
16	0.6	5941
17	0.42	4203
18	0.74	7331
19	0.44	4399
20	0.47	4679
21	0.47	4626
22	0.46	4553
23	0.43	4281
24	0.46	4552
25	0.61	6071
26	1.66	16415
27	0.59	5875
28	0.58	5704
29	0.56	5563
30	1.64	16240
31	1.27	12570
32	0.93	9201
33	0.49	4894
34	0.67	6620
35	0.63	6225
36	0.62	6121
37	0.52	5110
38	2.15	21281
39	1.1	10919
40	2.29	22615
41	0.52	5100
42	0.37	3669
43	0.39	3830
44	0.38	3736
45	0.39	3820

## EXhibit "B" (page 2 of 2)

## Sheet1

46	0.39	3862
47	0.48	4778
48	0.47	4605
49	0.47	4667
50	0.39	3832
51	0.7	6960
52	0.84	8333
53	1.44	14261
54	0.68	6762
55	0.62	6158
56	1.44	14214
57	1.57	15566
58	0.77	7604
59	1.09	10797
60	0.85	8399
61	0.72	7111
62	0.4	3997
63	0.37	3633
64	0.38	3772
65	0.4	3911
66	0.41	4050
67	0.42	4189
68	0.44	4329
69	0.43	4297
70	0.37	3635
71	0.37	3635
72	0.37	3635
73	0.39	3854
74	0.38	3760
75	0.39	3813
76	0.39	3835
77	0.37	3640
78	0.37	3621
79	0.36	3570
80	0.36	3517
81	0.35	3455
82	0.39	3867
Common	6.77	66284
Total		605021

# 53  
Dewey

Doc ID: 007217420014 Type: CRP  
Recorded: 04/07/2008 at 10:57:58 AM  
Fee Amt: \$53.00 Page 1 of 14  
Onslow County, NC  
Rebecca L. Pollard Reg. of Deeds  
BK 3207 PG 589-602

Doc ID: 009334140015 Type: CRP  
Recorded: 11/02/2011 at 02:09:33 PM  
Fee Amt: \$26.00 Page 1 of 15  
Onslow County, NC  
Rebecca L. Pollard Reg. of Deeds  
BK 3674 PG 273-287

**MASTER DECLARATION OF RESTRICTIVE AND PROTECTIVE  
COVENANTS AND EASEMENTS FOR VISTA CAY VILLAGE  
AND VISTA CAY VILLAGE, SECTION I**

Prepared by and return to: RE-EXECUTED, RE-NOTARIZED AND RE-RECORDED.  
Gaylor Edwards & Vatcher, P.A., 219 New Bridge Street, Jacksonville, NC 28540

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

31<sup>st</sup> THIS DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS AND EASEMENTS, made this the  
day of March, 2009, by ONLINE BUILDERS, INC., a North Carolina corporation, hereinafter called "Declarant", and  
DAVID V. HULL, and FAIRY KAY QUERRY, the owners of Lots 8 and 9 of Vista Cay Village Section I, respectively, who join  
in the execution of this Declaration to subject their lots to the covenants, restrictions, and easements set forth herein;

**WITNESSETH:**

THAT WHEREAS, the Declarant is the owner of the Real Property described in Article I of this Declaration (except  
Lots 8 and 9 Vista Cay Village, Section I) and is desirous of subjecting said real property, together with any future subdivision  
thereof, to the protective covenants and easements 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, the Declarant hereby declares that the real property in and referred to in Article I hereof 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 Swansboro, County of Onslow, State of North Carolina,  
and is more particularly described as follows:

BEING all that approximately 71.92 acre tract of land as shown on an unrecorded Preliminary Plat of Vista Cay Village, A  
Planned Residential Development, dated 5/08/07, prepared by Parker & Associates, Inc., a copy of which is attached hereto,  
marked Exhibit "A", and being also described as Tract One, Tract Two, Parcel A and Tract Two, Parcel B in a deed of  
conveyance to the Declarant recorded in Book 2596, Page 910, in the office of the Register of Deeds of Onslow County, North  
Carolina, being hereinafter sometimes referred to as the "Property" or "The Vista Cay Village Development".

The initial subdivision of the Property which is subject to this Declaration is more particularly described as follows:

BEING all that property as shown on a plat entitled "Final Plat, VISTA CAY VILLAGE, SECTION I", dated 04/08/08, prepared  
by John Parker & Associates, Inc. and recorded in Map Book 55, Page 143, Slide M-497, in the office of the Register of Deeds  
of Onslow County, North Carolina (the "Recorded Plat"), being sometimes hereinafter referred to as the "Subdivision".

**ARTICLE II  
DEFINITIONS**

Section 1. Association shall mean and refer to "The Vista Cay Village HOA, Inc.", its successors or assigns.

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

Section 3. Common Area shall mean and refer to all real and personal property now, or hereafter, owned by  
the Association for the common use and enjoyment of all of the Owners. The Common Area to be conveyed to the Association  
prior to the conveyance of the first Lot shall consist of all the areas designated as "Common Area, Community Boat Storage"  
and "Common Area, Open Space" as shown on the map attached hereto, marked Exhibit "A".

Section 4. Common Elements shall mean those facilities, improvements, structures, grading modification, pond, object or device for the common use, enjoyment or benefit of all the Owners situated on or within the Common Area, specifically including, but not limited to: (i) the subdivision identification sign(s), and (ii) the security lighting.

Section 5. Common Expenses shall mean and refer to :

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

b. all amounts expended by the Association in accordance with Article XVI in holding and being responsible for the obligations of the Stormwater Management Permit SW8 070630 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, including the landscaping thereof, within the Common Area, Open Space described on the map attached hereto, marked Exhibit "A".

Section 6. 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 7. Declarant shall mean and refer to Online Builders, Inc., a North Carolina corporation, or any successor in title or any successor in interest of Online Builders, Inc. to all of the Property then owned by Online Builders, Inc., or if it is provided in writing by the Declarant that the successor in title or successor in interest is to assume the rights and obligations of Declarant, then to any successor in title or successor in interest to any portion of the Property then subject to this Declaration.

Section 8. Lot shall mean any separately described parcel of land, other than streets, roadways or areas designated as easements, shown on any recorded subdivision map of the Property.

Section 9. Owner shall mean and refer to the record owner, whether one or more persons, of the fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation, and further excluding any contractor or builder holding title to such Lot solely for the purpose of constructing a residence thereon for resale or reconveyance.

Section 10. Permit shall mean the State of North Carolina Stormwater Management Permit number SW8 070630 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 as shown on the map described in Article I shall be put to any use other than for residential purposes, except that any lot which is owned by Declarant may be used by the Declarant for a street or roadway.

### **ARTICLE IV**

#### **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 residential 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 V**

#### **DWELLING QUALITY AND SIZE**

The ground floor area of the main structure, exclusive of one-story porches and garages, shall be not less than 1,200 square feet for a one-story dwelling, nor less than 700 square feet for a dwelling of more than one story. All dwellings shall be wood frame construction with brick or block foundations, with brick, vinyl or cement siding exterior walls, and architectural shingled roofs. No masonry, cinder block, or concrete block shall be permitted for any exposed exterior surface of any dwelling, except vinyl shack shall be permitted on the gables.

### **ARTICLE VI**

#### **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 25 feet to the rear lot line, and no garage or other permitted access or building shall be located nearer than 25 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 VII NUISANCES

No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Each owner shall maintain their lawn in a well manicured manner and their lawn shall not become overgrown, unsightly or be offensive to other lot owners.

#### ARTICLE VIII LIVESTOCK AND POULTRY

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

#### 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 rear of the primary dwelling and the rear lot line. No fence shall be erected between the rear 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 AND RECREATIONAL VEHICLES

No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding temporarily or permanently. No trailer, mobile home, camper, recreational vehicle or line vehicle shall be parked on any lot at any time for any purpose. The Common Area, Community Boat Storage as shown on the map attached hereto, marked Exhibit "A" shall be available for the parking of trailers, mobile homes, campers and recreational vehicles in accordance with the bylaws, rules and regulations of the Association which shall be enforceable by the Association and Declarant, its successors and assigns.

#### ARTICLE XIV DRAINAGE

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

ARTICLE XV  
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 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, except as hereinafter provided. Any change or amendment to Article XVI, below, shall require the written consent of the North Carolina Department of Environment and Natural Resources, Division of Water Quality.

ARTICLE XVI  
STORMWATER MANAGEMENT

(A) The allowable built-upon area, in square feet, per lot is specified on Exhibit "B", attached hereto and incorporated by reference, under the column entitled "LOT BUA". These allotted amounts include any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate and coquina, but does not include raised, open wood decking or the water surface of swimming pools.

(B) Filling in or piping of any vegetative conveyances (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.

(C) Lots within CAMA's Area of Environmental Concern ("AEC") may have the permitted built-upon area reduced due to CAMA jurisdiction within the AEC.

(D) All permitted runoff from any outparcels or future development shall be directed into the permitted stormwater control systems. The connections to the stormwater control system shall be performed in a manner that maintains the integrity and performance of the system as permitted.

(E) Each lot will maintain a thirty (30) foot wide vegetated buffer between all impervious areas and surface waters.

(F) All roof drains shall terminate at least thirty (30) feet from the mean high water mark of any navigable stream.

The covenants and restrictions set forth in this Article XVI is intended to ensure continued compliance with State Stormwater Management Permit Number SW8 070630, as modified, issued by the Division of Water Quality and may not be changed or deleted without the consent of the State of North Carolina.

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, for installation and maintenance of utilities, including water and sewer services, drainage facilities and access, those easements shown on any recorded subdivision map of the Property, or subsequently annexed property, 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 further reserves the right to subject the Property, including any subdivision thereof, 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.

In addition to the foregoing easements, the Declarant reserves for itself, its successors and assigns, the following additional easements and rights:

a. A perpetual easement for ingress, egress, regress, access, the installation and maintenance of utilities, 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, 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, poles, conduits, pipes and other equipment necessary or useful for furnishing electric power, gas, telephone service, 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 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 Stormwater Management Facilities located on said owner's Lot or fail to comply with all applicable North Carolina Sedimentation and Erosion Control Permits, in addition to any other rights set forth herein or provided by law, the Declarant, and the Association shall have the right, but not the obligation, through their agents and employees, to enter upon said Lot and clear, clean, repair, maintain and restore the Stormwater Management Facilities and to bring the Lot into compliance with the applicable North Carolina Sedimentation and Erosion Control Permits. There is included in the authority herein granted the power to clear Lots of undergrowth, rubbish, debris, weeds or grass.

The costs of the maintenance or repair authorized by this Article shall be considered the legal obligation of the Lot Owner. The Declarant, or the Association, as applicable, may maintain an action in court having jurisdiction for such costs, together with all collection costs, including reasonable attorney's fees, and expenses incurred in pursuing such action. The costs shall not constitute a lien on said Lot, unless and until the final judgment of such court 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

##### THE VISTA CAY VILLAGE HOA, INC.

a. Common Area Maintenance and Compliance with Permit. The The Vista Cay Village 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) and North Carolina Planned Community Act (Chapter 47F) of the General Statutes of North Carolina as an association of the Owners of the Lots. Its purposes are:

(i) except as otherwise provided herein, to maintain and keep in good repair all portions of the Common Area, together with improvements thereon and Common Elements, now existing or hereafter constructed or installed;

(ii) to oversee, inspect, maintain, repair and replace the Stormwater Management Facilities constructed pursuant to the Permit;

(iii) to enforce the provisions of the Permit;

(iv) to enforce each Lot Owner's obligations with respect to the Stormwater Management Facilities pursuant to this Declaration;

(v) to enforce each Lot Owner's obligations with respect to all applicable North Carolina Sedimentation and Erosion Control Permits.

Enforcement of the Permit requirements 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 The Vista Cay Village Development until such time as Declarant transfers such rights to the Association.

b. Future Annexation. The Declarant shall have the right, but not the obligation, to annex into

the The Vista Cay Village Development 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. Membership and Voting Rights. Each Owner of each Lot within the The Vista Cay Village Development shall be a member of the Association. 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.

The Association shall have two classes of voting membership:

Class A: Initially, the Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any Lot, all such Persons shall be members. Provided, however, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. If multiple owners of a Lot cannot provide written verification of the authority of a designated individual to cast their vote, then no vote may be cast by that particular Lot Owner.

Class B: The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events:

- (i) at such time as seventy-five percent (75.0%) of the Lots have been sold and are occupied by permanent residents thereof; or
- (ii) ten (10) years from the date of recordation of this Declaration; or
- (iii) when, in its discretion, the Declarant so determines.

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 that for so long as each is an owner of a Lot within the Subdivision or The Vista Cay Village Development, each will perform all acts necessary to remain in good and current standing as a member of the Association.

d. Property Rights:

(i) Members' Easement of Enjoyment. Subject to the provisions herein, every member of the Association shall have a right and easement of use and enjoyment in and to the Common Area, including, without limitation, the right of vehicular and pedestrian access, ingress and egress, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

(1) the right of the Association to adopt and publish rules and regulations governing the use of the Common Area, including, but not limited to, the right of the Association to levy fines against Owners for misconduct, abuse or other inappropriate activities relating to or occurring on the Common Area, which fines shall become a lien on the Owner's Lot in the same manner as are assessments as set forth herein;

(2) the right of the Association (i) to borrow money for the purpose of improving the Common Area, or any portions thereof, or constructing, repairing or improving any facilities located or to be located thereon, and (ii) upon the assent of two-thirds of the Class A members and the Class B member, if any, for improvements to the Common Area to give as security a mortgage or deed of trust conveying all or any portion of the Common Area; the lien and encumbrance of any such mortgage, however, shall be subject and subordinate to all rights, interests, easements and privileges herein reserved or established for the benefit of the Declarant, any Owner, or the holder of any mortgage, irrespective of when executed, given by the Declarant.

(3) 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 and 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 two-thirds (2/3) of each class of members, agreeing to such dedication or transfer, has been recorded;

(4) the easements reserved as set forth in this Declaration.

(ii) Declaration of Use. Any Owner may delegate, in accordance with the By-Laws, his/her right or use and enjoyment in and to the Common Area, together with the improvements thereon to the members of his/her family, tenants, guests and invitees, subject to such rules, regulations and fees as may be established from time to time by the Association.

e. Stormwater Facilities and Permit. The Declarant shall, at its sole cost and expense, initially construct all Stormwater Management Facilities required to be located upon the Lots and Property or upon any property annexed into the The Vista Cay Village Development by the Declarant to the standards required by the applicable Permit. Upon completion of the construction of said Stormwater Management Facilities located in The Vista Cay Village Development, 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 The Vista Cay Village Development 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 The Vista Cay Village Development 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. Creation of Lien and Personal Obligation for Assessments. 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. The annual general 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.

h. Purpose of Assessments. The assessments levied by the Association shall be used

to pay the expenses of the Association for:

(i) All amounts expended by the Association to promote the health, safety,

pleasure and welfare of the Owners of the Lots, including, without limitation, the maintenance and repair of the Common Area, Common Elements and any entrance areas within The Vista Cay Village Development and improvements thereon. The maintenance of services furnished by the Association, the purchase of insurance by the Association and the establishment and maintenance of a reasonable reserve fund or funds.

(ii) 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 The Vista Cay Village Development 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.

i. Computation of Annual Assessment. The initial annual assessment for the Common

Area and compliance with the Permit shall be in the amount of \$200.00 per Lot, with the Owner's first assessment (or pro rata portion thereof) to be paid upon the closing of the sale and purchase of the Owner's Lot, or such other time thereafter as may be set by the Declarant. The due dates shall be established by the Declarant until there is no longer a Class B membership and then by the Board. The annual 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 Declarant, contractors and builders holding title to any Lot or Lots solely for the purpose of sale, or constructing a residence thereon for resale or reconveyance likewise, shall not be obligated to pay any assessment. The annual assessment shall not be increased by more than fifteen percent (15.0%) above the previous year's annual assessment without the prior approval of a greater increase by a majority of the members of the Association at a duly called annual or special meeting. Once the annual assessment has been set, notice of the annual assessment shall be given to all Lot Owners. 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.

At such time as the annual assessment is proposed to be changed from the initial annual assessment amount, the budget and the proposed annual assessment to be levied against each Lot shall be delivered to each Owner no later than ten (10) days prior to such annual or special meeting. The annual assessments shall be equally divided among the Lots. The budget and the annual assessment shall become effective, unless disapproved at the annual meeting by either: (i) the Declarant, so long as there is a Class B membership, or (ii) a vote of a majority of the Owners voting in person or by proxy at such meeting with a quorum (as established by the By-Laws of the Association) being present. In the event the proposed budget is not approved or the Board of Directors fails for any reason to determine the budget for the succeeding year, then until a new budget has been established as provided herein, the budget and annual assessment in effect for the then current year shall continue for the succeeding year. If any budget at any time proves to be inadequate for any reason, the Board may call a meeting of the Association for the approval of a special assessment.

The Association shall, upon demand, and for a reasonable charge, not to exceed twenty-five dollars (\$25.00), 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 specified Lot shall be binding upon the Association as of the date of issuance. If the Association fails to respond to any such request, any lien outstanding shall be deemed to have been extinguished. All such requests shall be sent to the Association in the same manner as provided for notices.

j. Special Assessments. General special assessments and specific special assessments may be levied against Lots for such reasons as are provided in this Declaration, the Articles or the Bylaws, and on such terms as provided by the directors and the members. Upon a two-thirds (2/3) vote of the Directors and a two-thirds (2/3) vote of the Owners of Lots who are voting in person or by proxy at a meeting duly called for this purpose, the Association may levy and impose special assessments. The purposes for which special assessments may be levied are limited to providing funds to pay for: (i) the maintenance and repair of the Common Area, Common Elements and any entrance areas within The Vista Cay Village Development and improvements thereon, (ii) the maintenance of services furnished by the Association, (iii) the purchase of insurance by the Association, (iv) the oversight, inspection, maintenance and repair of the Stormwater Management Facilities, (v) 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 Common Area, Common Element, or 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 Common Area, Common Element or 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 damaged Common Area, Common Element or 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 damaged Common Area, Common Element or Stormwater Management Facilities located on said Lot or compliance with the applicable North Carolina Sedimentation and Erosion Control Permits. Specific special assessments shall be limited to the amount of funds actually expended, or in the discretion of the Board of Directors, the amount of funds reasonably estimated by the Board of Directors will be expended, by the Association to repair or replace the Common Area, Common Element or 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.

k. Notices. 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 ten (10) 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 (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

l. Rate of Assessments. Annual general assessments and special assessments shall, except as otherwise provided herein, be fixed at a uniform rate for all Lots.

m. Effect of Nonpayment of Assessments: Remedies of the Association. Any annual general assessment, general special 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, costs and fees. 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 Lot.

The lien of any assessment provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. 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 deed of trust or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. No Owner may waive or otherwise escape liability for the assessments provided for herein.

n. Commingle of Monies by Association. 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.

o. Amendment of Articles and Bylaws. 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 for so long as the Declarant owns any Lot.

#### ARTICLE XX REMEDIES

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

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

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

#### ARTICLE XXI

##### PROVISIONS RELATING TO WETLANDS

Portions of the Property have been classified and designated as "wetlands" as shown or may be shown on recorded maps of the Property, or portions thereof. No disturbance, including, but not limited to digging, filling or removal of the soils within the "wetlands" areas shall be performed without the prior approval of the United States Army Corps of Engineers, Wilmington, NC District.

#### ARTICLE XXII

##### COMPLIANCE WITH DEPARTMENT OF TRANSPORTATION TRAFFIC MAINTENANCE STANDARDS

Driveway headwalls, fences, mailboxes, newspaper delivery boxes or other roadside obstructions, constructed 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. In the event any Owner fails to remove an obstruction within the thirty (30) day period following receipt of notice of the objection, Declarant shall be entitled, but not obligated, to remove the obstruction and recover the expense and cost, including reasonable attorney's fees, incurred in the removal.

ARTICLE XXIII  
ENFORCEMENT

The Declarant (whether or not the Declarant is the owner of any Lot), the Association, any Lot

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

ARTICLE XXIV  
MODIFICATIONS

The terms, conditions, restrictions and provisions of this Declaration 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 Owner of not less than sixty-seven percent (67%) of the subdivided Lots or parts of said subdivision to which this Declaration applies, and recorded in the Office of the Register of Deeds of Onslow County, North Carolina. If the Declarant owns sixty-seven (67%) percent or more of the subdivided Lots, the Declarant may alter or amend these covenants without consent of anyone. Provided, however, the provisions of Article XVI cannot be amended or modified without the express written consent of the State of North Carolina.

ARTICLE XXV  
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 in its name by its President, with authority duly given by its boards of directors, the day and year first above written.

ONLINE BUILDERS, INC., a North Carolina corporation

By: [Signature]  
Robert Christopher Querry, its President

[Signature] (SEAL)  
David V. Hull

[Signature] (SEAL)  
Fairy Kay Querry

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

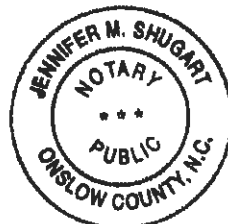
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

ROBERT CHRISTOPHER QUERRY

Date: April 16, 2009

[Signature]  
(Official Signature of Notary)

Jennifer M Shugart  
(Notary's printed or typed name)



(Official Stamp or Seal)

My commission expires: 10/24/2011



STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

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

DAVID V. HULL

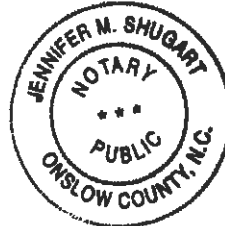
Date: April 6<sup>th</sup>, 2009

Jennifer M. Shugart

(Official Signature of Notary)

Jennifer M Shugart

(Notary's printed or typed name)



(Official Stamp or Seal)

My commission expires: 10/24/2011

STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

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

FAIRY KAY QUERRY

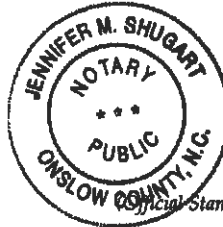
Date: April 6<sup>th</sup>, 2009

Jennifer M. Shugart

(Official Signature of Notary)

Jennifer M Shugart

(Notary's printed or typed name)



(Official Stamp or Seal)

My commission expires: 10/24/2011

This Declaration is being re-executed by the original Declarant, and individual owners, following insertion of page 3 of the original Declaration, inadvertently omitted in the Declaration recorded in Book 3207, Pages 589 - 602, Onslow County Registry.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed by in its name by its President, with authority duly given by its boards of directors, and the individual owners have hereto set their hands and seals, this the 2<sup>nd</sup> day of November, 2011.

ONLINE BUILDERS, INC., a North Carolina corporation

By: Robert Christopher Querry

Robert Christopher Querry, its President

David V. Hull (SEAL)

Fairy Kay Querry (SEAL)

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

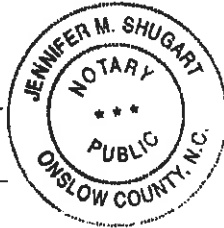
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: ROBERT CHRISTOPHER QUERRY

Date: November 2, 2011

Jennifer M. Shugart  
(Official Signature of Notary)

Jennifer M. Shugart  
(Notary's printed or typed name)

My commission expires: 10/24/2016



(Official Stamp or Seal)

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

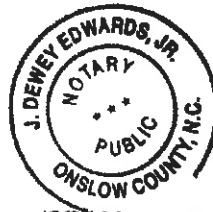
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: DAVID V. HULL

Date: November 2, 2011

J. Dewey Edwards, Jr.  
(Official Signature of Notary)

J. Dewey Edwards, Jr.  
(Notary's printed or typed name)

My commission expires: July 9, 2016



(Official Stamp or Seal)

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

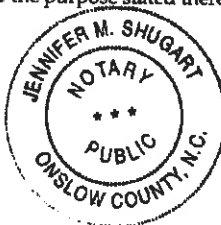
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: FAIRY KAY QUERRY

Date: November 2, 2011

Jennifer M. Shugart  
(Official Signature of Notary)

Jennifer M. Shugart  
(Notary's printed or typed name)

My commission expires: 10/24/2016



(Official Stamp or Seal)



## Exhibit "B" (page 1 of 2)

Sheet1

## Vista Cay Village Lot BUA

LOT #	Area (acre)	LOT BUA
1	0.67	6637
2	0.43	4223
3	0.82	8147
4	0.52	5192
5	0.85	8370
6	0.79	7849
7	1.33	13146
8	1.11	10954
9	0.85	8392
10	0.49	4808
11	0.44	4399
12	0.45	4439
13	0.5	4975
14	0.67	6610
15	0.66	6558
16	0.6	5941
17	0.42	4203
18	0.74	7331
19	0.44	4399
20	0.47	4679
21	0.47	4626
22	0.46	4553
23	0.43	4281
24	0.46	4552
25	0.61	6071
26	1.66	16415
27	0.59	5875
28	0.58	5704
29	0.56	5563
30	1.64	16240
31	1.27	12570
32	0.93	9201
33	0.49	4894
34	0.67	6620
35	0.63	6225
36	0.62	6121
37	0.52	5110
38	2.15	21281
39	1.1	10919
40	2.29	22615
41	0.52	5100
42	0.37	3669
43	0.39	3830
44	0.38	3736
45	0.39	3820

Page 1

## EXhibit "B" (page 2 of 2)

## Sheet1

46	0.39	3862
47	0.48	4778
48	0.47	4605
49	0.47	4667
50	0.39	3832
51	0.7	6960
52	0.84	8333
53	1.44	14261
54	0.68	6762
55	0.62	6158
56	1.44	14214
57	1.57	15566
58	0.77	7604
59	1.09	10797
60	0.85	8399
61	0.72	7111
62	0.4	3997
63	0.37	3633
64	0.38	3772
65	0.4	3911
66	0.41	4050
67	0.42	4189
68	0.44	4329
69	0.43	4297
70	0.37	3635
71	0.37	3635
72	0.37	3635
73	0.39	3854
74	0.38	3760
75	0.39	3813
76	0.39	3835
77	0.37	3640
78	0.37	3621
79	0.36	3570
80	0.36	3517
81	0.35	3455
82	0.39	3867
Common	6.77	66284
Total		605021

3  
Dovey

Doc ID: 009786080005 Type: CRP  
Recorded: 05/30/2012 at 10:37:14 AM  
Fee Amt: \$26.00 Page 1 of 5  
Onslow County, NC  
Rebecca L. Pollard Reg. of Deeds  
BK 3786 Pg 462-466

**THIRD AMENDMENT TO MASTER DECLARATION OF  
RESTRICTIVE AND PROTECTIVE COVENANTS AND  
EASEMENTS FOR VISTA CAY VILLAGE**

Prepared by and return to:  
Gaylor Edwards & Vatcher, P.A.  
219 New Bridge Street  
Jacksonville, NC 28540

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

THIS THIRD AMENDMENT TO MASTER DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS AND EASEMENTS FOR VISTA CAY VILLAGE (the "Third Amendment") is made this 23 day of May, 2012, by VISTA CAY VENTURES, LLC, a North Carolina limited liability company, the "Declarant" by virtue of Assignment of Declarant's Rights - Vista Cay Village, recorded in Book 3579, Page 467, Onslow County Registry, and CAVINESS & CATES BUILDING AND DEVELOPMENT COMPANY, a North Carolina corporation, AMERICAN HOMESMITH, LLC, a North Carolina limited liability company, and H & H HOMES OF FAYETTEVILLE, LLC, a North Carolina limited liability company, hereinafter referred to individually as "Owner", and collectively as "Owners".

**WITNESSETH:**

WHEREAS, the Declarant's predecessor in interest, Online Builders, Inc., a North Carolina corporation, did execute that certain document entitled, "Master Declaration of Restrictive and Protective Covenants for Vista Cay Village and Vista Cay Village, Section I", dated March 31, 2009, recorded in Book 3207, Page 589, in the Office of the Register of Deeds of Onslow County, North Carolina, re-executed and re-recorded in Book 3674, Page 273, hereinafter referred to as the "Declaration", subjecting the real property described therein to certain covenants, conditions, restrictions and easements; and

WHEREAS, Declarant and the Owners collectively are the owners of sixty-seven percent (67%) of the lots, existing or proposed, for The Vista Cay Village Development, as defined in the Declaration; and

WHEREAS, ARTICLE XXIV, MODIFICATIONS, provides that the "terms, conditions, restrictions and provisions of this Declaration are subject to being altered, modified, canceled or changed ... by written document executed by the Declarant ... and by the Owner of not less than sixty-seven percent (67%) of the subdivided Lots ..."

NOW, THEREFORE, the Declarant and Owners hereby declare that the Declaration, as heretofore amended, be and is hereby modified and amended as follows:

WPDOCS/DOC/RESTCOV/AMEND,VISTA CAY,BOAT STORAGE ON LOT

1. ARTICLE XIII, entitled "TEMPORARY STRUCTURES AND RECREATIONAL VEHICLES", is amended by inserting the following sentence at the end of said Article:

Provided, however, notwithstanding the foregoing provisions, the owner of any Lot shall be permitted to park a boat and/or boat trailer within an enclosed garage, or within an enclosed fence erected in accordance with the Declaration, on such owner's Lot.

2. Except as hereby amended, the Declaration, as previously, amended shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant and Owners have caused this instrument to be signed by their respective duly authorized Manager or officer, the day and year first above written.

VISTA CAY VENTURES, LLC, a North Carolina limited liability company

By: Trask Land Company, Inc., a North Carolina corporation,  
Its Manager

By:   
Ralford G. Trask, III, its President

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

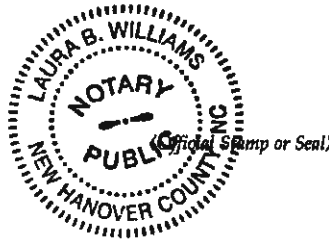
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:  
RALFORD G. TRASK, III

Date: May 8, 2012

  
(Official Signature of Notary)

Laura B. Williams  
(Notary's printed or typed name)

My commission expires: 6/23/15



WPDOCS/DOC/RESTCOV/AMEND.VISTA CAY.BOAT STORAGE ON LOT

(SIGNATURES AND ACKNOWLEDGMENTS FOR THIRD AMENDMENT TO VISTA CAY VILLAGE DECLARATION CONTINUED)

CAVINESS & CATES BUILDING AND  
DEVELOPMENT COMPANY, a North Carolina corporation

By: [Signature]  
Name: Christopher E. Cates  
Title: Vice President

STATE OF NORTH CAROLINA

COUNTY OF Cumberland

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:

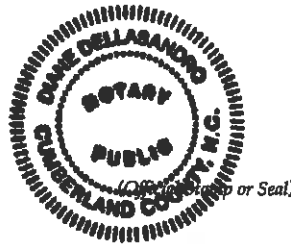
Christopher E. Cates

Date: May 8<sup>th</sup>, 2012

[Signature]  
(Official Signature of Notary)

Diane Dellasandro  
(Notary's printed or typed name)

My commission expires: 7/19/2013



WPDOCS/DOC/RESTCON/AMEND.VISTA CAY.B0AT STORAGE ON LOT



(SIGNATURES AND ACKNOWLEDGMENTS FOR THIRD AMENDMENT TO VISTA CAY VILLAGE DECLARATION CONTINUED)

H & H HOMES OF FAYETTEVILLE, LLC, a North Carolina limited liability company

By: [Signature]

Name: Rodney D. Baker

Title: Manager

STATE OF NORTH CAROLINA

COUNTY OF Cumberland

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:

Rodney D. Baker  
(Type or Print Name of Signatory)

Date: May 11, 2012

[Signature]  
(Official Signature of Notary)

Jill Riley  
(Notary's printed or typed name)

My commission expires: 3 August 2015



W:\DOCS\DOC\BESTCOV\AMEND.VISTA CAY.B0AT STORAGE ON LOT

(SIGNATURES AND ACKNOWLEDGMENTS FOR THIRD AMENDMENT TO VISTA CAY VILLAGE DECLARATION CONTINUED)

AMERICAN HOMESMITH, LLC, a North Carolina limited liability company

By: [Signature]

Name: Robert H. Jackson

Title: Manager

STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

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

Robert H. Jackson

(Type or Print Name of Signatory)

Date: May 23, 2012

[Signature]

(Official Signature of Notary)

J. Dewey Edwards, Jr.

(Notary's printed or typed name)

My commission expires: July 9, 2016

J Dewey Edwards Jr.  
Notary Public  
Onslow County, N.C.  
My Commission Expires:  
July 9, 2016

(Official Stamp or Seal)

WPDOCS/DOC/RESTCON/AMEND.VISTA CAY.B0AT STORAGE ON LOT