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Onslow County, NC  
Rebecca L. Pollard Reg. of Deeds  
BK **3359** PG **824-835**

MAIL AFTER RECORDING: HURST MNG. ASSOC., INC., PO BOX 836,  
SWANSBORO, NC 28584

NORTH CAROLINA  
ONSLow COUNTY

**DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS**

**JACKS BRANCH SUBDIVISION**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
is entered into this 10 day of February, 2010, by Hurst-Law Group, Inc., a  
North Carolina Corporation with its principal place of business in Robeson County,  
North Carolina hereinafter referred to as the Declarant:

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of all lots within a subdivision in the County of  
Onslow, State of North Carolina, known as Jacks Branch, Phase 1, 2 and 3, and being  
that certain tract or parcel of land more particularly described by map and recorded  
survey recorded in Book of Maps 58, Page 126 (amended at Book 59, Page 104), Book of  
Maps 58, Page 172 and Book of Maps 59, Page 92, Onslow County Register of Deeds;

**WHEREAS**, it is in the best interest of the Declarant and to the benefit, interest and  
advantage of every party hereafter acquiring any of the described property that certain  
covenants, conditions, easements, assessments, liens and restrictions governing and  
regulating the use and occupancy of the property be established; and

**WHEREAS**, Declarant desires to provide for the preservation of the values and  
amenities and the desirability and attractiveness of said property; and for the continued  
maintenance and operation of any recreational and/or common area.

**NOW THEREFORE**, in consideration of the premises, the Declarant agrees with all  
parties hereafter acquiring any of the property hereinafter described, that it shall be and is  
hereby subject to the following restrictions, covenants, conditions, easements,  
assessments and liens relating to the use and occupancy thereof which shall be construed  
as covenants running with the land which shall be binding on all parties acquiring any  
right, title or interest in any of the properties and which shall inure to the benefit of each  
owner thereof.

**ARTICLE I  
PROPERTIES SUBJECT TO THIS DECLARATION**

The property which shall be held, transferred, sold, conveyed and occupied subject to this  
Declaration is located in the County of Onslow, North Carolina, and is more particularly  
described as being that certain tract or parcel of land more particularly described by map  
and recorded survey recorded in Book of Maps 58, Page 126 (amended at Book 59, Page  
104), Book of Maps 58, Page 172 and Book of Maps 59, Page 92, Onslow County  
Register of Deeds; Additional properties may be subjected to these Declarations within  
ten (10) years from the date of this instrument.

## ARTICLE II DEFINITIONS

**Section 1.** "*Association*" shall mean and refer to Jacks Branch Homeowners Association, Inc., its successors and assigns.

**Section 2.** "*Owner*" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 3.** "*Properties*" shall mean and refer to that certain real property hereinafter be bought within the jurisdiction of the Association.

**Section 4.** "*Permanent Common Open Space*" shall consist of those areas designated on recorded plats of Jacks Branch as such. Such areas shall be dedicated in perpetuity to the common use and enjoyment of the owners. The Declarant will convey all Permanent Common Open Space shown on the various plats of the subdivision to the Association. The Association shall be responsible for the repair, maintenance and repaving as set forth in this Declaration.

**Section 5.** "*Lot*" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Permanent Common Open Space.

**Section 6.** "*Declarant*" shall mean and refer to Hurst-Law Group, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

**Section 7.** "*Common Expense*" shall mean and include:

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expenses of the common area and administration, maintenance, repair, or replacement of any Permanent Common Open Space;
- (c) Expenses declared to be common expenses by the provisions of this Declaration or the By-Laws;
- (d) Hazard, liability, or such other insurance premiums as the Declaration or the By-Laws may require the Association to purchase;
- (e) Ad valorem taxes and public assessment charges lawfully levied against common areas;
- (f) Expenses agreed by the members to be common expenses of the Association.
- (g) The Jacks Branch Home Owners Association shall be responsible for all maintenance, upkeep and repair of the private streets (Jenna Rea Road, Loren Road, North Eliza Lane, South Elisa Lane, and Clymer Court) as well as drainage easements as they appear and are more particularly described in Book of Maps 58, Page 126 (amended at Book 59, Page 104), Book of Maps 58, Page 172, Book of Maps 59, Page 92 duly recorded in the Onslow County Register of Deeds.

## ARTICLE III PROPERTY RIGHTS

### REAL ESTATE

**Section 1. Owners' Easements of Enjoyment.** Every owner shall have the right and easement of enjoyment in, and to, the Permanent Common Open Space and over the common open spaces for access, ingress, and egress from and to public streets, walkways and parking areas. Easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to suspend the voting rights of an owner for any period during which any assessment against his/ her Lot remains

- unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (b) the right of the Association to dedicate or transfer all or any part of the Permanent Common Open Space 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 agreement to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded, and the applicable Town Council has agreed to such conveyance;
  - (c) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Permanent Common Open Spaces and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said Properties shall be subordinate to the rights of the homeowners hereunder; and
  - (d) The right of the Association to adopt, publish and enforce rules and regulations as provided in Article IX.

**Section 2. Delegation of Use.** Any owner may delegate, in accordance with the By-Laws, his/ her right of enjoyment to the Permanent Common Open Space and facilities to the members of his/ her family, his/ her tenants, or contract purchasers who reside on the property.

**Section 3. Title to the Permanent Common Open Space.** The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Permanent Common Open Space to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot, utility and storm easements.

**Section 4. Parking Rights.** The Association may regulate the parking of boats, trailers and other such items on the Permanent Common Open Space.

**Section 5. TV Antennas and Cablevision.** The Association may supply cablevision and the cost of this service may be included in annual or special assessments. The Association may regulate or prohibit the erection of television antennas on individual lots.

**Section 6. Management and Contract Rights of Association.** Declarant may enter into a contract with a Management company manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the property. However, no such contract shall be binding upon the Association except through express adoption, or ratification of the terms and conditions of such contract. Any contract or lease entered into by Declarant or by the Association while Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract without justification or penalty after transfer or management by the Declarant to the Association.

**Section 7. Rights of Note holders.** Any institutional holder of a first mortgage on a Lot will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage, (e) receive written notice of any sixty-day (60) delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modifications of any insurance policy or fidelity bond maintained by the Owners' Association, (g) receive written notice of any proposed action that requires the content of a specified percentage or mortgage holders, and (h) be furnished with a copy of the master insurance policy.

## ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

**Section 1.** Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

**Section 2.** The Association shall have two classes of voting membership:

**Class A.** Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is hereby prohibited.

**Class B.** The Declarant shall be a Class B member and shall be entitled to four (4) votes for each lot owned. The class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total vote outstanding in the Class A membership equals the total vote outstanding in the Class B membership; or
- (b) Upon the surrender of all Class B membership by the holder thereof.

## ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All assessments relating to common open spaces shall be shared equally by the owners of each Lot.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and in particular for the acquisition, improvement and maintenance of the Permanent Common Open Space, including the maintenance, repair and reconstruction of private streets situated on the Permanent Common Open Space, such maintenance to include the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Permanent Common Open Space, the procurement and maintenance of insurance in accordance with this Declaration, the employment of attorneys to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements including, without limiting, the generality of the foregoing, signs, paving, grading, landscaping

and any other major expense for which the Association is responsible, and such other needs as may arise. Included herein are all streets which shall be the property of the Jacks Branch Homeowners Association.

**Section 3. Reserves.** The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the common area and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

**Section 4. Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall be \$100.00 per lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of membership by up to five percent (5%) of the previous year's assessment.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the increase permitted in Section 3(a) above by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

**Section 5. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Permanent Common Open Space, and in connection with exterior maintenance, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than (60) days in advance of the meeting setting forth of the meeting.

**Section 6. Notice and Quorum for any Action Authorized Under Sections 4 and 5.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 7. Uniform Rate of Assessment.** Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Lots and shall be collected on a yearly basis, provided, however, that the assessment for Lots owned by Declarant which are not occupied as a residence, may be a lesser amount as fixed by the Board of Directors of the Association, but shall not be less than twenty-five (25%) of the regular assessments for other Lots.

**Section 8. Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to all Lots on the first day of the

month following the conveyance of the first lot to an Owner. Such annual assessments shall be paid on a annual basis. The Board of Directors may be paid ratably on a monthly basis. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth the assessments on a specified Lot have been paid. Any certificate so given shall be conclusive evidence of payment of the assessments stated therein.

**Section 9. Effect of Nonpayment of Assessments; remedies of the Association.** Any assessment not paid within (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property in the same manner in which Deeds of Trust may be foreclosed under Power of Sale pursuant to Chapter 45 of the N.C. General Statutes, or its successors, and in either event interest, costs and reasonable attorney's fees of any such action shall be added to the assessment. No Owner may waive or otherwise escape liability for the Permanent Common Open Space or abandonment of his Lot. Should any deficiency remain after the foreclosure, the Association may also bring an action against the owner for said deficiency.

**Section 10. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments 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.

**Section 11. Exempt Property.** All Properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments. All designated utility lots and all Right of Way easements for water, sewer, electric and other public or private utilities.

## ARTICLE VI ARCHITECTURAL CONTROL

No fence shall be erected between the front building line and the street right-of-way except decorative fences such as split rail or picket not in excess of three feet in height. For purposes of this article a chain link fence, even though not in excess of three feet in height, shall not be considered a decorative fence. No fence shall be erected between the front building line of the main dwelling and the back lot line in excess of six feet in height. Where corner lots occur with adjacent lots sharing the same right-of-way line, no fence in excess of three feet in height shall be constructed along the right-of-way of the corner lots or nearer the right-of-way than the front building line of the adjacent lots. It is specifically provided in the area or any area designated for utility easements, that any fence constructed over these areas shall be constructed in such a manner and maintained in such a way as to allow ingress and egress for said utilities.

## ARTICLE VII ANNEXATION OF ADDITIONAL PROPERTIES

**Section 1.** Annexation of additional property shall require approval from the Association, and shall be required to occur within ten (10) years from the date of this instrument, provided, however, that all annexations of additional properties to the

original development described in Article I hereof must contain a minimum of five (5) acres, be contiguous to the property previously annexed. Provided further, that no annexation of additional property shall have the effect of placing the original development in violation of the County Zoning Ordinances.

**Section 2.** Annexation of additional Properties shall be accomplished by recording in the County Registry a Declaration of Annexation, duly executed, describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. The additional lands shall be deemed annexed to the Properties on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant, no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation, except approval by the applicable Town Council.

**Section 3.** Prior to the conveyance of the first lot in any newly annexed area, the Declarant shall deliver to the Association one or more deeds conveying fee simple title to any Permanent Common Open Space within the lands annexed free and clear of all encumbrances and liens except utility, storm drainage and greenway easements.

## ARTICLE VIII INSURANCE

**Section 1.** Any insurance coverage on the Property shall be governed by the following provisions:

- (a) **Ownership of Policies.** All insurance policies upon the common areas shall be purchased by the Association for the benefit of all the Association and the Owners. Lot owners shall be responsible for insurance coverage of their own unit and its contents.
- (b) **Coverage.** All buildings and improvements and all personal property included in the Permanent Common Open Space and facilities shall be insured, as necessary, in an amount equal to one hundred percent (100) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:
  - (1) Loss or damage by fire and other hazards covered by the standard coverage endorsement, and
  - (2) Such other risks as from time to time shall be customarily covered with respect to buildings on the land, if any.
  - (3) Such policies shall contain clause providing for waiver of subrogation.
- (c) **Liability.** Public liability insurance shall be secured by the Association, as necessary, with limits of liability of no less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary.
- (d) **Premiums.** Premiums for insurance policies purchased by the Association shall be paid by the Association and charged to the Owners as an assessment according to the provisions of Article V above.
- (e) **Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustees under this Declaration. The sole duty of the Association as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in

the By-Laws and for the benefit of the Owners and their mortgages in the following shares:

- (1) Proceeds on account of damage to Permanent Common Open Space and facilities held for the Association.
- (2) In the event a mortgagee endorsement has been issued for any Lot, the share of the Owner shall be held in trust for the mortgagee and the Owner as their interests may appear.

**Section 2. Distribution of Insurance Proceeds.** Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

- (a) **Expense of the Trust.** All expenses of the insurance trustees shall be first paid or provisions made therefore.
- (b) **Reconstruction or Repair.** The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners as above provided.

**Section 3. Fidelity Insurance or Bond.** All persons responsible for or authorized to expend funds, or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments plus reserves accumulated.

## ARTICLE IX USE RESTRICTIONS

**Section 1. Rules and Regulations.** The Board of Directors of the Association shall have the power to formulate, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the front yard space of each Lot and the Permanent Common Open Space. Such rules and regulations may provide for imposition of fines or penalties for the Violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

**Section 2. Use of Properties.** No portion of the Properties (except for temporary offices of the Declarant and/ or any model used by Declarant) shall be used except for residential purposes and for purposes incidental or accessory thereto.

**Section 3. Quiet Enjoyment.** NO obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

**Section 4. Animals.** No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. Allowed pets must be on leash when not in owner's enclosed pet area. All pets feces must be cleaned up while on leash and in common areas. At no time will dogs determined to be of a dangerous breed, as specified by Association, will be allowed.

**Section 5. Dwelling Specifications.** No dwelling shall be altered without Association or its Architectural Control Committees permission. An accessory building or structure for storage or other appropriate use, shall not in excess of two hundred fifty (250) square feet in area. An owner may let or rent his entire dwelling unit, but no portion of any dwelling unit shall be leased separately from the rest of the unit.

**Section 6. Temporary Structures.** Except as hereinbefore set forth, no trailer, tent, shack, barn or other out building other than an accessory building not more than two hundred fifty (250) square feet in size, shall be erected or placed on any lot covered by these covenants. No detached garage shall at any time be used for human habitation, either temporary or permanently.

**Section 7. Fences and Signs.** No sign of any shall be displayed to the public view on any lot except one professional sign of not more than one square foot parallel to the building line, one sign of not more than three square feet advertising the property for sale

or rent, or signs used by a builder to advertise property during the construction and sale period.

**Section 8. Buildings and Other Outdoor Structures.** All accessory buildings must conform to the same architectural style as the residence located on the same lot. No outside clothes lines, motorcycles, supplies, tractors, boats, trucks (other than one pick-up truck rated one-half ton or less), trailers, vans (other than one noncommercial van owned and operated on a regular daily basis by the owner-occupant of the lot), campers or other equipment or vehicles, except for operative licensed automobiles, shall be regularly parked or stored in any area on a lot except inside an enclosed building or behind screening. Garbage and refuse containers, transformers, air conditioning and other mechanical equipment, including solar and other mechanical equipment, including solar and other alternative energy devices shall either be concealed behind screening or integrated into the building design so as to be inconspicuous.

**Section 9. Appearance**

No inoperable motor vehicles may be parked on any lot if visible from any road within the subdivision. No rubbish or garbage containers shall be left at street side, except on day(s) trash is picked up.

**Section 10. Right of Way and Easement Area Maintenance**

On each lot, the rights-of-way and easement areas reserved by Declarant or dedicated to public 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 flow of water through drainage channels in the easements, or which damage or interfere with established slope ratios or create erosion problems. It is provided, however, that where the existing location of an easement or drainage channel reserved in these Restrictions or shown on the recorded plat 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.

## ARTICLE X EASEMENTS

**Section 1.** All of the Properties, including Lots and Permanent Common Open Space, shall be subject to such easements for driveways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by the Declarant or by its predecessors in title, prior to the subjecting of the Properties to this Declaration, and the Association shall have the power and authority to grant and establish upon, over, under, and across the Permanent Common Open Space conveyed to it, such further easements as are requisite for the convenience, use and enjoyment of the Properties. In addition, there is hereby reserved in the Declarant and its agents and employees an easement and right of ingress, egress and regress across all Permanent Common Open Space, now or hereafter owned by the Association, for the purpose of construction of improvements within the Properties.

**Section 2.** All Lots shall be subject to easements for the encroachments constructed on adjacent Lots by Declarant to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves, gutters and downspouts and walls.

**Section 3.** An easement is hereby established over the Permanent Common Open Space and facilities for the benefit of applicable governmental agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

**Section 4.** If any dwelling is located closer than eight (8) feet from its lot line, so long as such setback complies with the County Zoning Ordinances, the owner thereof shall have a perpetual access easement over the adjoining lot to the extent reasonable necessary to

perform repair, maintenance or reconstruction of his dwelling. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the owner shall restore the adjoining lot to as near as the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

**Section 5. Water and Sewer.** All lot owners shall be subject to monthly charges as approved by the proper public authorities for water and sewer for domestic usage.

## ARTICLE XI GENERAL PROVISIONS

**Section 1. Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

**Section 3. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot owners, and thereafter by an instrument signed by not less than seventy-five (75%) of the Lot owners.

**Section 4. Storm Water Restriction.** In accordance with Title 15 NCAC 2H. 1000, the Coastal Stormwater Management Regulations, deed restrictions and protective covenants are required for **Low Density Residential Subdivisions** where lots will be subdivided and sold. Deed restrictions and protective covenants are necessary to ensure that the development maintains a "built-upon" area consistent with the applicable regulation governing the density level. The following deed restrictions and covenants must be recorded prior to the sale of any lot:

- (a) The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit number 080914, as issued by the Division of Water Quality under NCAC 2H.1000.
- (b) The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Stormwater Management Permit.
- (c) These covenants are to run with the land and be binding on all persons and parties claiming under them.
- (d) The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality.
- (e) Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality.
- (f) The maximum allowable built-upon area per lot is as follows:

<u>Lot #</u>	<u>BUA</u>
1-3, 7-8, 14-16,19-24, 27-28, 39-49, 51-64, 67-68	4000 SF
4-6, 9-10, 17-18,65-66	3300 SF
12-13, 25-26, 29-38	5000 SF
11	7000 SF

This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina, driveways and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools.

**NOTE: The above lot #'s are subject to modification by subsequently recorded plats.**

- (g) Filling in, piping or altering any 3:1 vegetated conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings, is prohibited by any persons.
- (h) For those lots within CAMA's Area of Environmental Concern, where DCM calculates a different maximum lot built-upon area, the governing lot BUA shall be the most restrictive of the two amounts.
- (i) Filling in, piping or altering any designated 5:1 curb outlet swale or vegetated area associated with the development is prohibited by any persons.
- (j) A 30' vegetated buffer must be maintained between all built-upon area and the Mean High Water line of surface waters.
- (k) All roof drains shall terminate at least 30' from the Mean High Water mark.
- (l) Each designated curb outlet swale or 100' vegetated area shown on the approved plan must be maintained at a minimum of 100' long, maintain 5:1 (H:V) side slopes or flatter, have a longitudinal slope no steeper than 5%, carry the flow from a 10 year storm in a non-erosive manner, maintain a dense vegetated cover, and be located in either a dedicated common area or a recorded drainage easement.

**Section 5.** If any amendment to these covenants, conditions, and restrictions is executed, each such amendment shall be delivered to the Board of this Association. Thereupon, the Board of Directors shall, within thirty (30) days, do the following:

- (a) Reasonably assure its self that the amendment has been executed by the Owners of the required number of Lots. (For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any Lot to be examined.)
- (b) Attach to the amendment a certification as to its validity, which certification shall be excused by the Association in the same manner that deeds are executed.

**Section 6.** If any amendment to these covenants, conditions, and restrictions is executed, each such amendment shall be delivered to the Board of this Association. Thereupon, the Board of Directors shall, within thirty (30) days, do the following:

- (c) Reasonably assure its self that the amendment has been executed by the Owners of the required number of Lots. (For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any Lot to be examined.)
- (d) Attach to the amendment a certification as to its validity, which certification shall be excused by the Association in the same manner that deeds are executed.

**Section 7. Wetland Restrictions.** All of the Property subject to this Declaration of Covenants and Restrictions shall also be subject to the following special provisions relating to wetlands. In developing the property, the Declarant has agreed with the Department of the Army Corps of Engineers (pursuant to a permit issued by the Corps of Engineers) to restrict and prohibit any future filling or other detrimental activities in the wetlands area which presently exist within the identified area of the Property. Accordingly, all wetlands shown and delineated on the wetland survey plat dated 7-4-05 and verified by the Corps of Engineers on (awaiting signature), shall be maintained in perpetuity in their natural or mitigated condition. No person or entity shall fill, grade, excavate, or perform any other land disturbing activities; nor cut, remove, or harm any vegetation; nor construct any structures, nor allow animal grazing or watering or any other agricultural use on such conservation area. This covenant is intended to ensure continued compliance with the mitigation condition of authorizations issued by the United States of America, U.S. Army Corps of Engineers, Wilmington District, Action ID 2006-40100-067, and therefore may be enforced by the United States of America.

This covenant shall run with the land, and shall be binding on the Owner, and all parties claiming under it.

This Declaration must be executed and recorded with Onslow County Register of Deeds prior to the selling or developing the Property. This recording must also include recording of a wetland survey verified by the U.S. Army Corps of Engineers and must depict the location of all waters and wetlands within the boundary of the Property. The Declarant shall provide the Corps with a copy of the recorded restrictive covenants as soon as possible. (See also Note Article XI, Section 4, (f).)

**ARTICLE XII  
ELECTRICAL SERVICE**

Declarant reserves the right to subject the above-described Property to a contract with **Jones-Onslow Electric Membership Corp.** for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to **Jones-Onslow Electric Membership Corp.** by the Owner of each Lot within said Property.

**ARTICLE XIII  
EMERGENCY ACCESS**

In no case shall the Association be responsible for failing to provide any emergency or regular fire, police, or other public service to such developments or their occupants when such failure is due to the lack of access to such areas due to inadequate design or construction, blocking of access routes, or any other factor within the control of the developer, homeowners' association, or occupants.

IN WITNESS WHEREOF, Hurst-Law Group, Inc. has caused this declaration to be signed this 10 day of February, 2010.

Hurst-Law Group, Inc.

By: *Basil J. Hurst*  
President

**STATE OF NORTH CAROLINA**

**ONSLow COUNTY**

I, Pamela C. Redfearn, a Notary Public in and for said County and State, do hereby certify that on the 10<sup>th</sup> day of February, 2010, Basil J. Hurst, personally appeared before me and acknowledged that he is the President of Hurst-Law Group, Inc., a North Carolina Corporation, and acknowledged the due execution of the foregoing instrument for and in behalf of the corporation.

Witness by hand a notary seal, this 10<sup>th</sup> day of February, 2010.



*Pamela C. Redfearn*  
Notary Public

Commission expires: 3-26-10