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Doc ID: 000607490013 Type: CRP
Recorded: 06/16/2005 at 01:08:14 PM
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Onslow County, NC
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P.O. Box 428
Burgaw, NC 28425

BYLAWS
FOR

MIMOSA BAY HOMEOWNERS' ASSOCIATION, INC.

ARTICLE I
NAME AND DEFINITIONS

Section 1.1. Name. The name of the association shall be Mimosa Bay Homeowners' Association, Inc. (the "Association").

Section 1.2. Definitions. Terms specifically defined in the Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision, as may be from time to time, and including all attachments (hereinafter referred to as the "Declaration") shall have the same meaning, in these Bylaws, unless the context shall otherwise prohibit. For purposes of these Bylaws, the North Carolina Planned Community Act at Chapter 47F of the North Carolina General Statutes, including any amendments thereto, shall be referred to herein as the "Planned Community Act" and the North Carolina Nonprofit Corporation Act at Chapter 55A of the North Carolina General Statutes, including any amendments thereto, shall be referred to herein as the "Nonprofit Corporation Act."

ARTICLE II
MEMBERSHIP AND VOTING

Section 2.1. Membership. A Person shall become a member of the Association pursuant to the terms and conditions of the Declaration.

Section 2.2. Notice of Membership. Upon acquiring title to a Lot, each new Owner shall give such notice to the Association as is set forth in the Declaration.

Section 2.3. Suspension or Termination of Membership. The membership rights of a member shall not be suspended so long as the Person continues to hold an interest in a Lot

in fee simple, is not in violation of any provision of the Association Documents, and is not in arrears in the payment of any assessment.

Section 2.4. Vote/Voting Rights. The ownership of each Lot creates the right of one (1) vote for its owning member, or owning members collectively in the case of more than one Owner, on all matters upon which members vote as set forth in this Section. Members shall be entitled to vote on all matters as to which members may be entitled to vote under the Nonprofit Corporation Act, unless specifically provided otherwise in these Bylaws, the Articles of Incorporation, or the Declaration. In addition, members shall be entitled to vote on any other matters specifically provided for in the Declaration, the Articles of Incorporation, the Bylaws, or the Planned Community Act. Article III of the Declaration shall govern the membership classes and voting rights of members.

Section 2.5. Additional Provisions Governing Voting.

(a) Association Votes. If the Association is an Owner, the Association shall not cast the vote appurtenant to such Lot, nor shall any such vote be counted for the purpose of establishing a quorum.

(b) Multiple-Person Owners. In the event that more than one Person owns any Lot, the vote appurtenant to such Lot shall be cast as is provided by the Planned Community Act.

(c) Voting Certificate. If a member is not a natural person, any natural person authorized by such member may cast the vote by such member. Such natural person must be named and a certificate signed by an authorized officer, partner, member, or trustee of such Person and filed with the Secretary; provided, however, that any vote cast by a natural person on behalf of such member shall be deemed valid unless successfully challenged prior to the adjournment of the meeting at which the vote is cast. Such certificate shall be valid until revoked by a subsequent certificate similarly executed and filed with the Secretary. Whenever the approval or disapproval of a member is required by any of the Association Documents, any person who would be entitled to cast the vote of such member at any meeting of the Association may make such approval or disapproval.

(d) Delinquency. No member may vote at any meeting of the Association or be elected to serve on the Executive Board or be appointed to serve on any committee if payment by such member of any financial obligation to the Association is delinquent more than sixty (60) days and the amount necessary to bring the account current has not been paid by the record date set pursuant to Section 3.7 hereof for the applicable members' meeting (in the case of a member voting or being elected to serve on the Executive Board) or has not been paid by the date of appointment, in the case of appointment to serve on any committee.

Section 2.6. Manner of Voting. Except in the election of directors as provided in Section 4.1 herein, if a quorum is present, action on a matter at a meeting of members is approved as is provided by the Nonprofit Corporation Act.

Section 2.7. Proxies. Members may vote by proxy as is provided in the Nonprofit Corporation Act, as long as the provisions regarding voting by proxy in the Planned Community Act also are met.

ARTICLE III **MEETING OF MEMBERS**

Section 3.1. Place of Meeting. All meetings of members shall be held at the principal office of the Association or at such other place within the State of North Carolina as shall be designated in the notice of the meeting.

Section 3.2. Annual Meetings. The annual meeting of members shall be held at such date and time as may be determined on an annual basis by the Executive Board and stated in the notice of such members' meeting. The annual meeting of members shall be held for the purpose of electing directors of the Association and for such other purposes as may be included in the notice of such meeting.

Section 3.3. Special Meetings. Special meetings of the members may be called at any time by (a) the President, or (b) a majority of the Board of Directors of the Association, and shall be called by the Secretary of the Association within thirty (30) days upon receipt of a written request signed, dated, and delivered to the Secretary by the holders of at least ten percent (10%) of all the votes entitled to be cast on any issue proposed in such request to be considered at the meeting or (c) as provided in the Declarations.

Section 3.4. Notice of Meetings. Notice of meetings of members shall be given in accordance with the requirements of the Nonprofit Corporation Act, and such notice shall contain any and all information required by the Planned Community Act and the Nonprofit Corporation Act.

Section 3.5. Waiver of Notice of Meetings. A member may waive any notice required by the Nonprofit Corporation Act, the Articles of Incorporation, or Bylaws pursuant to the requirements of the Nonprofit Corporation Act.

Section 3.6. Quorum. Unless provided otherwise in these Bylaws or the Declaration, thirty-three percent (33%) of the votes entitled to be cast on a matter, represented in person or by proxy at a meeting of members, shall constitute a quorum on that matter. Applicable provisions of the Planned Community Act because a quorum is not present shall govern any adjournment of any members' meeting.

Section 3.7. Record Date to Determine Members and List of Members. The record date for determining the members entitled to notice of a members' meeting shall be fixed in accordance with applicable provisions of the Nonprofit Corporation Act. Further, the corporation shall comply with the requirements regarding a list of members who are entitled to notice of a meeting as set forth in the Nonprofit Corporation Act.

ARTICLE IV **EXECUTIVE BOARD**

Section 4.1. Number and Election of Directors. The number of directors constituting the Board of Directors shall be not less than five (5) nor more than seven (7) as from time to time may be fixed or changed within said minimum and maximum by the members or by the Board of Directors. The Board of Directors of the Association also may be referred to herein from time to time as the "Executive Board" or the "Board." Except as provided in Section 4.5(b) hereof, the directors shall be elected, and the number of directors for the upcoming year shall be determined, at the annual meeting of members; and those persons who receive the highest number of votes by the members entitled to vote in the election at a meeting at which a quorum is present shall be deemed to have been elected.

Section 4.2. Term of Office of Directors. The directors shall be divided into two classes, as nearly equal in number as may be, to serve in the first instance for terms of one year and two years, respectively, and until their successors shall be elected and shall qualify, and thereafter the successors in each class of directors shall be elected to serve for terms of two years and until their successors shall be elected and shall qualify. In the event of any increase in the number of directors, the additional directors shall be so classified such that both classes of directors shall be increased equally, as nearly as may be, and, in the event of any decrease in the number of directors, both classes of directors shall be decreased equally, as nearly as may be. Except as specifically provided above, each director shall hold office for a term of two (2) years or until such director's death, resignation, retirement, removal or disqualification. Despite the expiration of a director's term, the director continues to serve as such until the director's successor is elected, designated, or appointed and qualifies, or there is a decrease in the number of directors. During the period of Declarant control, Declarant shall appoint all members of the Board and may fill such appointments with members or non-members.

Section 4.3. Qualifications. No person shall be eligible for election as a member of the Executive Board, or remain qualified to serve as a member of the Executive Board, unless such person is a member of the Association, which is other than an individual. No member or representative of a member shall be elected as a director or continue to serve as a director if such member is more than sixty (60) days delinquent in meeting any financial obligation owed to the Association, if such delinquency is not cured by the record date set pursuant to Section 3.7 hereof for such members' meeting in the case of an election of directors.

Section 4.4. Voting, Quorum, and Manner of Acting. Each director shall be entitled to one (1) vote on all matters that come before the Association. The quorum for directors

and the vote of directors constituting an act of the Executive Board is as set forth in the Nonprofit Corporation Act.

Section 4.5. Removal or Resignation of Directors and Filling of Vacancies.

(a) Removal. Directors may be removed pursuant to applicable provisions of the Nonprofit Corporation Act and by the Declarant during the Period of Declarant control at Declarant's discretion. In addition, any director who is elected and who without a reasonable excuse (said reasonableness to be determined by the Board) misses three (3) consecutive meetings of the Executive Board, including all special and regular meetings, may be removed from the Executive Board by majority vote of the Board, or during the Period of Declarant Control may be removed by the Declarant. The removal and the reason therefore shall be noted in the minutes of the meeting of the Board at which the removal occurs.

(b) Filling of Vacancies. Vacancies on the Executive Board may be filled as is set forth in the Nonprofit Corporation Act, except during the Period of Declarant Control, during which time, the Declarant shall fill all vacancies.

(c) Resignation of Directors. A director may resign pursuant to the terms and conditions of the Nonprofit Corporation Act.

Section 4.6. Powers and Duties of the Board. The Executive Board shall manage the business and affairs of the Association. The Executive Board shall have all of the powers and duties necessary for the administration of the affairs of the Association, including, but not by way of limitation, all powers as set forth in Article 3 of the Nonprofit Corporation Act, and must do all such acts and things as are required by the Declaration or Bylaws to be exercised. The Executive Board shall delegate to one of its members or to a Person employed for such purpose the authority to act on behalf of the Board on such matters relating to the duties of the managing agent (as defined in Section 5.2 hereof), if any, which may arise between meetings of the Board as the Board deems appropriate. In addition to the duties imposed by any other provision of the Declaration or by any resolution of the Association that may hereafter be adopted, the Board shall perform the following duties and take the following actions on behalf of the Association:

(a) Provide goods and services to the members in accordance with the Declaration, and provide for maintenance, repair and restoration of the Common Elements and the Property, as provided in the Declaration.

(b) Designate, hire, dismiss and, where appropriate, compensate the personnel necessary to provide for the maintenance, repair and restoration of the Common Elements and the Property as provided for in the Declaration, and provide goods and services to the Owners, as well as purchase equipment, supplies and materials to be used by such personnel in the performance of their duties.

(c) Collect the assessments, deposit the proceeds thereof in depositories designated by the Executive Board and use the proceeds to carry out the maintenance, repair and restoration of the Common Elements and the Property as provided in the Declaration.

(d) Adopt, amend and repeal any reasonable rules and regulations not inconsistent with the Declaration.

(e) Open bank accounts on behalf of the Association and designate the signatories thereon.

(f) Enforce by legal means the provisions of the Association Documents as are in effect from time to time.

(g) Act with respect to all matters arising out of any eminent domain proceeding affecting the Common Elements.

(h) Notify the members of any litigation against the Association involving a claim in excess of ten percent (10%) of the amount of the annual budget.

(i) Obtain and carry insurance pursuant to the applicable article of the Declaration and pay the premiums there for and adjust and settle any claims there under.

(j) Pay the cost of all authorized goods and services rendered to the Association and not billed to Owners of Lots or otherwise provided for in the Declaration.

(k) Charge reasonable fees for the use of the Common Elements and for services.

(l) Suspend the right of any Owner or other occupant of a Lot, and the right of such Person's household, guests, employees, customers, tenants, agents and invitees to use any recreational facilities, areas or amenities located in the Common Elements.

(m) For each fiscal year, the Board shall prepare and adopt a proposed budget, including therein estimates of the amount considered necessary to pay the Common Expenses, together with amounts considered necessary by the Board for reserves. The process for approving and rejecting the budget is controlled by the Declaration, including Article V thereof.

(n) Adopt an annual budget and make assessments (general or special) against the Lots to defray the Common Expenses of the Association, establish the means and methods of collecting such assessments from the Owners and establish the period of the installment payment, if any, of the assessments for Common Expenses.

(o) With membership approval, borrow money on behalf of the Association when required for any valid purpose.

(p) Grant easements, rights of way and allow use of common property for septic fields and equipment and other uses when reasonably needed by a Lot owner or Declarant.

(q) Hire consultants for itself and/or its committees.

(r) Undertake any action authorized by the Declaration including the adjustment of Construction Deposits and Architectural Review Fee amounts after the Declarant Control Period.

(s) Contract with any third-party service provider and administer the terms of such contract for the servicing Lots and Common Elements with telephone, cable, internet and/or security systems. The Association shall have the specific authority to collect the cost of such services provided by the third-party service provider. The Association shall have the power to allocate the costs of such services to the Lot Owners in such a manner as is fair and reasonable and costs may be considered a Common Expense Liability. The amount of each Lot Owners portion of the costs required by the terms of the third-party contract may be allocated as a Common Expense Liability based upon the "basic plan" of services regardless of whether the Owner actually utilizes such services. As Lot owners may have the option of increasing the type services to be provided by the third-party service provider, those extra costs may be allocated to the individual Lot Owners who desire increased services and the extra cost may be included in such Lot Owner's assessment. The Association is authorized to hire third-parties to assist in the collection of such service costs. As all members are required to comply with the terms of such third-party service provider, the Association is authorized and required to immediately notify all Owners who are in violation of the terms of such contract and if the same is not immediately cured, pursue all actions necessary to enforce such compliance.

Section 4.7. Meeting of Directors.

(a) Types of Meetings. Regular and special meetings of the Executive Board may be held as is provided by the Nonprofit Corporation Act.

(b) Notice. Notice of regular and special meetings of the Executive Board shall be made as is provided by the Nonprofit Corporation Act.

(c) Waiver of Notice. Waiver of notice by a director may be made as set forth in the Nonprofit Corporation Act.

ARTICLE V **MANAGING AGENT**

Section 5.1. Compensation. The Executive Board may employ for the purpose of administering the Property and the Common Elements a "managing agent" at compensation to be

established by the Board.

Section 5.2. Duties. The managing agent shall perform such duties and services, as the Executive Board shall direct. Such duties and services may include, without limitation, the duties listed in Section 4.6(a), (b), (c), (f), (j), and (n). However, the Executive Board may not delegate to the managing agent the powers set forth in Section 4.6(d), (e), (g), (h), (i), (j), (l) (n), (o), (p) and (q). In addition and generally, the managing agent shall perform the obligations, duties and services relating to the management of the Property and Common Elements in compliance with the provisions of the Declaration. The Executive Board shall impose appropriate standards of performance upon the managing agent.

ARTICLE VI

OFFICERS

Section 6.1. Designation and Duties of Officers. The principal officers of the Association shall be the President (who shall also serve as Chairman of the Executive Board), the Vice President, the Secretary and the Treasurer, all of whom shall be elected by the Executive Board. The Executive Board may also elect an assistant Treasurer, an assistant secretary and such other officers as in its judgment may be necessary. All officers shall be Owners, officers of corporate Owners, partners of partnership Owners, or members of limited liability company Owners and shall be members of the Executive Board. Each officer shall perform such duties as are normally associated with such office in parliamentary organizations, except to the extent, if any, inconsistent with the Declaration and these Bylaws, and shall perform such other duties as may be assigned to such office by resolution of the Executive Board. If any officer is unable for any reason to perform the duties of the office, the President (or the Executive Board if the President fails to do so) may appoint another qualified individual to act in such officer's stead on an interim basis.

Section 6.2. Election of Officers. The Executive Board shall elect the officers of the Association annually. Each officer shall hold office for a term one (1) year or until such officer's death, resignation, retirement, removal or disqualification, or until the election and qualification of such officer's successor.

Section 6.3. Removal and Resignation. Officers may resign and be removed as is set forth in the Nonprofit Corporation Act, except during the Period of Declarant control, when the Officers may be removed by the Declarant.

Section 6.4. Vacancies. Subject to the provision set forth Section 6.1 of these Bylaws, a vacancy in the office may be filled by appointment by the Executive Board. Individuals appointed to fill a vacancy by the Executive Board shall serve for the remainder of the term of the officer such individual replaces.

Section 6.5. President. The President shall be the principal executive officer of the Association and, subject to the control of the Executive Board, shall supervise and control the

management of the Association in accordance with these Bylaws. The President, when present, shall preside at all meetings of members. The President, with any other proper officer, may sign any deeds, leases, mortgages, bonds, contracts or other instruments which lawfully may be executed on behalf of the Association, except where required or permitted by law otherwise to be signed and executed and except where the signing and execution thereof shall be delegated by the Executive Board to some other officer or agent. In addition, the President shall prepare, execute, certify, and record amendments to the Declaration on behalf of the Association. In general, the President shall perform all duties incident to the office of President and the Executive Board may assign such other duties as from time to time.

Section 6.6. Vice President. In the absence of the President or in the event of the President's death, inability or refusal to act, the Vice Presidents in the order of their length of service as Vice Presidents, unless otherwise determined by the Executive Board, shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such other duties as from time to time may be assigned by the President or by the Executive Board.

Section 6.7. Secretary. The Secretary shall: keep the minutes of all meetings of the Association and of the Executive Board; have charge of such books and papers as the Board may direct and as may be required by Article 16 of the Nonprofit Corporation Act; give or cause to be given all notices required to be given by the Association; give each Owner notice of each assessment against such Owner's Lot as soon as practicable after assessment is made; provide for each Owner, upon request, a copy of the Rules and Regulations of the Association; maintain a register setting forth the place to which all notices to members hereunder shall be delivered; make it possible for any member to inspect and copy at reasonable times and by appointment the records of the Association in accordance with and as required by the Nonprofit Corporation Act; and, in general, perform all the duties incident to the office of Secretary.

Section 6.8. Assistant Secretaries. In the absence of the Secretary or in the event of the Secretary's death, inability or refusal to act, the Assistant Secretaries in the order of their length of service as Assistant Secretaries, unless otherwise determined by the Executive Board, shall perform the duties of the Secretary, and when so acting shall have all the powers of and be subject to all the restrictions upon the Secretary. Assistant Secretaries shall perform such other duties as from time to time may be assigned by the Secretary, by the President, or by the Executive Board.

Section 6.9. Treasurer. The Treasurer shall have custody of all funds and securities belonging to the Association and shall receive, deposit or disburse the same under the direction of the Executive Board. The Treasurer shall maintain appropriate accounting records as may be required by law and, in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the President or by the Executive Board.

Section 6.10. Assistant Treasurers. In the absence of the Treasurer or in the event of the Treasurer's death, inability or refusal to act, the Assistant Treasurers in the order of their

length of service as Assistant Treasurers, unless otherwise determined by the Executive Board, shall perform the duties of the Treasurer, and when so acting shall have all the powers of and be subject to all the restrictions upon the Treasurer. Assistant Treasurers shall perform such other duties as from time to time may be assigned by the Treasurer, by the President, or by the Executive Board.

ARTICLE VII **COMMITTEES**

Committees of the Executive Board and other committees may be set up in accordance with applicable provisions of the Nonprofit Corporation Act. During the period of Declarant control, Declarant shall appoint the members of the Architectural Review Committee.

ARTICLE VIII **INDEMNIFICATION AND COMPENSATION**

Section 8.1. Indemnification. The Association shall indemnify, to the fullest extent permitted by law and this Section, any person who is or was a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding (and any appeal therein), whether civil, criminal, administrative, arbitrative, or investigative and whether or not brought by or on behalf of the Association, by reason of the fact that such person is or was a director or officer of the Association, or is or was serving at the request of the Association as a director, officer, partner, trustee, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise or as a trustee or administrator under an employee benefit plan, or arising out of such party's activities in any of the foregoing capacities, against all liability and litigation expense, including reasonable attorneys' fees; Provided, however, that the Association shall not indemnify any such person against liability or expense incurred on account of such person's activities which were at the time taken known or believed by such person to be clearly in conflict with the best interests of the Association or if such person received an improper personal benefit from such activities. The Association likewise shall indemnify any such person for all reasonable costs and expenses (including attorneys' fees) incurred by such person in connection with the enforcement of such person's right to indemnification granted herein.

The Association shall pay all expenses incurred by any claimant hereunder in defending a civil or criminal action, suit, or proceeding as set forth above in advance of the final disposition of such action, suit, or proceeding upon receipt of and undertaking by or on behalf of such claimant to repay such amount unless it ultimately shall be determined that such claimant is entitled to be indemnified by the Association against such expenses.

The Executive Board of the Association shall take all such action as may be necessary and appropriate to authorize the Association to pay the indemnification required by this Bylaw, including without limitation, (a) a determination by a majority vote of disinterested directors (i) that the activities giving rise to the liability or expense for which indemnification is

requested were not, at the time taken, known or believed by the person requesting indemnification to be clearly in conflict with the best interests of the Association and (ii) that the person requesting indemnification did not receive an improper personal benefit from the activities giving rise to the liability or expense for which indemnification is requested, and (b) to the extent needed, giving notice to the members of the Association.

Any person who at any time after the adoption of this Bylaw serves or has served in any of the aforesaid capacities for or on behalf of the Association shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Such right shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provision of this Bylaw.

Section 8.2. Compensation of Directors and Officers. No salary or other compensation shall be paid by the Association to any director or officer of the Association for serving or acting as such, but this shall not preclude the payment of salary or other compensation for the performance by any person serving as a director or officer for services provided to the Association in a capacity other than that of director or officer nor shall it preclude the reimbursement of reasonable, ordinary and necessary expenses incurred in serving or acting as a director or officer.

Section 8.3 Board to Purchase Insurance. The Board is required to purchase the directors and officers insurance, fidelity bond and general liability insurance described in the Declaration.

ARTICLE IX

BOOKS AND RECORDS

Section 9.1. Maintenance. The Association shall keep books and records and financial information as required by applicable provisions of the Nonprofit Corporation Act and in compliance with the Planned Community Act.

Section 9.2. Availability. Any Owner and the Owner's authorized agents shall make all financial and other records of the Association reasonably available for examination. For this purpose, the books and records of the Association shall be available for inspection by the members and their attorneys and accountants pursuant to the terms and conditions of applicable provisions of the Nonprofit Corporation Act.

Section 9.3. Fiscal Year. The Executive Board shall fix the fiscal year of the Association.

ARTICLE X
AMENDMENTS

These Bylaws may be amended or repealed and new Bylaws may be altered, amended, or repealed at any time by the membership and by the Board of Directors pursuant to the applicable provisions of the Nonprofit Corporation Act.

ARTICLE XI
CONFLICT

Any conflict between the Planned Community Act and the Nonprofit Corporation Act as such laws relate to the operations and governance of the Association shall be resolved, to the degree possible, such the conflicting provisions of the two laws are consistent with one another. However, in the event of an unresolvable conflict between the provisions of the Planned Community Act and the Nonprofit Corporation Act, the provisions of the Planned Community Act shall control.

I certify that the foregoing are a true copy of the By-Laws of Mimosa Bay Homeowners Association, Inc.

BLUE MARLIN, L.L.C.

By: _____

Gordon P. Frieze, Jr., Member/Manager

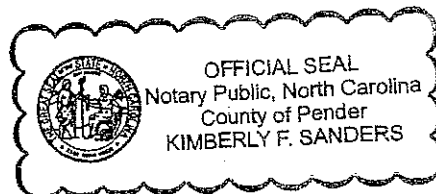
NORTH CAROLINA
ONSLOW COUNTY

I, Kimberly F. Sanders, a Notary Public of the County and State aforesaid, certify that Gordon P. Frieze, Jr. personally came before me this day and acknowledged that he is a Member/Manager of Blue Marlin, LLC and that he, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 15th day of June, 2005.

Kimberly F. Sanders
Notary Public

Commission expires: 5-15-2010
STATE OF NORTH CAROLINA
COUNTY OF ONSLOW



Kimberly F. Sander

The foregoing certificate of _____ Notary Public is certified to be correct. This instrument was presented for registration this day and hour and duly recorded in the office of the Register of Deeds of Pender County, North Carolina, in Book 2461, Page 16, this the 16 day of June, 2005, at 1:08 o'clock P.m.

Michael M. Thomas
Register of Deeds

Return to: Biberstein + Nunalee
P.O. Box 428 Burgaw NC 28425
STATE OF NORTH CAROLINA
ONSLOW COUNTY

CONSERVATION DECLARATION

This **DECLARATION of CONSERVATION COVENANTS, CONDITIONS, and RESTRICTIONS** ("Conservation Declaration") is made on this 8th day of June, 2005, by Blue Marlin, L.L.C. a North Carolina Limited Liability Company ("Declarant").

RECITALS & CONSERVATION PURPOSES

A. Declarant is the sole owner in fee simple of the certain Conservation Property ("Property") being approximately 3.1 acres, more particularly described in Exhibit A attached hereto and by this reference incorporated herein; and

B. The purpose of this Conservation Declaration is to maintain wetland and/or riparian resources and other natural values of the Property, and prevent the use or development of the Property for any purpose or in any manner that would conflict with the maintenance of the Property in its natural condition. The preservation of the Property in its natural condition is a condition of Department of the Army permit Action ID 87-05 issued by the Wilmington District Corps of Engineers ("Corps"), required to mitigate for unavoidable impacts to waters of the United States authorized by that permit, and this Conservation Declaration may therefore be enforced by the United States of America.

NOW, THEREFORE the Declarant hereby unconditionally and irrevocably declares that the Property shall be held and subject to the following restrictions, covenants and conditions as set out herein, to run with the subject real property and be binding on all parties that have or shall have any right, title, or interest in said property.

ARTICLE I. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Property inconsistent with the purposes of this Conservation Declaration is prohibited. The Property shall be maintained in its natural, scenic, and open condition

and restricted from any development or use that would impair or interfere with the conservation purposes of this Conservation Declaration set forth above.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted.

A. Disturbance of Natural Features. Any change disturbance, alteration or impairment of the natural features of the Property or any introduction of non-native plants and/or animal species is prohibited.

B. Construction. There shall be no constructing or placing of any building, mobile home, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, pier, landing, dock or any other temporary or permanent structure or facility on or above the Property.

C. Industrial, Commercial and Residential Use. Industrial, residential and/or commercial activities, including any right of passage for such purposes are prohibited.

D. Agricultural, Grazing and Horticultural Use. Agricultural, grazing, animal husbandry, and horticultural use of the Property are prohibited.

E. Vegetation. There shall be no removal, burning, destruction, harming, cutting or mowing of trees, shrubs, or other vegetation on the Property.

F. Roads and Trails. There shall be no construction of roads, trails or walkways on the property.

G. Signage. No signs shall be permitted on or over the Property, except the posting of no trespassing signs, signs identifying the conservation values of the Property, signs giving directions or proscribing rules and regulations for the use of the Property and/or signs identifying the Grantor as owner of the property.

H. Dumping or Storage. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery or hazardous substances, or toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials on the Property is prohibited.

I. Excavation, Dredging or Mineral Use. There shall be no grading, filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other materials, and no change in topography of the land in any manner on the Property, except to restore natural topography or drainage patterns.

J. Water Quality and Drainage Pattern. There shall be no diking, draining, dredging,

channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited.

K. Development Rights. No development rights that have been encumbered or extinguished by this Conservation Declaration shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

L. Vehicles. The operation of mechanized vehicles, including, but not limited to, motorcycles, dirt bikes, all-terrain vehicles, cars and trucks is prohibited.

M. Other Prohibitions. Any other use of, or activity on, the Property which is or may become inconsistent with the purposes of this grant, the preservation of the Property substantially in its natural condition, or the protection of its environmental systems, is prohibited.

ARTICLE II. ENFORCEMENT & REMEDIES

A. This Declaration 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, and therefore may be enforced by the United States of America. This covenant is to run with the land and shall be binding on all parties and all persons claiming under the Declarant.

B. Corps, its employees and agents and its successors and assigns, have the right, with reasonable notice, to enter the Property at reasonable times for the purpose of inspecting the Property to determine whether the Declarant, Declarant's representatives, or assigns are complying with the terms, conditions and restrictions of this Conservation Declaration.

C. Nothing contained in this Conservation Declaration shall be construed to entitle Corps to bring any action against Declarant for any injury or change in the Conservation Property caused by third parties, resulting from causes beyond the Declarant's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Declarant under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to Property or harm to the Property resulting from such causes.

ARTICLE III. PUBLIC ACCESS

A. This Conservation Declaration does not convey to the public the right to enter the Property for any purpose whatsoever.

ARTICLE IV. DOCUMENTATION AND TITLE

A. Conservation Property Condition. The Declarant represents and acknowledges that the Property is currently undeveloped land, with no improvements other than any existing utility lines, Declarations and rights of way.

B. Title. The Declarant covenants and represents that the Declarant is the sole owner and is seized of the Property in fee simple and has good right to make the herein Declaration; that there is legal access to the Property, that the Property is free and clear of any and all encumbrances, except Declarations of record.

ARTICLE V. MISCELLANEOUS

A. Conservation Purpose. Declarant, for itself, its successors and assigns, agrees that this Conservation Property shall be held exclusively for conservation purposes.

B. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Declaration and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Declaration. If any provision is found to be invalid, the remainder of the provisions of this Conservation Declaration, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

C. Recording. Declarant shall record this instrument and any amendment hereto in timely fashion in the official records of Onslow County, North Carolina, and may re-record it at any time as may be required to preserve its rights.

D. Environmental Condition of Conservation Property. The Declarant warrants and represents that to the best of its knowledge after appropriate inquiry and investigation: (a) the Property described herein is and at all times hereafter will continue to be in full compliance with all federal, state and local environmental laws and regulations, and (b) as of the date hereof there are no hazardous materials, substances, wastes, or environmentally regulated substances (including, without limitation, any materials containing asbestos) located on, in or under the Property or used in connection therewith, and that there is no environmental condition existing on the Property that may prohibit or impede use of the Property for the purposes set forth in the Recitals.

IN WITNESS WHEREOF, Declarant has hereunto set his hand and seal, the day and year first above written.

BLUE MARLIN, L.L.C.

By: 

MEMBER-MANAGER

Donald J. Rivers

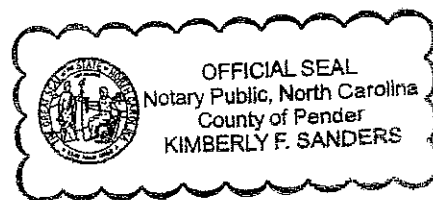
STATE OF NORTH CAROLINA
COUNTY OF Pender

I, Kimberly F. Sanders a Notary Public in and for the aforesaid County and State, do hereby certify that Donald J. Rhine, Member-Manager of Blue Marlin, L.L.C. personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and notarial seal this the 8th day of June, 2005.

Kimberly F. Sanders
Notary Public

My Commission Expires: 5-15-2005



NORTH CAROLINA, ONSLOW COUNTY

The foregoing certificate(s) of Kimberly F. Sanders

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Mildred M. Thomas Register of Deeds for Onslow County
Deputy/Assistant-Register of Deeds

EXHIBIT A

A certain tract or parcel of land lying and being in Stump Sound Township, Onslow County, North Carolina and being part of the Blue Marlin, LLC tract and being more particularly described as follows: Beginning at a point located North 51 degrees 01 minutes 04 seconds West 37.73 feet from an iron at the southern end of the easternmost line of said Blue Marlin, LLC tract, said iron is also the common corner with the northeastern corner of the Dan Baucom tract (Book 467, Page 771); Proceed from said point of beginning and with a new line 30 ft. west of said Blue Marlin LLC eastern line North 01 degrees 39 minutes 26 seconds East 288.30 feet to a point, thence North 89 degrees 39 minutes 04 seconds West 656.57 feet to a point, thence South 54 degrees 57 minutes 53 seconds East 476.41 feet to a point, thence South 31 degrees 23 minutes 15 seconds East 83.18 feet to a point; thence a line 30 ft. north of the southern line of said Blue Marlin, LLC tract North 76 degrees 18 minutes 26 seconds East 221.09 feet to the point of beginning and containing 3.10 acres. All bearing are NC Grid NAD 83.

7.00



Doc ID: 000607460002 Type: CRP
Recorded: 06/16/2005 at 01:06:39 PM
Fee Amt: \$17.00 Page 1 of 2
Onslow County, NC
Mildred M Thomas Register of Deeds
BK 2464 PG 370-371

SUBSTITUTION OF TRUSTEE

Prepared by: Charles A. Brooks, Attorney

Return to: Gordon P. Frieze, Jr.
Mimosa Bay Mortgage, LLC
PO Box 1328
Wrightsville Beach, NC 28480

Biberstein + Nunalee
P.O. Box 428
Burgaw NC 28425

STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

THIS INSTRUMENT made and entered into this 13th day of June, 2005, by and between Mimosa Bay Mortgage, LLC, party of the first part and Charles A. Brooks, party of the second part:

WITNESSETH

WHEREAS, Blue Marlin, LLC executed to Charles A. Brooks, as Trustee, a certain Deed of Trust upon the lands therein described to secure the payment of that certain indebtedness therein set out, which Deed of Trust is dated March 15, 2005 and recorded on March 16, 2005 in Book 2409, Pages 684 -701 in the Office of the Register of Deeds for Onslow County, North Carolina; and

WHEREAS, the party of the first part has the right under the Deed of Trust to appoint a substitute Trustee; and

WHEREAS, the party of the first part is the holder and owner of all the indebtedness secured by said Deed of Trust,

NOW, THEREFORE, said party of the first part, acting under the provisions of the Deed of Trust and the General Statutes of North Carolina, does hereby substitute Gordon P. Frieze, Jr. as Trustee in said Deed of Trust in the place and stead of said Charles A. Brooks, Trustee named.

IN WITNESS WHEREOF, Mimosa Bay Mortgage, LLC, party of the first part, and Charles A. Brooks, party of the second part, have caused this instrument to be signed this the day and year first above written.

Mimosa Bay Mortgage, LLC

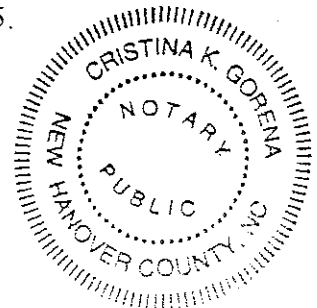
By: [Signature]
Joel R. Rhine, Manager
[Signature]
Charles A. Brooks, Trustee

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, the undersigned Notary Public of the County and State aforesaid, certify that Joel R. Rhine personally came before me this day and acknowledged that he is a Manager of Mimosa Bay Mortgage, LLC, a North Carolina Limited Liability company and that by authority duly given and as the act of such entity, he signed the forgoing instrument in its name on its behalf as its act and deed.

Witness my hand and official stamp or seal, this 13th day of June, 2005.

[Signature]
Notary Public
My Commission Expires: 4/17/2008

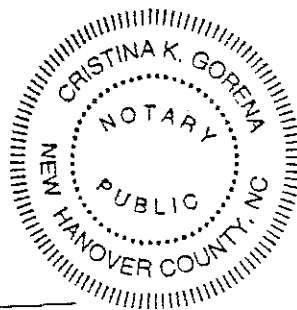


STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, the undersigned Notary Public of the County and State aforesaid, certify that Charles A. Brooks, Trustee, personally appeared before me this day and acknowledged the due execution of the forgoing instrument.

Witness my hand and official stamp or seal, this 13th day of June, 2005.

[Signature]
Notary Public
My Commission Expires: 4/17/2008



IT IS THE POLICY OF THE STATE OF NORTH CAROLINA, ONSLOW COUNTY
foregoing certificate(s) of [Signature]

are certified to be correct. This instrument and this certificate are duly registered at the date and
and in the Book and Page shown on the first page hereof.

[Signature] Register of Deeds for Onslow County
Deputy/Assistant-Register of Deeds