

**MIMOSA BAY**

**DECLARATION WITH AMENDMENTS THRU 2/12/2018**

39  
104.00

Doc ID: 000807470031 Type: CRP  
Recorded: 08/18/2005 at 01:07:21 PM  
Fee Amt: \$104.00 Page 1 of 31  
Onslow County, NC  
Mildred M Thomas Register of Deeds  
BK 2464 PG 372-402

Return to: Biberstein + Nunalee  
P.O. Box 428, Burgaw NC 28525  
STATE OF NORTH CAROLINA

DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR MIMOSA BAY SUBDIVISION

COUNTY OF ONSLOW

This Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision ("Declarations") made the 15<sup>th</sup> day of June, 2005, by BLUE MARLIN, L.L.C., hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated:

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Onslow County, North Carolina, known as MIMOSA BAY, PHASE I, as shown on a plat recorded in the Office of the Register of Deeds of Onslow County, North Carolina, in Map Book 48, Page 171 to which reference is made for a more particular description and all other such property that may be annexed in accordance with the process set forth herein (the "Property"); and

WHEREAS, Declarant now owns or may acquire other lands that may or may not be contiguous with real property that constitutes Phase I, which at Declarant's sole option may be added to the Planned Community (as hereinafter defined) and be bound by the provisions of these Declaration and shall be treated as part of the Property; and

WHEREAS, Declarant is unable to determine at the time of recording of this Declaration what types of residential housing or units or developments will be constructed on any Additional Property (as hereinafter defined) but desires to retain the flexibility for this Declaration to accommodate such different housing or units and developments.

NOW, THEREFORE, Declarant declares that the Property described above shall be held, sold and conveyed subject to the North Carolina Planned Community Act set forth in Chapter 47F of the North Carolina General Statutes (the "Act"), as well as the following easements, restrictions, covenants, and conditions.

ARTICLE I  
DEFINITIONS

In addition to other terms defined herein, the following capitalized terms shall have the following meanings as used herein:

SECTION 1. Additional Property shall mean and refer to any lands, in addition to the above described Property, annexed to and made a part of the Planned Community, whether such lands are now owned or hereafter acquired by Declarant or others, and whether developed by Declarant or others and whether contiguous with existing phases or not contiguous thereto.

SECTION 2. Allocated Interest shall mean the Common Expense Liability and votes in the Association allocated to each Lot.

SECTION 3. Association shall mean and refer to MIMOSA BAY HOMEOWNERS' ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns, the owners association organized pursuant to the Act for the purposes set forth herein.

SECTION 4. Common Elements shall mean and refer to all lands and easements within or appurtenant to the Planned Community which are owned or enjoyed by the Association, other than a Lot, and intended for the common use and enjoyment of the Declarant, Owners, and their tenants including, without limitation, any private roads, perimeter fencing for the Property (but not privacy fences located on or within a Lot), and storm water retention ponds within the Planned Community. Common Elements shall also include any areas designated on any plats for the Planned Community as "Open Space", "Common Area", "Common Element", "Recreation Area", "Amenity Area", or any Roads shown on such plats or any other area designated or described by any other similar designation. Common Elements need not be contiguous to or abutting the Property or any Additional Property.

SECTION 5. Common Expenses means expenditures made by or financial liabilities of the Association, together with any allocations to reserves, all of which shall be the responsibility of the Owners (as that term is defined herein).

SECTION 6. Common Expense Liability means the liability for Common Expenses allocated to each Lot as permitted by the Act, this Declaration or otherwise.

SECTION 7. Declarant shall be used interchangeably with Developer (which designations shall include singular, plural, masculine and neuter as required by the context) and shall mean and refer to BLUE MARLIN, L.L.C., its successors and assigns, if such successors or assigns should acquire undeveloped property from the Declarant or a Lot not previously disposed of for the purpose of development and reserves or succeeds to any Special Declarant Right.

SECTION 8. Declarant Control Period or Period of Declarant Control shall have the meaning set forth in Article III hereof.

SECTION 9. Declaration shall mean this instrument and as it may be from time to time amended or supplemented.

SECTION 10. Executive Board or Board shall be used interchangeably with the Board of Directors and means the body, regardless of name, designated in this Declaration or otherwise to act on behalf of the Association.

SECTION 11. Lot(s) shall mean and refer to any portion of the Planned Community designated for separate ownership by a Lot Owner and shown on a recorded subdivision plat which has been approved by the applicable planning board or other governmental authority.

SECTION 12. Lot Owner or Owner shall mean any Person, except the Declarant who owns a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Declarant is not an Owner or Lot Owner.

SECTION 13. Master Association means a master association as defined in the Act.

SECTION 14. Member shall mean any member of the Association, including Declarant.

SECTION 15. Person means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, or agency or other legal or commercial entity.

SECTION 16. Planned Community shall mean and refer to the Property plus any Additional Property made a part of the Planned Community by the exercise of any Special Declarant Right.

SECTION 17. Purchaser means any Person, other than the Declarant or a Person in the business of selling real estate for the purchaser's own account, who by means of a voluntary transfer acquires a legal or equitable interest in a Lot, other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.

SECTION 18. Reasonable Attorneys' Fees means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

SECTION 19. Sewer or Sewer/Septic shall mean any public or private wastewater disposal system, including private septic systems, lines and related equipment and improvements. These terms shall be construed broadly

SECTION 20. Special Declarant Rights means rights reserved for the benefit of the Declarant including, without limitation, the right (i) to complete improvements intended or planned by Developer for the Property or Additional Property; (ii) to exercise any development or other right reserved to the Declarant by this Declaration or otherwise; (iii) to maintain within the Planned Community sales offices, management offices, construction offices/trailers, signs advertising the Planned Community, and models; (iv) to use the Common Elements for the purpose of making improvements within the Planned Community; (v) to make the Planned Community part of a larger planned community or group of planned communities; (vi) to make the Planned Community subject to a Master Association; (vii) to appoint or remove any officer or Executive Board member of the Association or any Master Association or any member of the Architectural Review Committee during the Declarant Control Period or (viii) to permit other land to be annexed to and made part of the Planned Community in accordance with the terms of

this Declaration.

SECTION 21. Utilities shall mean any and all improvements that provide cable, water, electricity, Sewer, Sewer/Septic or wastewater disposal, telephone lines and equipment, internet, security systems, refuse disposal and related services to the Lots or Common Elements. This term shall be construed as broadly as possible to include all services that could apply to the development as intended herein.

## ARTICLE II PROPERTY RIGHTS AND EASEMENTS

SECTION 1. Owners' Property Rights and Easement of Enjoyment. Every Owner and Declarant shall have and is hereby granted a right and easement of enjoyment in and to the Common Elements, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The Association may make and amend reasonable rules and regulations governing use of the Common Elements by the Owners;

(b) Without modifying the Declarant's rights as set forth herein, the Association may grant a security interest in or convey the Common Elements, or dedicate or transfer all or part of the Common Elements, for such purposes and subject to such conditions as may be approved by 67% of the Members (including Declarant) present at a Meeting (which must have a quorum and meet the other requirements set forth in the Act, these Declarations and the Association's By-Laws) called to authorize the same. All members, including the Declarant, shall be entitled to vote pursuant to the Voting Rights process set forth in Article III. However, that the Association, if it has the Declarant's written consent (which is necessary during during the Period of Declarant Control), may, without the consent of the Owners, grant easements, leases (including conservation easements), licenses and concessions through or over the Common Elements. No conveyance or encumbrance of Common Elements shall deprive any Lot of its rights of access or support.

SECTION 2. Easements in Favor of Declarant and the Association. The following easements are reserved to Declarant and the Association, their agents, contractors, employees, successors and assigns:

(a) easements as necessary in the Common Elements and fifteen feet on the rear and front of all Lots and fifteen feet along all roads and ten feet on each side of all Lots (except for sides which front a road where the fifteen foot easement applies) for the installation and maintenance of Sewer/Septic, Utilities and drainage facilities (including the right to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, wires, cables, conduits, sewers, septic lines and related equipment water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, septic, water or other public conveniences (including cable, telephone, internet and security systems) or utilities on, in or over each Lot and such other areas as are shown on the plat of the

Property or any Additional Property recorded or to be recorded in the office of the Register of Deeds of Onslow County; the right to cut drain ways, swales and ditches for surface water whenever such action may appear to the Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance; the right to discharge stormwater into any retention ponds and related drainage facilities; the right to cut any trees, bushes or shrubbery; the right to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance; and the right to locate wells, pumping stations, Septic tanks and equipment and Utilities within Common Elements, or upon any easement area (including the aforementioned 15 foot and 10 foot easements on the Lots). No structures or plantings or other material shall be placed or permitted to remain upon such easement areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of Utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion. Declarant reserves the right to grant easements/curb cuts over all private or public streets and all Common Elements within the Planned Community to itself or others for the purpose of providing access and utilities to other lands, whether owned by the Declarant or others and whether or not part of the Planned Community. These easement areas (whether or not shown on the recorded plats for the Planned Community) but not the improvements within such areas shall be maintained by the respective Owner except those for which a public authority or utility company is responsible.

(b) easements over and under all Roads and streets, access easements, and Common Elements within the Planned Community as necessary to provide access, ingress and egress, to and the installation of Utilities for any Additional Property.

(c) an easement of unobstructed access over, on, upon, through and across each Lot and the Common Elements located thereon, if any, at all reasonable times to perform any maintenance and repair to the Common Elements and Utilities.

(d) a temporary construction easement of twenty-five (25) feet in width along both sides and running parallel to streets or roads, which easements shall expire twelve (12) months after the particular road construction commences, or upon the acceptance of such streets or roads for maintenance by governmental authority, whichever first occurs.

(e) the right to erect and maintain Utilities, drainways and other public conveniences in common lands or the aforementioned 10 and 15 foot easements on the Lots, including the right to cut any trees, bushes or shrubbery, make any grading in the soil or take any similar action reasonable and necessary or desirable to provide economical and safe installation or service.

(f) the right to contract with a third-party service contractor to construct, own and maintain cable, internet, telephone and security system equipment and facilities on Common Elements and through any easement area described in subparagraph (a) above. This specifically includes the right to allow third-party service providers to construct, own and maintain a "bunker" that houses the equipment (which the third-party service provider may or may not own) it deems necessary to

integrate a wiring system for cable, telephone, internet and security systems for the entire Planned Community. In addition to this bunker, related equipment, including satellite dishes, may be erected, owned and maintained by third-party service provider. The third-party shall be allowed to provide service to other persons and landowners who live outside the Planned Community from this bunker.

(g) unless specifically stated therein, nothing in these restrictions, nor in the recording of any plat or deed pursuant hereto, shall dedicate (or be deemed to dedicate) to public use any of the Roads, streets, bridges, common lands or other grounds within the Property.

SECTION 3. Other Easements. The following additional easements are granted by Declarant:

(a) an easement to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots and Common Elements in the performance of their duties.

(b) in case of any emergency originating in or threatening any Lot or Common Elements, regardless of whether any Lot Owner is present at the time of such emergency, the Association or any other person authorized by it, shall have the immediate right to enter any Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot Owners.

(c) the Association is granted an easement over each Lot for the purposes of providing Lot maintenance when an Owner fails to provide maintenance and upkeep in accordance with this Declaration.

SECTION 4. Nature of Easements. All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Declarant and the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Planned Community, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

SECTION 5. Septic Fields shall revert to Declarant. Any area that is designated as a septic field or proposed septic field or is used as a septic field for an off site Lot, shall revert to the Declarant upon the availability of Public Sewer Service, which must be utilized by all Lots and Lot Owners. Upon reversion, Declarant may sell such former Septic Fields as Lots. Declarant, at its sole discretion, may reject to receive such reversion.

SECTION 6. The Declarant makes no representation in these covenants as to the type, quality, or amount of common areas and improvements other than shown on the Final Plat.

ARTICLE III  
HOMEOWNERS' ASSOCIATION

SECTION 1. Formation of Association. The Association shall be incorporated no later than the date the first Lot in the Planned Community is conveyed. The Association is a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Declarant and Owners of Lots to operate and maintain the Common Elements and any Limited Common Elements in accordance with this Declaration, its Charter and Bylaws. The Association shall be empowered to perform and/or exercise those powers set forth in the Act as it may be amended from time to time, in addition to any powers and authority otherwise granted to it.

SECTION 2. Membership. Every Lot Owner and Declarant shall be a Member of the Association. Except for the Declarant, membership shall be appurtenant to and may not be separated from Lot ownership.

SECTION 3. Membership Classes. The Association shall initially have two classes of voting membership (but the Declarant by amendment to this Declaration without the consent of any Lot Owners may add other membership classes for each Limited Common Element Development or other type development which may be annexed to the Planned Community).

Class A. Class A Members shall be Owners who have not been assigned to another membership class pursuant to this Declaration.

Class B. The Declarant and its successors shall be a Class B Member.

SECTION 4. Voting Rights. The voting rights of each class of membership shall be as follows:

(a) The Class A Members 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. Only certain classes of members may vote on certain issues as hereinafter provided.

(b) The Class B Member shall be entitled to ten (10) votes for each Lot owned. The Class B Membership shall cease and be converted to a Class A Membership on the happening of any of the following events, whichever occurs earlier:

(i) when the total vote outstanding in all Classes of Membership, other than Class B Membership, constitutes a representation of ninety percent (90%) of the total Lots; or

(ii) on December 31, 2020; or

(iii) upon the voluntary surrender of all Class B Membership by the holder

thereof.

The period during which there is Class B Membership is sometimes referred to herein as the Declarant Control Period or Period of Declarant Control. If the Declarant loses Class B Membership, it shall re-acquire Class B Membership for the Planned Community upon adding Additional Property or reacquiring septic fields as set forth herein. During the Declarant Control Period, the Declarant shall have the right to designate and select the Executive Board of the Association (from Members or Non-Members) and the right to remove any person or persons designated and selected by the Declarant to serve on the Executive Board, and to replace them for the remainder of the term of any person designated and selected by the Declarant to serve on the Executive Board who may resign, die, or be removed by the Declarant.

SECTION 5. Government Permits. After completion of construction of any facilities required to be constructed by Declarant pursuant to permits, agreements and easements for the Planned Community, all duties, obligations, rights and privileges of the Declarant under any water, sewer, septic stormwater and utility agreements, easements and permits for the Planned Community with municipal or governmental agencies or public or private utility companies, shall be the duties, rights, obligations, privileges and the responsibility of the Association, notwithstanding that such agreements, easements or permits have not been assigned or the responsibilities thereunder specifically assumed by the Association. There are additional provisions made in this Declaration concerning stormwater facilities and the Stormwater Permit.

SECTION 6. Common Elements. The Association shall at its sole cost and expense be responsible for the operation and maintenance of each Common Element within the Planned Community after such Common Element has actually been deeded or turned over to the Association and such transfer may be made by the Declarant to the Association at any time after the common Element is constructed and the Association must accept ownership of the same upon tender by the Declarant. Declarant shall be entitled to specific performance to require the Association to accept such transfer of Common Elements. If the Declarant is required by any government agency to provide any operation or maintenance activities to a Common Element for which the Association is liable to perform such operation and maintenance pursuant to this section, then the Association agrees to reimburse the Declarant the cost of such operation and maintenance within 30 days after Declarant renders a bill to the Association therefor. The Association agrees to levy a Special Assessment to cover the amount of such bill if it does not have other sufficient funds available. Declarant shall be entitled to specific performance to require the Association to levy and collect such Special Assessment and shall be entitled to receive its attorneys' fees and costs associated with any action it takes to collect said sums .

SECTION 7. Architectural Review Committee. The Executive Board shall perform all duties of the Architectural Review Committee if no such committee is appointed by it, subject, however, to the Special Declarant Rights. During the Period of Declarant Control, the Declarant shall appoint all members of the Architectural Review Committee by appointing any persons it deems fit (Owners or non- Owners). Any Architectural Review Committee appointed by the Executive Board shall consist of at least 3 members.

ARTICLE IV  
INSURANCE AND BONDS

SECTION 1. Individual Home Insurance. All Owners shall purchase at their individual expense individual policies covering each Lot and Lot Owner individually.

SECTION 2. Common Element Insurance. The Board of Directors on behalf of the Association, as a Common Expense of all Lot Owners, shall at all times keep the Common Elements and other assets of the Association insured against loss or damage by fire or other hazards and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees. The Association at minimum shall maintain with regard to the Common Elements the insurance coverage(s) required by the Act.

SECTION 3. Fidelity Bond, Directors and Officers Insurance and General Liability Insurance. The Association shall maintain, as a Common Expense paid by the Owners, blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association; provided, however, that if the Association shall delegate some or all of the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association. Similarly, the Association shall maintain Directors and Officers Insurance and General Liability Insurance in order to protect the Association, its members, Board and Officers and the same shall also be considered a Common Expense of the Lot Owners.

ARTICLE V  
COVENANTS FOR ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. Each Lot Owner (which term specifically excludes the Declarant) covenants and agrees to pay to the Association the following assessments, as applicable (collectively the "Assessments"):

- A. Annual Common Element Assessments;
- B. Special Assessments;
- C. Insurance Assessments;
- D. Ad Valorem Tax Assessments; and

#### E. Working Capital Assessments.

The 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 respective Lot against which the Assessments are 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 Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall pass to the Owner's successors in title. However, in such event that the delinquent obligation passes to subsequent Owners, the successors in title are hereby granted a right to indemnity against the previous Owner who allowed the assessments to become delinquents and such right of indemnification shall cover all sums paid to satisfy the delinquent assessments.

SECTION 2. Purpose of Annual Assessments. The Annual Common Element Assessments levied by the Association shall be used, as applicable, exclusively to promote the recreation, health, safety and welfare of the Owners, Declarant and residents of the Planned Community and for the maintenance, repair and replacement of the Common Elements. The funds arising from said assessments or charges, may be used for any or all of the following purposes: Operations, maintenance and improvement of the Common Elements, including payment of Utilities; enforcing this Declaration; paying taxes, insurance premiums, legal and accounting fees and governmental charges; establishing working capital; paying dues and assessments to any organization or Master Association of which the Association is a member; and in addition, doing any other things necessary or desirable in the opinion of the Association to keep the Common Elements in good operating order and repair.

SECTION 3. Annual Assessments. At least 30 days before or after the beginning of each fiscal year, the Executive Board shall adopt proposed annual budgets, as follows:

(i) a budget for the Annual Common Element Assessments consisting of the annual cost of operating and maintaining the Common Elements.

(ii) such other budgets as the Executive Board deems appropriate.

Within 30 days after adoption of the proposed budgets for the Planned Community, the Executive Board shall provide to all of the Lot Owners and Declarant a summary of the budgets and notice of a meeting to consider ratification of the budgets, including a statement that the budgets may be ratified without a quorum. Each budget is ratified unless at a Meeting (which must have a quorum and the meet other requirements set forth in the Act, these Declarations and the Association's By-Laws) a majority of all of the Members of the Association entitled to vote at that Meeting on the particular budget rejects the budget. All Members, including the Declarant, shall be entitled to vote on the budget for the Annual Common Element Assessments pursuant to the Voting Rights process set forth in Article III herein. In the event a proposed budget is rejected, the periodic budget shall be continued until such time as the Members ratify a subsequent budget proposed by the Executive Board pursuant to the Voting Rights process set forth in Article III herein. The Annual Assessments for each Lot shall be established based on

the annual budgets thus adopted, with all Lots funding the budget for the Annual Common Element Assessments; provided, however, that the first Annual Assessments shall be set by the Declarant prior to the conveyance of the first Lot to an Owner. The due date for payment shall be established by the Executive Board. The Executive Board shall have the authority to require the Assessments to be paid in full or in periodic installments. The Association shall, upon demand, and for a reasonable charge furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. The initial annual assessment is hereby established by the Declarant as \$500.00 per year. This annual assessment may be increased by the Executive Board without Member approval, if such increase shall not exceed twenty percent and the Declarant consents. If the Executive Board desires to increase the annual assessment by an amount greater than 20% of the previous annual assessment amount, then such increase must have the assent of a majority of the Members who vote at a Meeting, which must have a quorum and meet the other requirements set forth in the Act, these Declarations and the Association's.

**SECTION 4. Special Assessments.** In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to the year only for the following purposes:

A. To defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such Special Assessment shall be approved majority of all of the Members of the Association, including the Declarant who vote at a Meeting, which must have a quorum and meet the other requirements set forth in the Act, these Declarations and the Association's By-Laws. All members, including the Declarant, shall be entitled to vote on the Assessments pursuant to the Voting Rights process set forth in Article III herein. Written notice of any Special Meeting called for the purpose of approving such Special Assessment shall be sent to all Members, including Declarant, not less than ten (10) days nor more than sixty (60) days in advance of the meeting.

B. To comply with the terms of any contract with a third-party service provider of integrated telephone, cable, internet and/or security systems, the Association may issue special assessments for the costs thereof. These costs may be in the form of a special assessment or may be part of the annual assessment or may be a combination of the two. The costs of the third-party service provider may be allocated to the Lots as a Common Expense for the "basic plan" and any upgrades desired by a Lot Owner may be added to such assessment.

**SECTION 5. Insurance Assessments.** All premiums on insurance policies purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a Common Expense, and the Association may at any time levy against the Members to which it applies an "Insurance Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay the cost of all such deductibles and insurance premiums not included as a component of the Annual Assessment.

SECTION 6. Ad Valorem Tax Assessments. All ad valorem taxes levied against the Common Elements, if any, shall be a common expense, and the Association may at any time year levy against the Owners equally an "Ad Valorem Tax Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay ad valorem taxes not included as a component of the Annual Assessment.

SECTION 7. Working Capital Assessments. At the time title to a Lot is conveyed to an Owner by Declarant, the Owner shall pay the sum of \$200.00 to the Association as working capital to be used for operating and capital expenses of the Association. Such amounts paid for working capital are not to be considered as advance payment of the Annual or any other Assessments.

SECTION 8. Commencement of Assessments. Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant.

SECTION 9. Effect of Nonpayment of Assessments And Remedies Of The Association. Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments.

SECTION 10. Lien for Assessments. The Association may file a lien against a Lot when any Assessment levied against said Lot remains unpaid for a period of 30 days or longer.

A. The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the office of the Clerk of Superior Court of the county in which the Lot is located. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, interest, and other charges imposed pursuant to the Planned Community Act are enforceable as Assessments.

B. The lien under this section shall be prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot.

C. The lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court.

D. Any judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.

E. Where the holder of a first mortgage or deed of trust of record obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors and assigns shall not be liable for the Assessments against the Lot which became due prior to the acquisition of title to the Lot by such purchaser. The unpaid Assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners including such purchaser, its heirs, successors and assigns. This exclusion shall not be construed to apply to any other successor in title.

F. A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed.

G. In no instance, whatsoever, shall the Declarant, nor the Declarant's Lots be subject to any assessments nor liens.

#### ARTICLE VI RIGHTS OF DEVELOPER

The Declarant shall have, and there is hereby reserved to the Declarant, the Special Declarant Rights as herein defined and the following rights, powers and privileges which shall be in addition to the Special Declarant Rights and any other rights, powers and privileges reserved to the Declarant herein:

SECTION 1. The Architectural Review Committee/Executive Board. The Declarant shall be entitled, during the Period of Declarant Control, to appoint and remove the members of the Architectural Review Committee. The Declarant shall be entitled during the Declarant Control Period to appoint and remove the Directors, officers and members of the Executive Board. These appointments may be made from Members or Non-Members.

SECTION 2. Plan of Planned Community. The right to change, add to, delete, alter or re-designate the allocated planned, platted, or recorded use or designation of any of the lands constituting the Planned Community including, but not limited to, the right to change, alter or re-designate road, Utility and drainage facilities and easements and to change, alter, add to, delete, or re-designate such other present and proposed amenities, Common Elements, Limited Common Elements, or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable. The Declarant shall have the right, but shall not have the obligation, of installing an integrated wiring system throughout the Planned Community, on common area and otherwise, which will facilitate a uniform service of telephone, cable, internet and security systems and this may be undertaken by and through a third-party service provider. The Declarant may allow for the erection of a bunker and related equipment including satellite dishes that will facilitate the supply of such services. The Declarant hereby expressly reserves unto itself, its successors and

assigns, the right to re-plat any one (1) or more Lots shown on the plat of any subdivision of the Property or Additional Property in order to create one or more modified Lots; to further subdivide tracts or Lots shown on any such subdivision plat into two or more Lots; to recombine one or more tracts or Lots or a tract and Lots to create a larger tract or Lot (any Lot resulting from such recombination shall be treated as one Lot for purposes of Assessments); to eliminate from this Declaration or any plats of the Planned Community Lots that are not otherwise buildable or are needed or desired by Declarant for access or are needed or desired by Declarant for use as public or private roads or access areas, whether serving the Planned Community or other property owned by the Declarant or others, or which are needed for the installation of Utilities, Common Elements or amenities, and to take such steps as are reasonably necessary to make such re-platted Lots or tracts suitable and fit as a building site, access area, roadway or Common Elements. The Declarant need not develop, or develop in any particular manner, any lands now owned or hereafter acquired by the Declarant, including any lands shown on plats of the Planned Community as "Future Development" or potential lots in planned future sections of the Planned Community. Any such lands shall not be subject to this Declaration unless Declarant expressly subjects them hereto by filing of a supplemental declaration in the Register of Deeds office of Onslow County. Declarant is required by the Division of Water Quality (DWQ) to state herein the maximum allowed built-upon area for all lots which Declarant has planned to develop within the Planned Community. By listing the maximum built-upon area herein for all such lots, Declarant does not obligate itself to develop in any particular manner or for any particular uses any lands now owned or hereinafter acquired by Declarant which are not shown on the recorded plats referenced herein.

SECTION 3. Amendment of Declaration by the Declarant. This Declaration may be amended without Member approval by the Declarant, or the Executive Board, as the case may be, as follows:

- A. In any respect, prior to the sale of the first Lot.
- B. To the extent this Declaration applies to Additional Property, including, but not limited to, amendments to add additional classes of Membership to the Association, to add, delete or alter Common and Limited Common Elements and to establish minimum square footages and other standards for structures.
- C. To correct any obvious error or inconsistency in drafting, typing or reproduction or to clarify the Declarant's intentions. This right shall be broadly construed..
- D. To qualify the Association or the Property and Additional Property, or any portion thereof, for tax-exempt status.
- E. To incorporate or reflect any platting change as permitted by this Article or otherwise permitted herein.
- F. To conform this Declaration to the requirements of any law or governmental agency

having legal jurisdiction over the Planned Community or to qualify the Planned Community or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, stormwater regulations, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the North Carolina Department of Environment and Natural Resources, the Department of Veterans Affairs, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. The Declarant may at any time amend this Declaration to change the maximum built-upon area permitted by DENR/DWQ. Notwithstanding anything else herein to the contrary, only the Declarant, during the Declarant Control Period, shall be entitled to amend this Declaration pursuant to this Section.

G. To file a restrictive covenant limiting usage of property still owned by Declarant or Common Elements and granting enforcement rights to the United States of America in order preserve mitigation property in an effort to ensure continued compliance with any Clean Water Act authorization issued by any District of the U.S. Army Corps of Engineers. These Additional Restrictions may be in the form of an amendment to the Declarations or a new set of Restrictions, all of which shall be binding on All Lots and Lot Owners and Members.

**SECTION 4. Annexation of Additional Property.** Declarant may annex to and make a part of the Planned Community any other real property, whether now owned or hereafter acquired by Declarant or others, and whether developed by the Declarant or others (the "Additional Property") and brought within the scheme of these Declarations and the Bylaws of the Association and the jurisdiction of the Association, in the following ways:

A. Declarant intends to and therefore, reserves the right, to develop and subject to these Declarations and Restrictions and the Bylaws any or all of the Property described in Schedule A, which is attached hereto and incorporated herein by reference. Each, any, or all of this Property may be annexed to the properties by Declarant, at its sole and absolute discretion, and brought within the scheme of these Restrictions and the Bylaws and within the jurisdiction of the Association, in future stages of development without the consent of the Association or its Members; provided, however that said annexations must occur within 20 years after the date of this instrument.

B. At Declarant's sole and absolute discretion, additional residential property and

common area, consisting of not more than Eight Hundred (800) acres, outside of the area described in the aforementioned Schedule A, may be annexed to the properties and brought within the scheme of development and these Declarations and the jurisdiction of the Association and the Associations's By-Laws in future stages of development without the consent of the Association or its members; provided, however, that said annexations must occur within 20 years after the date of this instrument.

C. The additions authorized under the preceding subsections (A) and (B) shall be made by filing of record Supplementary Declarations with respect to the additional properties which shall extend the scheme of the Declarations and By-Laws and thereby subject such additions to the Association's jurisdiction. Such Supplementary Declarations may contain such complementary additions and modification of these Declarations and the By-Laws as may be necessary to reflect only the different character and density of the housing planned on the added properties and are not inconsistent with the provisions of these Declarations. For example, future stages may include Villa Lots, which will be smaller lots, which may have a proportionally increased common area that may be used for the sole benefit of the Villa Lots and will be maintained by a separate homeowner's Association. Also, Associations may be created to maintain and own septic lines and equipment, or maintain at their sole expense special common areas shared amongst the new Owners and not the entire Association, etc.

D. Declarant is not required to annex any land to the Planned Community.

SECTION 5. Sales Model/Parking. So long as the Declarant or its designee shall retain ownership of any Lot, it may utilize any such Lot for offices, models or other purposes relating to the development, construction, sale or rental of Lots and dwellings, including the right to place "For Sale" or "For Rent" signs on any Lots. In addition, in connection with any of the above activities, the Declarant and its agents shall have the right to park vehicles and materials on any street or within the right of way thereof.

SECTION 6. Transfer of Declarant and Special Declarant Rights. Without limiting Declarant's general authority to transfer its rights hereunder, the Declarant specifically reserves the right to transfer, without the approval of any Lot Owners, any Declarant or Special Declarant rights contained herein or which shall be hereinafter imposed or reserved by Declarant, to any other Person. Upon such transfer, the transferee shall have all of the rights of the Declarant hereunder except to the extent any such rights are limited in the document of transfer.

SECTION 7. Use of Infrastructure and Amenities. Declarant may allow other owners' associations, and their owners, to use the amenities and infrastructure (including all Utilities) within the Planned Community so long as such other owners' associations pay a portion of the cost or the operation and maintenance of such amenities and infrastructure, the exact amount of such payment to be in the sole discretion of the Declarant. However, with respect to any bunker that houses internet, telephone, cable and/or security system equipment, such other persons shall not be required to share in the cost of supplying such services to the Planned Community.

SECTION 8. Declarant Shall Grant Rights of Ingress, Egress and Regress to Others. The Declarant, for itself and the Association, reserves the right to grant onto property owners of properties adjacent to or near Mimosa Bay, the right of ingress, egress and regress through Mimosa Bay as it now exists or as it may be expanded as set forth herein. The Declarant and/or the Association, may cause any and all roads constructed in this Mimosa Bay development, or which may be constructed, to become a servient estate to other real property for the purpose of ingress, egress and regress to said dominate estate property. The Declarant may grant said easements without the consent of the Association, except these easements must be granted within 20 years after the date of this instrument. For example, certain easement rights have been or will be granted by Declarant to the adjacent property owners. All Members shall abide by and will not interfere with any easement rights granted by Declarant to others. Declarant hereby creates no obligation to grant any easement rights but merely reserves the ability to do so.

SECTION 9. Street Lighting Agreement. The Declarant and the Association (with approval of the Declarant during the Period of Declarant Control) shall have the right to subject the Property to a contract with an electric utility company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or continuing monthly payment to an electric company or Association by Lot Owners and/or the Association. If the monetary obligation is required of the Association, then the same shall be a Common Expense.

ARTICLE VII  
USE RESTRICTIONS, ARCHITECTURAL CONTROL  
AND MAINTENANCE

SECTION 1. Approval of Plans for Building and Site Improvements. No dwelling, wall, tent or other structure shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Review Committee. If the Architectural Review Committee fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Architectural Review Committee shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Architectural Review Committee for its records. The Architectural Review Committee shall not be responsible for any structural or other defects in plans and specifications submitted to it or in any structure erected according to such plans and specifications.

SECTION 2. Minimum Standards for Site Improvements.

A. Each dwelling, on the following Lots shown on the above referenced plat, shall have the following minimum of square footages of enclosed, heated dwelling area:

LOTS NUMBER 1 through 24 (consecutively); 82 through 87 (consecutively); and A1, A2 and A3 shall have a minimum square footage of 2500 square feet of enclosed, heated dwelling area.

ALL OTHER LOTS IN PHASE I shall have a minimum square footage of 1800 square feet of enclosed, heated dwelling area.

The term "enclosed, heated dwelling area" shall mean the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas. The Declarant, as provided above, shall be entitled to amend this Declaration to establish different square footage minimums for any Additional Property annexed to the Planned Community for the types of homes that could be included in these future phases, including Villa Lots or townhomes.

B. **Setbacks:** All improvements to all Lots must comply with Onslow County setback requirements for a development of this type. The establishment of inflexible building setback lines for location of houses on Lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any Lot shall be controlled by and must be approved absolutely by the Architectural Review Committee; provided, however, that no structure shall be constructed closer to a Lot line than is permitted by applicable governmental regulations. Further, absent extraordinary circumstances set forth below, the Architectural Review Committee shall approve no plans unless the following minimum setback requirements are met:

Front yard:	30 feet from Lot line
Side yard (not situated on a Road):	10 feet from Lot line
Rear yard and Side yard on Road:	15 feet from Lot line

Setbacks for Lots in all other phases or annexed properties shall be set by Declarant in its sole discretion. It is possible that future phases may have Villa Lots or townhomes, which could have less setbacks than those set forth above.

The Architectural Review Committee shall have the right to approve deviations from each of these setback requirements upon application of an individual lot owner if, for reasons of topography or septic approvals, strict compliance creates a hardship if such approval does not violate the applicable governmental regulations or approvals. If required by Onslow County, each plot plan must receive zoning approval prior to the commencement of any construction.

C. The exterior of all dwellings, yards, landscaping, irrigation and other structures must

be completed within twelve (12) months after the construction of same shall have commenced. In the event that such improvements on any lot is not completed within one year, and it is determined by the Declarant, its successors and assigns, or if the Declarant so designates, by the Architectural Review Committee, that construction progress has diminished to such an extent that completion of the dwelling, outbuildings, or other improvements is unlikely within 120 days, the Association, will be advised of this determination. The Association shall then have the right to give notice to the Owner that the Owner has the obligation, within 30 days, to complete the removal of all the construction work in progress, including without limitation, the foundation and all building improvements and all stored building materials, and fill and grade the lot so that it is restored to its natural grade level, and the Association shall have the right to undertake this work upon Owner's failure to do so and charge the cost to the Owner and place a lien upon the lot upon the Owner's failure to pay these charges. During period of construction, the general contractor shall be allowed a sign of a design and substance approved by the Declarant, its successors or assigns, or if the Declarant so designates, by the Architectural Review Committee, but no sub-contractor signs shall be permitted. Unless otherwise changed by Declarant, the allowed contractor sign shall be no larger than 12 inches by 24 inches and may contain only an identification of the address and the Contractor's name. Declarant shall also have the right to allow certain selected "Preferred" or "Approved" Builders to have larger more elaborate signs, the location, size dimension and colors of which must be approved by Declarant, in its sole and absolute discretion.

D. All service utilities, garbage receptacles, fuel tanks, and heating ventilation and air conditioning units are to be enclosed within a wall or plant screen of a type and size approved by the Architectural Review Committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the Planned Community. All mail and newspaper boxes shall be uniform in design within each type development within the Planned Community. Design for mail and newspaper boxes shall be furnished by the Architectural Review Committee. Fences shall be permitted on any Lot; provided, however, that the design, placement, and materials of any fence are approved by the Architectural Review Committee. Clothes lines are not permitted on any Lot.

E. Off street parking for not less than two (2) passenger automobiles must be provided on each Lot prior to the occupancy of any dwelling constructed on said Lot which parking areas and the driveways thereto shall be constructed of concrete, brick, asphalt, or turf stone, or any other material approved by the Architectural Review Committee. Garages must be included as part of any plans submitted to the Architectural Review Committee. As with all other provisions, this restriction may be amended for future phases.

F. All light bulbs or other lights installed in any fixture located on the exterior of any building or any Lot for the purpose of illumination shall be clear, white or non-frost lights or bulbs.

G. If the Architectural Review Board requires grass on a particular Lot, then such requirement shall be accomplished by sodding such area.

H. Construction activity on a Lot shall be confined within the boundaries of said Lot. Each Lot Owner shall have the obligation to repair damage to Common Elements or other property and to collect and dispose of all rubbish and trash resulting from the construction on his Lot. Upon a Lot Owner's failure to repair such damage within thirty (30) days or to collect and dispose of such trash within thirty (14) days after receipt of a written notice from the Association, the Association may repair the damage or collect and dispose of such rubbish and trash at the Lot Owner's expense. Any expense incurred by the Association in repair or clean-up of the Lot shall be billed to the Owner of the Lot and if not paid within 30 days, the amount thereof shall become a lien against the Lot which shall be enforceable pursuant to the provisions of this Declaration as is the case for delinquent assessments.

I. The Association shall be entitled to collect a Construction deposit of Five Hundred and No/100 Dollars (\$500.00) and an Architectural Review Fee of Two Hundred and No/100 Dollars (\$250.00) from any Owner who desires to construct a home on his or her Lot. This Construction Deposit and Architectural Review Fee amounts may be adjusted by the Declarant during the Declarant Control Period and thereafter by the Board in any amount in its sole discretion.

J. More than one lot may be combined to form one or more lots by (or with the written consent of) Declarant, its successors and assigns. If a Person other than Declarant combines two Lots into One Lot, and elects to notify the Association to treat the combined Lots as one Lot it may do so but by doing so, the Owner waives any right or ability to thereafter have the lots divided back into two Lots as before and the Association is entitled to demand a proper filing be made with the Onslow County Registry showing that the Lots shall thereafter be treated as a single lot. If the Owner does not make such an election and make such a filing, then the two lots shall continue to be treated as two Lots by the Association despite their being owned by one Owner. No lot may be subdivided by sale or otherwise, except by written consent of Declarant, its successors and assigns. Upon combination or subdivision of lots, the building line requirements prescribed herein shall apply and the easements reserved herein shall be applicable to the rear, side and front lot lines of such lot as combined or subdivided. The resulting building site and structures erected thereon must otherwise comply with these Restrictions and the new property line of the resulting building site shall be used to compute the setback lines as set forth herein.

K. All connections of private driveways to the Mimosa Bay road system shall be constructed, by the Lot Owner, and maintained, by the Lot Owner, in accordance with the rules, regulations and specifications of the Committee. However, in order to insure emergency vehicle access to all lots, all driveways which connect residences or other structures that are more than fifty (50) feet from the subdivision road must be at least eleven (11) feet in width, with a clearance of no less than eleven (11) feet in height.

L. The exterior materials used in the construction of a house shall be subject to Architectural Review Board approval. The Architectural Review Board shall establish general guidelines for acceptable construction materials and may alter and revise the same at their discretion. For example, certain types of vinyl siding shall not be allowed, while other more

H. Construction activity on a Lot shall be confined within the boundaries of said Lot. Each Lot Owner shall have the obligation to repair damage to Common Elements or other property and to collect and dispose of all rubbish and trash resulting from the construction on his Lot. Upon a Lot Owner's failure to repair such damage within thirty (30) days or to collect and dispose of such trash within thirty (14) days after receipt of a written notice from the Association, the Association may repair the damage or collect and dispose of such rubbish and trash at the Lot Owner's expense. Any expense incurred by the Association in repair or clean-up of the Lot shall be billed to the Owner of the Lot and if not paid within 30 days, the amount thereof shall become a lien against the Lot which shall be enforceable pursuant to the provisions of this Declaration as is the case for delinquent assessments.

I. The Association shall be entitled to collect a Construction deposit of Five Hundred and No/100 Dollars (\$500.00) and an Architectural Review Fee of Two Hundred and No/100 Dollars (\$250.00) from any Owner who desires to construct a home on his or her Lot. This Construction Deposit and Architectural Review Fee amounts may be adjusted by the Declarant during the Declarant Control Period and thereafter by the Board in any amount in its sole discretion.

J. More than one lot may be combined to form one or more lots by (or with the written consent of) Declarant, its successors and assigns. If a Person other than Declarant combines two Lots into One Lot, and elects to notify the Association to treat the combined Lots as one Lot it may do so but by doing so, the Owner waives any right or ability to thereafter have the lots divided back into two Lots as before and the Association is entitled to demand a proper filing be made with the Onslow County Registry showing that the Lots shall thereafter be treated as a single lot. If the Owner does not make such an election and make such a filing, then the two lots shall continue to be treated as two Lots by the Association despite their being owned by one Owner. No lot may be subdivided by sale or otherwise, except by written consent of Declarant, its successors and assigns. Upon combination or subdivision of lots, the building line requirements prescribed herein shall apply and the easements reserved herein shall be applicable to the rear, side and front lot lines of such lot as combined or subdivided. The resulting building site and structures erected thereon must otherwise comply with these Restrictions and the new property line of the resulting building site shall be used to compute the setback lines as set forth herein.

K. All connections of private driveways to the Mimosa Bay road system shall be constructed, by the Lot Owner, and maintained, by the Lot Owner, in accordance with the rules, regulations and specifications of the Committee. However, in order to insure emergency vehicle access to all lots, all driveways which connect residences or other structures that are more than fifty (50) feet from the subdivision road must be at least eleven (11) feet in width, with a clearance of no less than eleven (11) feet in height.

L. The exterior materials used in the construction of a house shall be subject to Architectural Review Board approval. The Architectural Review Board shall establish general guidelines for acceptable construction materials and may alter and revise the same at their discretion. For example, certain types of vinyl siding shall not be allowed, while other more

attractive higher grade vinyl siding may be allowed.

M. As of the date these Declarations are being prepared, because of unavailability of certain services such as high speed internet and because of potential cost savings to the Lot Owners and other reasons, the Declarant is investigating the propriety of having an integrated wiring system installed in the Planned Community for the Lots to receive cable, high speed internet, telephone and/or security systems from a third-party service provider. As is set forth in this Declaration and in the By-Laws, the Association may contract with such third-party service provider to install fiber optic lines in easement areas and to supply such cable, internet, telephone and/or security system services to all Lots and the cost of the same shall be collected from Lot Owners through assessments or otherwise, regardless of whether the services are actually used by the Owners. If this contract is consummated, then the Architectural Review Board is required to reject any plan that fails to include structural wiring for telephone, data and video and security system wiring. Wiring specifications shall be developed by the third-party service providers and will be made available to all Owners and the Architectural Review Board. Further, in the event this contract is entered into, all owners will be required to comply with any terms therein. By purchasing a Lot in the Planned Development, all Owners agree and consent that any violation of such terms shall be subject to immediate enforcement action by the Declarant and/or the Association and agree that immediate and irreparable harm can and will occur to the Declarant, the Association and all Owners if such terms are violated and thus agree that Temporary Restraining Orders, Preliminary Injunctions and Permanent Injunctions shall be granted by the Court to avoid the same and require specific performance to ensure compliance with such contractual terms and attorney's fees and all costs of enforcing such contractual terms shall be awarded to the Declarant and/or the Association.

### SECTION 3. Use Restrictions.

A. Land Use And Building Type. No Lot or parcel of land shall be used for any purpose except for residential purposes, subject, however, to the rights of the Declarant contained herein. All Lots are restricted for construction of one single family dwelling (plus, a detached garage, if there is not one attached to the residence, and such other accessory buildings as may be approved by the Architectural Review Committee). Notwithstanding the foregoing, the Declarant may develop any parcel of land annexed to the Planned Community as multifamily so long as the parcel is restricted only to residential use.

B. 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. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the enjoyment of other Lots by the Owners thereof or the Declarant's development and sales activities. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or un-kept condition of buildings or grounds on the Owner's Lot which would tend to decrease the beauty of the neighborhood as a whole or the specific area. Each Lot Owner shall keep his Lot free from weeds, underbrush or

refuse piles, or unsightly growth or objects. All structures shall be kept neat and in good condition and repair. All shrubs, trees, grass and plantings shall be kept neatly trimmed and properly cultivated.

C. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot any time as a residence either temporarily or permanently without the written consent of the Association or its designee; provided, however, that this shall not prevent the Declarant, its designees or assigns from maintaining a construction trailer or office on any part of the Planned Community until the construction and sale of dwellings on all Lots and the Common Elements improvements are completed.

D. Modular Homes. Modular homes are permissible only if approved by the Architectural Review Committee at their sole and absolute discretion.

E. Vehicles/Boats. No boat, motor boat, camper, trailer, motor or mobile homes, tractor/trailer, or similar type vehicle, shall be permitted to remain on any Lot or on any street at any time, without the written consent of the Association. No inoperable vehicle or vehicle without current registration and insurance will be permitted on any Lot, street or Common Element. The Association shall have the right to have all such vehicles towed away at the owner's expense. No repairs to any vehicle may be made on streets or in driveways but only in garages or other areas and not visible from the street.

F. 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 and provided further that they are not allowed to run free, are at all times kept properly leashed and personally escorted and do not become a nuisance.

G. Statuary, TV Satellite Dishes and Outside Antennas. No yard statuary or TV satellite signal receiving dishes are permitted on any Lot and no outside radio or television antennas shall be erected on any Lot or dwelling unit unless and until permission for the same has been granted by the Architectural Review Committee; provided, however, satellite dishes not over 18" in diameter which cannot be seen from the street are permitted. If a contract with a third-party service provider prohibits the use of satellite dishes or outside antennas, then the same shall be prohibited.

H. Construction in Common Elements. No Person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction or with the express written consent of the Association.

I. Signs. Except as provided herein for Declarant and for Builders (including Article VII Section 2 Paragraph C), no signs (including "For Sale" or "For Rent" signs) shall be permitted on any Lot or in the Common Elements. Again, Declarant shall be allowed to erect and maintain

whatever signs it desires, at its sole and absolute discretion, including signs on Common Elements. Prior to the expiration of the Declarant Control Period, Declarant shall have the authority to establish sign rules and regulations that will be permitted after the end of the Declarant Control Period. For example, Declarant may establish a standard "For Sale" sign that will be allowed to be displayed after the expiration of the Declarant Control Period.

J. Subdividing. Subject to any rights reserved to the Declarant herein, no Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the Declarant Control Period and thereafter by the Board of Directors.

K. Leases. No rental or lease for any Lot shall be for a term of less than six months. All leases must be in writing and must contain a provision requiring the tenant to comply with all the use restrictions of this Declaration and any rules and regulations adopted by the Association. Transient rentals are strictly prohibited.

L. Trees. Except for trees located within ten feet of an approved "house foot print," no trees on any Lot 6 inches in diameter or greater may be removed without the approval of the Architectural Review Committee.

## ARTICLE VIII STORMWATER PERMIT/FACILITIES

SECTION 1. Stormwater Permit. The Association and each of its Members agree that at anytime after (i) all work required under the Stormwater Permit has been completed (other than operation and maintenance activities), and (ii) the Developer is not prohibited under DENR regulations from transferring the Stormwater Permit for the Planned Community to the Association, the Association's officers without any vote or approval of Lot Owners, and within 10 days after being requested to do so, will sign all documents required by DENR for the Stormwater Permit to be transferred to the Association; provided, however, that at the time the Developer requests that the Association accept transfer of the Stormwater Permit, the Developer has delivered to the Association a certificate from an engineer licensed in the State of North Carolina, dated no more than 45 days before the date of the request, that all stormwater retention ponds, swales and related facilities are constructed in accordance with the plans and specifications therefore. If the Association fails to sign the documents required by this paragraph, the Developer shall be entitled to specific performance in the courts of North Carolina requiring that the appropriate Association officers sign all documents necessary for the Stormwater Permit to be transferred to the Association. Failure of the officers to sign as provided herein shall not relieve the Association of its obligations to operate and maintain the stormwater facilities covered by the Stormwater Permit.

SECTION 2. Stormwater Facilities Operation and Maintenance. Any stormwater retention ponds and related facilities for the Planned Community which have or are to be constructed by or on behalf of Declarant constitute Common Elements and, subject only to the provisions of

Section 3 of this Article, the Association, at its sole cost and expense, is responsible for the operation and maintenance of such facilities. Such Operation and Maintenance shall include, but not be limited to, compliance with all of the terms and obtaining any renewals of the Stormwater Permit. Except as provided in *Section 3 of this Article*, the Association shall indemnify and hold harmless the Developer from any obligations and costs under the Stormwater Permit for operation and maintenance of the stormwater retention ponds and related facilities.

**SECTION 3. Damage to Storm Water Facilities.** The Declarant shall at its sole cost and expense be responsible for repairing any damage to storm water facilities which Declarant determines is caused by the Developer's development activities. The Developer shall not be responsible for damages to stormwater retention ponds and related facilities caused by any other cause whatsoever, including but not limited to construction of residences or other activities by Owners, their agents and contractors, upon their Lots, acts of God, and the negligence of others. Lot Owners shall be responsible for damages to such stormwater facilities caused by construction of buildings or other activities upon the Owner's Lot. Each Owner, shall within 30 days after receipt of notice of damage to stormwater facilities, repair the damage at the Owner's sole cost and expense to return them to the state required by the storm water plans and specifications for the Planned Community. If the Lot Owner fails to do so within said 30-day period, the Association shall perform the work and the cost of the work shall be added to the Annual Assessment due from the Lot Owner.

**SECTION 4. Enforcement Of Storm Water Runoff Regulations.**

A. The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 050325, 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 (this data is for Lots shown on the above-referenced plat plus lots for which the Declarant has an approved stormwater plan but which Declarant is under no obligation to subdivide or develop in any particular fashion or for any particular use):

1	6200
2	6000
3	6500
4	6800
5	6200
6	6200
7	7000
8	6500
Marina area	6000
9	6500
10	6500
11	6500
12	8000
13	6500
14	6500
15	7500
16	9000
17	9000
18	7500
19	7000
20	6000
21	6000
22	6000
23	6000
24	6000
26	5000
27	4800
28	4800
29	4800
30	4800
31	4800
32	4800
33	4800
34	4800
35	5000
36	5200
37	5000
38	5000

39	5000
62	5000
63	5000
64	5000
65	5000
66	5000
67	5000
68	7500
69	5500
70	8000
71	5500
72	5500
73	6500
74	6500
75	6500
76	6000
77	7500
78	8000
79	7500
80	7500
81	6000
82	9000
83	7500
84	8000
85	8000
86	8000
87	8000
88	5500
89	6500
90	6000
91	8000
92	5000
93	5500
94	5500
95	5500
96	4800
97	4800
98	4800
99	4800

100	4800
101	4800
102	4800
103	4800
140	7000
141	8000
142	7000
143	7500
144	9000
145	7500
A-1	7000
A-2	7000
150	7000
A-3	<u>7000</u>
TOTAL	567,900

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, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools. Declarant reserves the right to recalculate the maximum allowable built-upon areas if required by applicable regulations.

G. Built-upon area in excess of the permitted amount will require a permit modification.

H Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings, is strictly prohibited by any persons.

I. Each Lot will maintain a 30' wide vegetated buffer between impervious areas and surface waters.

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

#### ARTICLE IX CONSERVATION DECLARATION

SECTION 1. Declarant has filed or will file a Conservation Declaration or similar document to set aside an area within the Property, in order to perpetually maintain and preserve the natural

beauty of this land for the enjoyment of the residents of Mimosa Bay. This area shall have usage restrictions. The Conservation 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.

## ARTICLE X LOTS SUBJECT TO DECLARATION/ENFORCEMENT

SECTION 1. Lots Subject to Declaration. The covenants and restrictions contained in this Declaration are for the purpose of protecting the value and desirability of the Planned Community and the Lots. All present and future Owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant or occupant. The covenants and restrictions of this Declaration shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot, their heirs, successors and assigns, as though such provisions were made a part of each and every deed of conveyance or lease, 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, unless terminated by the Lot Owners.

SECTION 2. Lots 25 and 50. Lots 25 and 50 will be transferred back to the previous owner, A. K. Everett, Jr. (hereinafter referred to as "Everett"). At this time, Lots 25 and 50 shall not be part of Mimosa Bay and will not be subject to the rules, restrictions and assessments set forth therein. However, Everett or persons who are "Qualified Successors" may elect to subject either or both Lot 25 and Lot 50 to the Mimosa Bay subdivision, at which time the same shall be treated like all other Lots and the owners of Lot 25 and 50 shall be treated like all other Lot Owners. A "Qualified Successor" is either an heir of Everett who takes title of either Lot 25 or 50 from Everett upon his death, or from an owner who received title by bequeath or intestate succession transfer from an heir of Everett or a member of Everett's immediate family who takes possession by a deed from Everett. In the event that title to Lot 25 or Lot 50 is acquired by someone who is not a Qualified Successor, then the Lot shall become a part of Mimosa Bay and shall be treated like all other Lots. In the event that these Lots become part of Mimosa Bay, then they will be subject to the Storm Water provisions set forth in Article VIII above and shall have a limitation of impervious surface in an amount to be established by Declarant at or before the time of annexation, which shall not be more than 25% of the total square footage of said Lots.

SECTION 3. Enforcement and Remedies. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable (by proceedings at law or in equity) by the Association, the Declarant or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns. The Executive Board shall be entitled to enforce its Articles of Incorporation, Bylaws and Rules and Regulations. In addition to the remedies otherwise

provided for herein concerning the collection of Assessments, the following remedies shall be available:

A. Association to Remedy Violation. In the event an Owner (or other occupant of a Lot) is in violation of or fails to perform any maintenance or other activities required by this Declaration, the Association's Bylaws, Charter or Rules and Regulations, the Executive Board, after 30-days notice, may enter upon the Lot and remedy the violation or perform the required maintenance or other activities, all at the expense of the Owner. The full amount of the cost of remedying the violation or performing such maintenance or other activities shall be chargeable to the Lot, including collection costs and reasonable attorneys' fees. Such amounts shall be due and payable within 30 days after Owner is billed. If not paid within said 30 day period, the amount thereof may immediately be added to and become a part of the Annual Assessment levied against said Owner's Lot. In the event that any maintenance activities are necessitated to any Common Elements by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors, the cost of the same shall be the personal obligation of the Owner and if not paid to the Association upon demand, may immediately be added to and become a part of the Annual Assessment levied against said Owner's Lot.

B. Fines. The Association may in accordance with the procedures set forth in the Act establish a schedule of and collect fines for the violation of this Declaration or of the Association's Articles of Incorporation, Bylaws or Rules and Regulations. If an Owner does not pay the fine when due, the fine shall immediately become a part of and be added to the Annual Assessment against the Owner's Lot and may be enforced by the Association as all other Assessments provided for herein.

C. Suspension of Services and Privileges. The Association may in accordance with the procedures set forth in the Act suspend all services and privileges provided by the Association to an Owner (other than rights of access to Lots) for any period during which any Assessments against the Owner's lot remain unpaid for at least 30 days or for any period that the Owner or the Owner's Lot is otherwise in violation of this Declaration or the Association's Charter, Bylaws, or Rules and Regulations.

SECTION 4. Miscellaneous. Failure by the Association, the Declarant or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The remedies provided herein are cumulative and are in addition to any other remedies provided by law.

## ARTICLE XI COMPLIANCE WITH WETLAND AND BUFFER REGULATIONS

SECTION 1. Deed Restrictions. In accordance with Title 15 A NCAC 2H .0500, the following Deed Notification shall restrict the following Lots: 1 through 24 (consecutively); 53; 54; 77

through 87 (consecutively); 91 through 95 (consecutively); 98; 140 through 145 (consecutively) and 150: "A portion of this Lot has been determined to meet the requirements for designation as a wetland, stream or protected stream buffer. Any subsequent fill or alteration of this area shall conform to the requirements of the state rules adopted by the State of North Carolina in force at the time of the proposed alteration. The intent of this provision is to prevent additional wetland, stream or buffer filling or draining, so the property owner should not assume that a future application for filling or draining would be approved. The property owner shall report the name of the subdivision any application pertaining to said rules. This covenant is intended to insure continued compliance with all rules adopted by the State of North Carolina and therefore the State of North Carolina may enforce benefits. This covenant is to run with the land and shall be binding on all Parties and all persons claiming under them."

## ARTICLE XII GENERAL PROVISIONS

SECTION 1. Rights of Institutional Note Holders. Any institutional holder of a first lien 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 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 Planned Community or the property securing its loan, (e) receive written notice of any sixty-day (60) delinquency in the payment of Assessments or charges owed by any Owner of any property which is security for the loan, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of any master insurance policy.

SECTION 2. Utility Service. Declarant reserves the right to subject the Property to contracts for the installation of utilities, cable TV and street lighting, which may require an initial payment and/or a continuing monthly payment by the Owner of each Lot. Each Lot Owner will be required to pay for any water connections, sewer connections (if any), impact fees or any other charges imposed by any entity furnishing water, sewer or other utility service to the Lots. In the alternative, the Developer may collect such connection, impact and other fees, and charges directly from the Lot Owners. All Lot Owners shall be required, for household purposes, to use water and sewer supplied by the companies/governmental units servicing the Planned Community, if and when available. Separate water systems for outside irrigation and other outdoor uses shall not be permitted without the consent of the Architectural Review Committee.

SECTION 3. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

SECTION 4. Amendment of Declaration. Except in cases of amendments that may be executed

by the Declarant under this Declaration or by certain Members under the Act, this Declaration may be amended by affirmative vote or written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, or by the Declarant if necessary for the exercise of any Special Declarant Right or development or other right reserved to the Declarant herein.

SECTION 5. North Carolina Planned Community Act. It is the intent of the Declarant to comply with the requirements imposed on the Planned Community by the Act and to the extent any of the terms of this Declaration violate the Act, the terms of the Act shall control.

SECTION 6. Liability Outside Class. By virtue of this Declaration, the Association's Articles and Bylaws, certain actions by the Association are required to be taken for only a particular Class of Members. The Members of any Class of Membership outside of a Class for which the Association is required or elects to take any action shall have no liability, through assessments or otherwise, for the Association's failure to take or to mismanage any such action.

IN TESTIMONY WHEREOF, Declarant has caused this Declaration to be signed in its corporate name by its MANAGER as of the day and year first above written.

BLUE MARLIN, L.L.C.

By: Gordon P. Frieze Jr.  
MANAGER

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

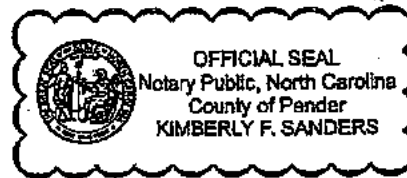
I, Kimberly F. Sanders a Notary Public, certify that Gordon P. Frieze Jr. personally came before me this day and acknowledged that he is the \_\_\_\_\_ MANAGER of BLUE MARLIN, L.L.C., a Limited Liability Corporation, and that he, as MANAGER, being authorized to do so, executed the foregoing on behalf of said Limited Liability Corporation.

Witness my hand and seal, this the 15<sup>th</sup> day of June, 2005.

Kimberly F. Sanders  
Notary Public

My commission expires: 5-15-2010

(SEAL)



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.

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

Handwritten initials and a circled '1' in the top left corner.



Doc ID: 000642010008 Type: CRP  
Recorded: 03/10/2008 at 04:18:10 PM  
Fee Amt: \$20.00 Page 1 of 3  
Onslow County, NC  
Mildred M Thomas Register of Deeds

SK-2615 PG 688-690

STATE OF NORTH CAROLINA

SUPPLEMENTAL  
DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR MIMOSA BAY SUBDIVISION  
PHASE I

COUNTY OF ONSLOW

This Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision PHASE II ("Phase II Declarations") made the 3 day of March 2006, by BLUE MARLIN, L.L.C., hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated:

WITNESSETH:

WHEREAS, Blue Marlin, L.L.C. ("Declarant") is the owner of certain real property in Onslow County, North Carolina, known as MIMOSA BAY, PHASE I, as shown on plats recorded in the Office of the Register of Deeds of Onslow County, North Carolina, in Map Book 48, page 171, Book 48, page 239, Book 49, page 140, and Book 50, page 79 to which reference is made for a more particular description; and

WHEREAS, the Mimosa Bay Subdivision is subject to Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision Phase I filed June 16, 2005, which are recorded in Book 2464 at Pages 372 through 402 of the Register of Deeds for Onslow County ("Declarations"); and

WHEREAS, Declarant executes this document for the purpose of supplementing the Restrictive covenants for Phase I so as to enumerate the additional lots shown on the maps Phase I referred to above.

NOW, THEREFORE, in accordance with the recitals which by this reference are made a substantive part hereof, Declarant declares that:

ARTICLE I  
PHASE I IS SUBJECT TO DECLARATION AND BYLAWS

All of the property described herein, are made subject to Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision Phase I filed June 16, 2005, which are recorded in Book 2464 at Pages 372 through 402 of the Register of Deeds for Onslow County and the Bylaws of Mimosa Bay Homeowners Association, Inc. ("Bylaws") were filed June 16, 2005 and are recorded of record in the Onslow County Register of Deeds at Book 2464, Pages 403 through 415 and that such easements, restrictions, covenants and conditions shall burden and be appurtenant to and run with said Mimosa Bay Phase I properties and be binding on all parties now or hereafter owning said real property and their respective heirs, successors and assigns, having any right, title or interest in the properties in said Mimosa Bay Phase I properties, or any part thereof, and shall inure to the benefit of each owner thereof and their respective heirs, successors and assigns.

**ARTICLE II.  
IMPERVIOUS COVERAGE**

**SECTION I.** The maximum allowable built-upon area per Lot is as follows (this data is for Lots shown on the above-referenced plat plus lots for which the Declarant has an approved stormwater plan but which Declarant is under no obligation to subdivide or develop in any particular fashion or for any particular use):

40	5200
41	5200
42	5000
43	5000
44	5000
45	5000
46	5000
47	5000
48	5000
49	5000
51	6000
52	5500
53	5000
54	5000
55	5000
56	6500
57	6500
58	6500
59	6500
60	7000
61	7000
146	6500
147	6500
148	6500
149	6500
<b>TOTAL</b>	<b>142,900</b>

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, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools. Declarant reserves the right to recalculate the maximum allowable built-upon areas if required by applicable regulations.

**ARTICLE III  
MINIMUM STANDARDS FOR SITE IMPROVEMENTS**

**SECTION I.** Each dwelling on the Phase I Lots shown on the above referenced plats, shall have the shall have a minimum square footage of 1800 square feet of enclosed, heated dwelling area. The term "enclosed, heated dwelling area" shall mean the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open

porches, and like areas.

IN TESTIMONY WHEREOF, Declarant has caused this Declaration to be signed in its corporate name by its MANAGER as of the day and year first above written.

BLUE MARLIN, L.L.C.

By: Gordon P. Frazier Jr.  
MANAGER

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

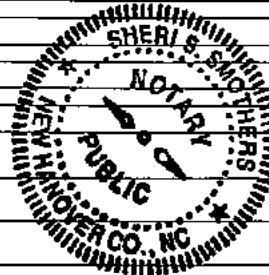
I, Sheri S. Smothers, a Notary Public, certify that Gordon P. Frazier Jr. personally came before me this day and acknowledged that he is the \_\_\_\_\_ MANAGER of BLUE MARLIN, L.L.C., a Limited Liability Corporation, and that he, as MANAGER, being authorized to do so, executed the foregoing on behalf of said Limited Liability Corporation. Witness my hand and seal, this the 3 day of March, 2006.

Sheri S. Smothers  
Notary Public

My commission expires: Aug. 29, 2006

(SEAL)

F:\core\Tern\Mimosa Bay-PHASE I-revised cov  
3-2-06



Doc ID: 000942820004 Type: CRP  
 Recorded: 03/10/2006 at 04:19:12 PM  
 Fee Amt: \$23.00 Page 1 of 4  
 Onslow County, NC  
 Mildred M Thomas Register of Deeds  
 BK **2615** PG **691-694**

STATE OF NORTH CAROLINA  
 COUNTY OF ONSLOW

DECLARATION OF COVENANTS  
 CONDITIONS AND RESTRICTIONS  
 FOR MIMOSA BAY SUBDIVISION  
 PHASE III

This Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision PHASE III ("Phase III Declarations") made the 3<sup>rd</sup> day of March, 2006, by BLUE MARLIN, L.L.C., hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated:

WITNESSETH:

WHEREAS, Blue Marlin, L.L.C. ("Declarant") is the owner of certain real property in Onslow County, North Carolina, known as MIMOSA BAY, PHASE I, as shown on a plat recorded in the Office of the Register of Deeds of Onslow County, North Carolina, in Map Book 48, Page 171, Map Book 48, Page 239, Map Book 49, page 140 and Map Book 50, page 79 to which reference is made for a more particular description and also owns the Property that is known as MIMOSA BAY, PHASE III, as shown on a plat recorded in the Office of the Register of Deeds of Onslow County, North Carolina, in Map Book 50, Page 95 to which reference is made for a more particular description (hereinafter "Mimosa Bay Phase III" or "Phase III"); and

WHEREAS, the Mimosa Bay Subdivision is subject to Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision filed June 16, 2005, which are recorded in Book 2464 at Pages 372 through 402 and those filed 3-10-06, which are recorded in Book 2415 at Pages 688 through 690 of the Register of Deeds for Onslow County ("Declarations"); and

WHEREAS, pursuant to Article VII of the Declarations, the Declarant has the right to include Phase III within the Mimosa Bay Subdivision and subject Phase III to the Declarations; and

WHEREAS, the Bylaws of Mimosa Bay Homeowners Association, Inc. ("Bylaws") were filed June 16, 2005 and are recorded of record in the Onslow County Register of Deeds at Book 2464, Pages 403 through 415: and

WHEREAS, the Bylaws provide Declarant with the ability to subject Phase III to said Bylaws such that all owners of any Lots within Phase III shall become members of Mimosa Bay Homeowners Association, Inc. and subject to the rights, obligations and responsibilities of the

Bylaws;

WHEREAS, Declarant executes this document for the sole purpose of clarifying the entitlement and desire to incorporate Phase III into the Mimosa Bay Subdivision;

NOW, THEREFORE, in accordance with the recitals which by this reference are made a substantive part hereof, Declarant declares that:

ARTICLE I  
PHASE III IS SUBJECT TO DECLARATION AND BYLAWS

All of the property described herein, and, specifically, Mimosa Bay Phase III, are made subject to Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision filed June 16, 2005, which are recorded in Book 2464 at Pages 372 through 402 and those filed on 3-10-06, which are recorded in Book 2465 at Pages 408 through 410 of the Register of Deeds for Onslow County and the Bylaws of Mimosa Bay Homeowners Association, Inc. ("Bylaws") were filed June 16, 2005 and are recorded of record in the Onslow County Register of Deeds at Book 2464, Pages 403 through 415 and that such easements, restrictions, covenants and conditions shall burden and be appurtenant to and run with said Mimosa Bay Phase III properties and be binding on all parties now or hereafter owning said real property and their respective heirs, successors and assigns, having any right, title or interest in the properties in said Mimosa Bay Phase III properties, or any part thereof, and shall inure to the benefit of each owner thereof and their respective heirs, successors and assigns.

ARTICLE II.  
IMPERVIOUS COVERAGE

SECTION 1. The maximum allowable built-upon area per Lot is as follows (this data is for Lots shown on the above-referenced plat plus lots for which the Declarant has an approved stormwater plan but which Declarant is under no obligation to subdivide or develop in any particular fashion or for any particular use):

104	4200
105	4200
106	4200
107	4200
108	4200
109	4200
110	4200
111	4200
112	4200

113	4200
114	4200
115	4200
116	4200
117	4200
118	4200
119	4200
120	4200
121	4200
122	4200
123	4200
124	4200
125	4200
126	4200
127	4200
128	4200
129	4200
130	4200
131	4200
132	4200
133	4200
134	4200
135	4200
136	4200
137	4200
138	4200
139	4200
TOTAL	151,200

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, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools. Declarant reserves the right to recalculate the maximum allowable built-upon areas if required by applicable regulations.

ARTICLE III  
EASEMENTS

All Easements set forth in the Declarations are extended to Phase III and all Common Elements and Lots therein.

ARTICLE IV  
MINIMUM STANDARDS FOR SITE IMPROVEMENTS

SECTION 1. Each dwelling on the Phase III Lots shown on the above referenced plat, shall have the shall have a minimum square footage of 1800 square feet of enclosed, heated dwelling area. The term "enclosed, heated dwelling area" shall mean the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas.

IN TESTIMONY WHEREOF, Declarant has caused this Declaration to be signed in its corporate name by its MANAGER as of the day and year first above written.

BLUE MARLIN, L.L.C.

By: Gordon P. Frazier, Jr.  
MANAGER

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, Jeri S. Smother a Notary Public, certify that Gordon P. Frazier, Jr. personally came before me this day and acknowledged that he is the MANAGER of BLUE MARLIN, L.L.C., a Limited Liability Corporation, and that he, as MANAGER, being authorized to do so, executed the foregoing on behalf of said Limited Liability Corporation.

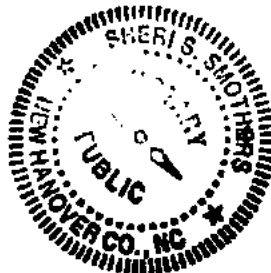
Witness my hand and seal, this the 3 day of March, 2006.

Jeri S. Smother  
Notary Public

My commission expires: Aug 29, 2006

(SEAL)

Minerva Bay-Phase III-Resd. Cdbv.wpd



2  
B.M.  
ENV

Doc ID: 002170830002 Type: CRP  
Recorded: 11/27/2006 at 02:50:28 PM  
Fee Amt: \$17.00 Page 1 of 2  
Onslow County, NC  
Mildred M Thomas Register of Deeds  
BK 2775 PG 423-424

STATE OF NORTH CAROLINA  
ONSLow COUNTY

AMENDMENT NUMBER ONE TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR MIMOSA BAY SUBDIVISION

THIS AMENDMENT, made as of 17 October 2006, by Blue Marlin, LLC, hereinafter referred to as Declarant or Developer for the purposes hereinafter stated:

WITNESSETH:

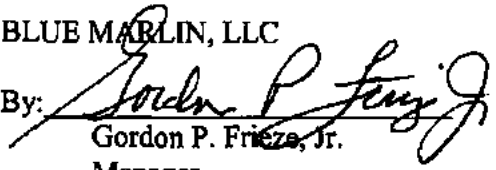
WHEREAS, Declarant has heretofore filed a certain Declaration recorded in Book 2464 at pages 372-402; and

WHEREAS, Declarant desires to amend said Declaration as hereinafter stated.

NOW, THEREFORE, Declarant hereby amends the Declaration of Covenants, Conditions and Restrictions for Mimosa Bay Subdivision recorded in Book 2464 at pages 372-402 as follows:

1. Article VIII, Section 4, paragraph F, is amended to increase the maximum allowable built-upon area for the marina area to 8,000 square feet.

IN TESTIMONY WHEREOF, Declarant has caused this Amendment to be signed in its name by its Manager.

BLUE MARLIN, LLC  
By:   
Gordon P. Frieze, Jr.  
Manager

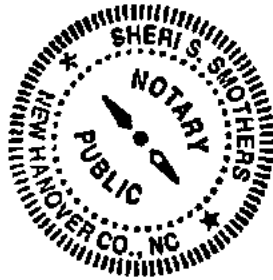
STATE OF NORTH CAROLINA  
COUNTY OF PENDER

I, Sheri S. Smothers a Notary Public in and for the aforesaid County and State, do hereby certify that Gordon P. Frieze, Jr., Manager of Blue Marlin, LLC, 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 23 day of October, 2006.

Sheri S. Smothers  
Notary Public

My Commission Expires: August 29, 2011

F:\CORE\TERRA\Deeds\mimosa-amendment-MimosaBay.doc



Prepared by + Return to  
Stubbs + Perdue, PA  
P.O. Box 1654  
New Bern, NC 28563

Doc ID: 002217420002 Type: GRP  
Recorded: 01/08/2007 at 11:52:10 AM  
Fee Amt: \$17.00 Page 1 of 2  
Onslow County, NC  
Mildred M Thomas Register of Deeds  
BK 2799 PG 137-138

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

AMENDMENT TO DECLARATION OF  
COVENANTS CONDITIONS AND RESTRICTIONS  
FOR MIMOSA BAY SUBDIVISION

This Amendment to Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision ("Amended Declaration") made the 11<sup>th</sup> day of December, 2006, by BLUE MARLIN, L.L.C., hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated:

WITNESSETH:

WHEREAS, Blue Marlin, L.L.C. ("Declarant") is the owner of certain real property in Onslow County, North Carolina, known as MIMOSA BAY, PHASES I and III as shown on plats recorded in the Office of the Register of Deeds of Onslow County, North Carolina, in Map Book 48, page 171, Map Book 48, Page 239, Map Book 49, Page 140, Map Book 50, Page 79, Map Book 50, Page 125, Map Book 51, Page 46, Map Book 50, Page 191, Map Book 50 Page 231, Map Book 50, Page 95, Map Book 50, Page 192 Map Book 51, Page 44 to which reference is made; and

WHEREAS, the Mimosa Bay Subdivision is subject to Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision filed June 16, 2005, which are recorded in Book 2464 at Pages 372 through 402 and those filed March 10, 2006, which are recorded in Book 2615 at Pages 688 through 690 of the Register of Deeds for Onslow County ("Declarations"); and

WHEREAS, Phase III has been made subject to the Declarations by virtue of The Declaration of Covenants, Conditions and Restrictions for Mimosa Bay Subdivision, Phase III, which are recorded in Book 2615 at Page 691, in the Onslow County Registry.

WHEREAS, the Declarations, including Article VI Section 3C and Article VII Section 2, Paragraph provides that the Declarations can be Amended for the sole purpose of clarifying the Declarant's intent that a construction bond be required and that part of the same would be non-refundable and be placed in a road fund for the benefit of the Association and the proper amounts thereof;

NOW, THEREFORE, in accordance with the recitals, which by this reference are made a substantive part hereof, Declarant declares that:

ARTICLE VII Section 2 Paragraph I is amended as follows:

The Association shall be entitled to collect a construction bond in the amount of One Thousand and No/100 Dollars (\$1,000.00) from any Owner who desires to construct a home a Lot. Of this \$1,000.00 Construction Bond, Five Hundred and No/100 Dollars (\$500.00) shall be non-refundable and shall be held by the Association in a road fund and the remaining Five Hundred and No/100 Dollars (\$500.00) is refundable, subject to the right of the Association to apply such bond for damages or fines as may be established from time to time in Mimosa Bay Design Review Guidelines and procedures manual. The non-refundable portion of the Construction Bond is to be given to the Association to offset wear and tear on the roads that will occur regardless of any improper act of any contractor and Owner and will assist in building a fund that will be used to perform road maintenance and repaving when necessary. The Association shall also be entitled to collect an Architectural Review Fee of Two Hundred Fifty and No/100 Dollars (\$250.00) from any Owner who desires to construct a home on a Lot. The Construction Bond and Architectural Review Fee amounts may be adjusted by the Declarant during the Declarant Control Period and thereafter by the Board in any amount in its sole discretion.

Except as specifically amended and modified hereby, the provisions of the Declarations shall remain in full force and effect.

IN TESTIMONY WHEREOF, Declarant has caused this Amended Declaration to be signed in its corporate name by its MANAGER as of the day and year first above written.

BLUE MARLIN, L.L.C.

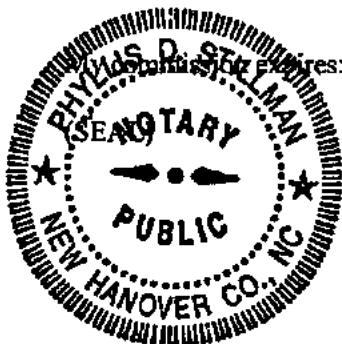
By Gordon P. Frieze, Jr.  
Member, MANAGER

STATE OF NORTH CAROLINA  
COUNTY OF ~~ONSLOW~~ NEW HANOVER

I, PHYLLIS D. STILLMAN, Notary Public, certify that GORDON P. FRIEZE, JR. personally came before me this day and acknowledged that he is the MANAGER of BLUE MARLIN, L.L.C., a Limited Liability Corporation, and that he, as MANAGER, being authorized to do so, executed the foregoing on behalf of said Limited Liability Corporation.

Witness my hand and seal, this the 14th day of December, 2006.

Phyllis D. Stillman  
Notary Public



My commission expires: 7-9-07

#29

Doc ID: 002272320008 Type: CRP  
Recorded: 02/27/2007 at 08:19:44 AM  
Fee Amt: \$28.00 Page 1 of 6  
Onslow County, NC  
Maryland K. Washington Reg. of Deeds  
BK 2826 PG 168-173

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR MIMOSA BAY SUBDIVISION  
PHASE IV

This Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision PHASE IV ("Phase IV Declarations") made the 27 day of FEBRUARY, 2007, by BLUE MARLIN, L.L.C., hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated:

WITNESSETH:

WHEREAS, Blue Marlin, L.L.C. ("Declarant") is the owner of certain real property in Onslow County, North Carolina, known as MIMOSA BAY, PHASES I, II and III, as shown on a plat recorded in the Office of the Register of Deeds of Onslow County, North Carolina, in Map Book 48, page 71, Map Book 48, page 239, Map Book 49, page 140, Map book 50, page 79, Map Book 50, page 95, Map Book 50, page 125, Map Book 50, page 191, Map Book 50, page 231, Map Book 50, page 192, Map Book 51, page 44, Map Book 51, page 46 and Map Book 52, Page 199, to which reference is made for a more particular description and also owns the Property that is known as MIMOSA BAY, PHASE IV, as shown on a plat recorded in the Office of the Register of Deeds of Onslow County, North Carolina, in Map Book 52, Page 198 to which reference is made for a more particular description (hereinafter "Mimosa Bay Phase IV" or "Phase IV"); and

WHEREAS, the Mimosa Bay Subdivision is subject to Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision filed June 16, 2005, which are recorded in Book 2464 at Pages 372 through 402 and those filed March 3, 2006, which are recorded in Book 2615 at Pages 688 through 690 and amended March 3, 2006 in Book 2775 at pages 423 through 424, of the Register of Deeds for Onslow County ("Declarations"); and

WHEREAS, pursuant to Article VII of the Declarations, the Declarant has the right to include Phase IV within the Mimosa Bay Subdivision and subject Phase IV to the Declarations; and

WHEREAS, the Bylaws of Mimosa Bay Homeowners Association, Inc. ("Bylaws") were filed June 16, 2005 and are recorded of record in the Onslow County Register of Deeds at Book 2464,

↓  
Blue Marlin, LLC  
P.O. Box 1328  
Wrightsville Beach, NC  
28480

Pages 403 through 415; and

WHEREAS, the Bylaws provide Declarant with the ability to subject Phase IV to said Bylaws such that all owners of any Lots within Phase IV shall become members of Mimosa Bay Homeowners Association, Inc. and subject to the rights, obligations and responsibilities of the Bylaws; and

WHEREAS, Declarant executes this document for the sole purpose of clarifying the entitlement and desire to incorporate Phase IV into the Mimosa Bay Subdivision and subject Phase IV to the Declarations;

NOW, THEREFORE, in accordance with the recitals which by this reference are made a substantive part hereof, Declarant declares that:

**ARTICLE I  
PHASE IV IS SUBJECT TO DECLARATION AND BYLAWS**

All of the property described herein, and specifically Mimosa Bay Phase IV, are made subject to Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision filed June 16, 2005, which are recorded in Book 2464 at page 372 through 402 and those filed on March 3, 2006, which are recorded in Book 2615 at Pages 688 through 690 and amended March 3, 2006 in Book 2775 at page 423 through 424 of the Register of Deeds for Onslow County and the Bylaws of Mimosa Bay Homeowners Association, Inc. ("Bylaws") were filed June 16, 2005 and are recorded in the Onslow County Register of Deeds at Book 2464, Pages 403 through 415, and that such easements, restrictions, covenants and conditions shall burden and be appurtenant to and run with said Mimosa Bay Phase IV properties and be binding on all parties now or hereafter owning said real property and their respective heirs, successors and assigns, having any right, title or interest in the properties in said Mimosa Bay Phase IV properties, or any part thereof, and shall inure to the benefit of each owner thereof and their respective heirs, successors and assigns.

**ARTICLE II  
IMPERVIOUS COVERAGE**

SECTION 1. The maximum allowable built-upon area per Lot is as follows (this data is for Lots shown on the above-referenced plat plus lots for which the Declarant has an approved stormwater plan but which Declarant is under no obligation to subdivide or develop in any particular fashion or for any particular use):

<b>LOT</b>	<b>SQ. FT.</b>
<b>151</b>	<b>4200</b>
<b>152</b>	<b>4200</b>

153	4200
154	4200
155	4200
156	4200
157	4200
158	4200
159	4200
160	4500
161	4800
162	4800
163	4800
164	4500
165	4200
166	4200
167	4200
168	4200
169	4200
170	4200
171	4200
172	4200
173	4200
174	4200
175	4200
176	4200
177	4200
178	4200
179	4200
180	4200

181	4200
182	4200
183	4800
184	4500
185	4500
186	4000
187	4000
188	4000
189	4000
190	4000
191	4500
192	4500
193	4500
194	4200
196	4500
197	4200
198	4200
199	4200
200	4500
201	4200
202	4200
203	4200
204	4200
205	4200
206	4200
207	4200
208	4200
209	4200

210	4200
211	4200
212	4500
213	4800
214	4500
215	4200
216	4200
217	4200
218	4200
219	4200
220	4200
<b>TOTAL</b>	<b>295,100</b>

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, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools. Declarant reserves the right to recalculate the maximum allowable built-upon areas if required by applicable regulations.

**ARTICLE III  
EASEMENTS**

All Easements set forth in the Declarations are extended to Phase IV and all Common Elements and Lots therein.

**ARTICLE IV  
MINIMUM STANDARDS FOR SITE IMPROVEMENTS**

SECTION 1. Each dwelling on the Phase IV Lots shown on the above referenced plat shall have a minimum square footage of 1800 square feet of enclosed, heated dwelling area. The term "enclosed, heated dwelling area" shall mean the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas.

ARTICLE V  
ACCESS TO LAKES

The Declarant reserves an access over all lots which adjoin any lake in Phase IV, for the purpose of maintaining these lakes. This reservation of an access easement includes the lakefront portion of each lot 12 feet in depth as well as an easement twelve (12') feet in width (6 feet on each side of the property line) along the common property line of every other lot adjoining any lake, beginning with Lot 193, to the extent deemed necessary or convenient by Declarant to access any lake.

IN TESTIMONY WHEREOF, Declarant has caused this Declaration to be signed in its corporate name by its MANAGER as of the day and year first above written.

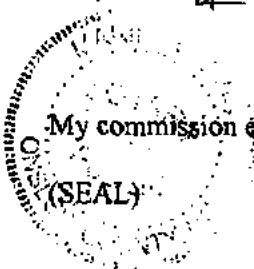
BLUE MARLIN, L.L.C.

By: Gordon P. Frize, Jr. m/m  
MANAGER


STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

I, Marilyn Davis Notary Public, certify that Gordon P. Frize, Jr. personally came before me this day and acknowledged that he is the MANAGER of BLUE MARLIN, L.L.C., a Limited Liability Corporation, and that he, as MANAGER, being authorized to do so, voluntarily executed the foregoing on behalf of said Limited Liability Corporation. Witness my hand and seal, this the 21 day of February, 2007.

Marilyn Davis  
Notary Public



My commission expires: 6/29/09

  
 Doc ID: 007799070002 Type: CRP  
 Kind: RESTRICTIVE COVENANT  
 Recorded: 01/04/2010 at 12:03:16 PM  
 Fee Amt: \$17.00 Page 1 of 2  
 Onslow County, NC  
 Rebecca L. Pollard Reg. of Deeds  
 BK 3344 pg 356-357

STATE OF NORTH CAROLINA  
 ONSLOW COUNTY

AMENDMENT TO DECLARATION  
 OF COVENANTS, CONDITIONS AND RESTRICTIONS  
 FOR MIMOSA BAY SUBDIVISION

THIS AMENDMENT, made as of 21 December 2009, by Blue Marlin, LLC, hereinafter referred to as Declarant or Developer for the purposes hereinafter stated. (The designation Declarant or Developer as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context);

WITNESSETH:

WHEREAS, Declarant has heretofore filed a certain Declaration recorded in Book 2615 at pages 691-694 of the Onslow County Registry; and

WHEREAS, Declarant desires to further amend said Declaration as hereinafter stated.

NOW, THEREFORE, Declarant hereby amends the Declaration of Covenants, Conditions and Restrictions for Mimosa Bay Subdivision Phase III recorded in Book 2615 at pages 691-694 as follows:

1. Article II, Section 1, is amended to add lots 1001, 1002, 1003 and 1004, each with a maximum allowable built-upon area of 4200 square feet.
2. Lots 1001, 1002, 1003 and 1004, Phase 3, Section 5, as shown on that map recorded in Map Book 56, Page 24 of the Onslow County Registry are hereby made subject to

that Declaration of Covenants, Conditions and Restrictions recorded in Book 2464,  
Pages 372-402 of the Onslow County Registry.

IN TESTIMONY WHEREOF, Declarant has caused this Amendment to be signed in its  
name by its Manager.

BLUE MARLIN, LLC

By: Gordon P. Frieze, Jr.  
Gordon P. Frieze, Jr.  
Manager

STATE OF NORTH CAROLINA  
COUNTY OF PENDER

I, Sheri S. Smothers a Notary Public in and for the aforesaid County and State,  
do hereby certify that Gordon P. Frieze, Jr., Manager of Blue Marlin, LLC, 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 21 day of December 2009.

Sheri S. Smothers  
Notary Public

My Commission Expires: Aug. 29, 2011

P:\Kint CORE\Kint\Miscellaneous\Amendment-2\restrictions.2



Doc ID: 008794020008 Type: CRP  
 Recorded: 03/28/2011 at 02:23:12 PM  
 Fee Amt: \$29.00 Page 1 of 6  
 Onslow County, NC  
 Rebecca L. Pollard Reg. of Deeds  
**BK 3571 PG 547-552**

STATE OF NORTH CAROLINA  
 COUNTY OF ONSLOW

DECLARATION OF COVENANTS  
 CONDITIONS AND RESTRICTIONS  
 FOR MIMOSA BAY SUBDIVISION  
 PHASE V, SECTION ONE-A

This Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision PHASE V, Section One-A ("Phase V, Section One-A Declarations") made the 18<sup>th</sup> day of March, 2011, by BLUE MARLIN, L.L.C., hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated:

**WITNESSETH:**

WHEREAS, Blue Marlin, L.L.C. ("Declarant") is the owner of certain real property in Onslow County, North Carolina, known as MIMOSA BAY, PHASES I, II, III and IV, as shown on plats recorded in the Office of the Register of Deeds of Onslow County, North Carolina, in Map Book 48, page 171, Map Book 48, Page 239, Map Book 49, page 140, Map Book 50, page 79, Map Book 50, page 125, Map Book 51, page 46, Map Book 50, page 191, Map Book 50 page 231, Map Book 50, Page 95, Map Book 50 page 192 and Map Book 51, page 44 to which reference is made for a more particular description, and also owns the Property that is known as MIMOSA BAY, PHASE V, Section One-A, as shown on a plat recorded in the Office of the Register of Deeds of Onslow County, North Carolina, in Map Book 61, Page 166 to which reference is made for a more particular description (hereinafter "Mimosa Bay Phase V, Section One-A" or "Phase V, Section One-A"); and

WHEREAS, the Mimosa Bay Subdivision is subject to Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision filed June 16, 2005, which are recorded in Book 2464 at Pages 372 through 402 and those filed March 10, 2006, which are recorded in Book 2615 at Pages 688 through 690 of the Register of Deeds for Onslow County ("Declarations"); and

WHEREAS, pursuant to Article VII of the Declarations, the Declarant has the right to include Phase V, Section One-A within the Mimosa Bay Subdivision and subject Phase V, Section One-A to the Declarations; and

WHEREAS, the Bylaws of Mimosa Bay Homeowners Association, Inc. ("Bylaws") were filed June 16, 2005 and are recorded of record in the Onslow County Register of Deeds at Book 2464, Pages 403 through 415; and

WHEREAS, the Bylaws provide Declarant with the ability to subject Phase V, Section One-A to said Bylaws such that all owners of any Lots within Phase V, Section One-A shall become members of Mimosa Bay Homeowners Association, Inc. and subject to the rights, obligations and responsibilities of the Bylaws;

WHEREAS, Declarant executes this document for the sole purpose of clarifying the entitlement and desire to incorporate Phase V, Section One-A into the Mimosa Bay Subdivision;

NOW, THEREFORE, in accordance with the recitals which by this reference are made a substantive part hereof, Declarant declares that:

**ARTICLE I  
PHASE V, SECTION ONE-A IS SUBJECT TO  
DECLARATION AND BYLAWS**

All of the property described herein, and, specifically, Mimosa Bay Phase V, Section One-A, is made subject to Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision filed June 16, 2005, which are recorded in Book 2464 at Pages 372 through 402 and those filed on March 20, 2006, which are recorded in Book 2615 at Pages 688 through 690 of the Register of Deeds for Onslow County and the Bylaws of Mimosa Bay Homeowners Association, Inc. ("Bylaws") were filed June 16, 2005 and are recorded of record in the Onslow County Register of Deeds at Book 2464, Pages 403 through 415 and that such easements, restrictions, covenants and conditions shall burden and be appurtenant to and run with said Mimosa Bay Phase V, Section One-A properties and be binding on all parties now or hereafter owning said real property and their respective heirs, successors and assigns, having any right, title or interest in the properties in said Mimosa Bay Phase V, Section One-A properties, or any part thereof, and shall inure to the benefit of each owner thereof and their respective heirs, successors and assigns. Provided however, that if any provision or provisions in said Declarations conflicts with any provision set forth herein, the provision set forth herein shall control.

**ARTICLE II  
IMPERVIOUS COVERAGE**

SECTION 1. The maximum allowable built-upon area per Lot is as follows (this data is for Lots shown on the above-referenced plat plus lots for which the Declarant has an approved storm water plan but which Declarant is under no obligation to subdivide or develop in any particular fashion or for any particular use):

<u>Lot #</u>	<u>(sf)</u>	<u>Lot #</u>	<u>(sf)</u>	<u>Lot #</u>	<u>(sf)</u>	<u>Lot #</u>	<u>(sf)</u>
1	4075	66	3500	131	6000	196	6000
2	4075	67	3500	132	6000	197	6000
3	4075	68	3500	133	6000	198	6000
4	4075	69	3500	134	6000	199	6000
5	4075	70	3500	135	6000	200	6000
6	4075	71	3500	136	6000	201	6000

<u>Lot #</u>	<u>(sf)</u>	<u>Lot #</u>	<u>(sf)</u>	<u>Lot #</u>	<u>(sf)</u>	<u>Lot #</u>	<u>(sf)</u>
7	4075	72	3500	137	6000	202	6000
8	4075	73	3500	138	6000	203	6000
9	4075	74	3500	139	6000	204	6000
10	4075	75	3500	140	6000	205	6000
11	4075	76	3500	141	6000	206	6000
12	4075	77	3500	142	6000	207	6000
13	4075	78	3500	143	6000	208	6000
14	4075	79	3500	144	6000	209	6000
15	4075	80	3500	145	6000	210	6000
16	4075	81	3500	146	6000	211	6000
17	4075	82	3500	147	6000	212	6000
18	4075	83	3500	148	6000	213	6000
19	4075	84	3500	149	6000	214	6000
20	4075	85	3500			215	6000
21	4075	86	3500			216	6000
22	4075	87	3500			217	6000
23	4075	88	3500			218	6000
24	4075	89	3500			219	6000
25	4075	90	3500	155	6000	220	6000
26	4075	91	3500	156	6000	221	6000
27	4075	92	3500	157	6000	222	6000
28	4075	93	3500	158	6000	223	6000
29	4075	94	3500	159	6000	224	6000
30	4075	95	3500	160	6000	225	6000
31	4075	96	3500	161	6000	226	6000
32	4075	97	3500	162	6000	227	6000
33	6000	98	3500	163	6000	228	6000
34	6000	99	3500	164	6000	229	6000
35	6000	100	3500	165	6000	230	6000
36	6000	101	6000	166	6000	231	6000
37	6000	102	6000	167	6000	232	6000
38	6000	103	6000	168	6000	233	6000
39	6000	104	6000	169	6000	234	6000
40	6000	105	6000	170	6000	235	6000
41	6000	106	6000	171	6000	236	6000
42	6000	107	6000	172	6000	237	6000
43	6000	108	6000	173	6000	238	6000
44	6000	109	6000	174	6000	239	6000
45	6000	110	6000	175	6000	240	6000
46	6000	111	6000	176	6000	241	6000
47	6000	112	6000	177	4075	242	6000
48	6000	113	6000	178	4075	243	6000
49	6000	114	6000	179	4075	244	6000
50	6000	115	6000	180	4075	245	6000
51	6000	116	6000	181	4075	246	6000
52	6000	117	6000	182	4075	247	6000
53	6000	118	6000	183	4075	248	6000

<u>Lot #</u>	<u>(sf)</u>	<u>Lot #</u>	<u>(sf)</u>	<u>Lot #</u>	<u>(sf)</u>	<u>Lot #</u>	<u>(sf)</u>
54	6000	119	6000	184	4075	249	6000
55	6000	120	6000	185	4075	250	6000
56	6000	121	6000	186	4075	251	6000
57	6000	122	6000	187	4075	252	6000
58	6000	123	6000	188	4075	253	6000
59	6000	124	6000	189	6000	254	6000
60	6000	125	6000	190	6000		
61	6000	126	6000	191	6000		
62	6000	127	6000	192	6000		
63	6000	128	6000	193	6000		
64	6000	129	6000	194	6000		
65	3500	130	6000	195	6000		

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, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools. Declarant reserves the right to recalculate the maximum allowable built-upon areas if required or allowed by applicable regulations.

**ARTICLE III  
EASEMENTS**

All Easements set forth in the Declarations are extended to Phase V, Section One-A and all Common Elements and Lots therein.

**ARTICLE IV  
MINIMUM STANDARDS FOR SITE IMPROVEMENTS**

**SECTION 1.** Each dwelling on the Phase V, Section One-A Lots shown on the above referenced plat, shall have a minimum square footage of 1800 square feet of enclosed, heated dwelling area. The term "enclosed, heated dwelling area" shall mean the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas.

**SECTION 2. Setbacks:** All improvements to all Lots must comply with Onslow County setback requirements for a development of this type. The establishment of inflexible building setback lines for location of houses on Lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any Lot shall be controlled by and must be approved absolutely by the Architectural Review Committee; provided, however, that no structure shall be constructed closer to a Lot line than is permitted by applicable governmental regulations. Further, absent extraordinary circumstances set forth below, the Architectural Review Committee shall approve no plans unless the following minimum setback requirements are met:

Front yard Lot 1-5	25 feet from Lot line
Front yard for all other Lots	30 feet from Lot line
Side yard	8 feet from Lot line
Corner street side yard	20 feet from Street
Rear yard	15 feet from Lot line

Setbacks for Lots in all other phases or annexed properties shall be set by Declarant in its sole discretion. It is possible that future phases may have Villa Lots or townhouses, which could have less setbacks than those set forth above.

The Architectural Review Committee shall have the right to approve deviations from each of these setback requirements upon application of an individual lot owner if, for reasons of topography or septic approvals, strict compliance creates a hardship if such approval does not violate the applicable governmental regulations or approvals. If required by Onslow County, each plot plan must receive zoning approval prior to the commencement of any construction.

**ARTICLE V  
LOT AND BUFFER AREA WETLANDS**

All wetlands conveyed with individual lots and located within the 20' buffer (As shown on Master Plan Dated 9-24-10) shall remain in their present natural state or order. Wetlands on lots or located within the 20' buffer area may not be filled or excavated, however, they may be mowed and maintained by the individual lots owners for aesthetic, maintenance and surveying purposes. This Article may not be amended or modified without the express written consent of the U.S. Army Corps of Engineers, Wilmington District.

**ARTICLE VI  
MITIGATED CONSERVATION AREAS**

The areas shown on the recorded plat entitled "Mimosa Bay Phase 5, Section One-A, dated 2-14-2011, and recorded in Map Book 61 at page 166 of the Onslow County Registry on 2-21-2011 as conservation areas shall be maintained in perpetuity in their natural or mitigated condition. No person or entity shall perform any of the following activities on such conservation area:

- a. fill, grade, excavate or perform any other land disturbing activities
- b. cut, mow, burn, remove, or harm any vegetation
- c. construct or place any roads, trails, walkways, building, mobile homes, signs, utility poles or towers, or any other permanent or temporary structures
- d. drain or otherwise disrupt or alter the hydrology or drainage ways of the conservation area
- e. dump or store soil, trash, or other waste
- f. graze or water animals, or use for any agricultural or horticultural purpose

These covenants apply to Phase V, Section One-A of Mimosa Bay Subdivision only.

This covenant is intended to ensure continued compliance with the mitigation condition of a Clean Water Act authorization issued by the United State of America, U.S. Army Corps of Engineers, Wilmington District, Action ID 2005-674067 and therefore may be enforced by the United States of America. This covenant is to run with the land, and shall be binding on the Owner, and all parties claiming under it. This Article may not be amended or modified without the express written consent of the U. S. Army corps of Engineers, Wilmington District.

IN TESTIMONY WHEREOF, Declarant has caused this Declaration to be signed in its limited liability company name by its MANAGER as of the day and year first above written.

BLUE MARLIN, L.L.C.

By: Gordon P. Frigo Jr  
Member MANAGER

STATE OF NORTH CAROLINA  
COUNTY OF New Hanover

I, Sheri S. Smothers, Notary Public, certify that Gordon P. Frigo Jr personally came before me this day and acknowledged that he is the MANAGER of BLUE MARLIN, L.L.C., a Limited Liability Corporation, and that he, as MANAGER, being authorized to do so, executed the foregoing on behalf of said Limited Liability Corporation.

Witness my hand and seal, this the 18 day of March, 2011.

Sheri S. Smothers  
Notary Public

My commission expires: Aug. 29, 2011

(SEAL)



P:\TERRUM\mimosa Bay-Phase V SEC 1A 1B -Rest Cov 2-11-11-final.doc

Doc ID: 009301290006 Type: CRP  
Recorded: 10/18/2011 at 12:07:37 PM  
Fee Amt: \$28.00 Page 1 of 8  
Onslow County, NC  
Rebecca L. Pollard Reg. of Deeds  
BK 3666 PG 50-55

STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR MIMOSA BAY SUBDIVISION  
PHASE V, SECTION ONE-B

This Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision PHASE V, Section One-B ("Phase V, Section One-B Declarations") made the 12th day of October, 2011, by BLUE MARLIN, L.L.C., hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated:

WITNESSETH:

WHEREAS, Blue Marlin, L.L.C. ("Declarant") is the owner of certain real property in Onslow County, North Carolina, known as MIMOSA BAY, PHASES I, II, III, IV and V, as shown on plats recorded in the Office of the Register of Deeds of Onslow County, North Carolina, in Map Book 48, Page 171, Map Book 48, Page 239, Map Book 49, Page 140, Map Book 50, Page 79, Map Book 50, Page 125, Map Book 51, Page 46, Map Book 50, Page 191, Map Book 50, Page 231, Map Book 50, Page 95, Map Book 50, Page 192, Map Book 51, Page 44 and Map Book 61, Page 166 to which reference is made for a more particular description, and also owns the Property that is known as MIMOSA BAY, PHASE V, Section One-B, as shown on a plat recorded in the Office of the Register of Deeds of Onslow County, North Carolina, in Map Book 62, Page 234 to which reference is made for a more particular description (hereinafter "Mimosa Bay Phase V, Section One-B" or "Phase V, Section One-B"); and

WHEREAS, the Mimosa Bay Subdivision is subject to Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision filed June 16, 2005, which are recorded in Book 2464 at Pages 372 through 402 and those filed March 10, 2006, which are recorded in Book 2615 at Pages 688 through 690 of the Register of Deeds for Onslow County ("Declarations"); and

WHEREAS, pursuant to Article VII of the Declarations, the Declarant has the right to include Phase V, Section One-B within the Mimosa Bay Subdivision and subject Phase V, Section One-B to the Declarations; and

WHEREAS, the Bylaws of Mimosa Bay Homeowners Association, Inc. ("Bylaws") were filed June 16, 2005 and are recorded of record in the Onslow County Register of Deeds at Book 2464, Pages 403 through 415; and

WHEREAS, the Bylaws provide Declarant with the ability to subject Phase V, Section One-B to said Bylaws such that all owners of any Lots within Phase V, Section One-B shall become members of Mimosa Bay Homeowners Association, Inc. and subject to the rights, obligations and responsibilities of the Bylaws;

WHEREAS, Declarant executes this document for the sole purpose of clarifying the entitlement and desire to incorporate Phase V, Section One-B into the Mimosa Bay Subdivision;

NOW, THEREFORE, in accordance with the recitals which by this reference are made a substantive part hereof, Declarant declares that:

**ARTICLE I  
PHASE V, SECTION ONE-B IS SUBJECT TO  
DECLARATION AND BYLAWS**

All of the property described herein, and, specifically, Mimosa Bay Phase V, Section One-B, is made subject to Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision filed June 16, 2005, which are recorded in Book 2464 at Pages 372 through 402 and those filed on March 20, 2006, which are recorded in Book 2615 at Pages 688 through 690 of the Register of Deeds for Onslow County and the Bylaws of Mimosa Bay Homeowners Association, Inc. ("Bylaws") were filed June 16, 2005 and are recorded of record in the Onslow County Register of Deeds at Book 2464, Pages 403 through 415 and that such easements, restrictions, covenants and conditions shall burden and be appurtenant to and run with said Mimosa Bay Phase V, Section One-B properties and be binding on all parties now or hereafter owning said real property and their respective heirs, successors and assigns, having any right, title or interest in the properties in said Mimosa Bay Phase V, Section One-B properties, or any part thereof, and shall inure to the benefit of each owner thereof and their respective heirs, successors and assigns. Provided however, that if any provision or provisions in said Declarations conflicts with any provision set forth herein, the provision set forth herein shall control.

**ARTICLE II  
IMPERVIOUS COVERAGE**

SECTION 1. The maximum allowable built-upon area per Lot is as follows (this data is for Lots shown on the above-referenced plat plus lots for which the Declarant has an approved storm water plan but which Declarant is under no obligation to subdivide or develop in any particular fashion or for any particular use):

<u>Lot #</u>	<u>(sf)</u>	<u>Lot #</u>	<u>(sf)</u>	<u>Lot #</u>	<u>(sf)</u>	<u>Lot #</u>	<u>(sf)</u>
1	4075	66	3500	131	6000	196	6000
2	4075	67	3500	132	6000	197	6000
3	4075	68	3500	133	6000	198	6000
4	4075	69	3500	134	6000	199	6000
5	4075	70	3500	135	6000	200	6000
6	4075	71	3500	136	6000	201	6000
7	4075	72	3500	137	6000	202	6000

8	4075	73	3500	138	6000	203	6000
9	4075	74	3500	139	6000	204	6000
10	4075	75	3500	140	6000	205	6000
11	4075	76	3500	141	6000	206	6000
12	4075	77	3500	142	6000	207	6000
13	4075	78	3500	143	6000	208	6000
14	4075	79	3500	144	6000	209	6000
15	4075	80	3500	145	6000	210	6000
16	4075	81	3500	146	6000	211	6000
17	4075	82	3500	147	6000	212	6000
18	4075	83	3500	148	6000	213	6000
19	4075	84	3500	149	6000	214	6000
20	4075	85	3500			215	6000
21	4075	86	3500			216	6000
22	4075	87	3500			217	6000
23	4075	88	3500			218	6000
24	4075	89	3500			219	6000
25	4075	90	3500	155	6000	220	6000
26	4075	91	3500	156	6000	221	6000
27	4075	92	3500	157	6000	222	6000
28	4075	93	3500	158	6000	223	6000
29	4075	94	3500	159	6000	224	6000
30	4075	95	3500	160	6000	225	6000
31	4075	96	3500	161	6000	226	6000
32	4075	97	3500	162	6000	227	6000
33	6000	98	3500	163	6000	228	6000
34	6000	99	3500	164	6000	229	6000
35	6000	100	3500	165	6000	230	6000
36	6000	101	6000	166	6000	231	6000
37	6000	102	6000	167	6000	232	6000
38	6000	103	6000	168	6000	233	6000
39	6000	104	6000	169	6000	234	6000
40	6000	105	6000	170	6000	235	6000
41	6000	106	6000	171	6000	236	6000
42	6000	107	6000	172	6000	237	6000
43	6000	108	6000	173	6000	238	6000
44	6000	109	6000	174	6000	239	6000
45	6000	110	6000	175	6000	240	6000
46	6000	111	6000	176	6000	241	6000
47	6000	112	6000	177	4075	242	6000
48	6000	113	6000	178	4075	243	6000
49	6000	114	6000	179	4075	244	6000
50	6000	115	6000	180	4075	245	6000
51	6000	116	6000	181	4075	246	6000
52	6000	117	6000	182	4075	247	6000
53	6000	118	6000	183	4075	248	6000
54	6000	119	6000	184	4075	249	6000

55	6000	120	6000	185	4075	250	6000
56	6000	121	6000	186	4075	251	6000
57	6000	122	6000	187	4075	252	6000
58	6000	123	6000	188	4075	253	6000
59	6000	124	6000	189	6000	254	6000
60	6000	125	6000	190	6000		
61	6000	126	6000	191	6000		
62	6000	127	6000	192	6000		
63	6000	128	6000	193	6000		
64	6000	129	6000	194	6000		
65	3500	130	6000	195	6000		

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, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools. Declarant reserves the right to recalculate the maximum allowable built-upon areas if required or allowed by applicable regulations.

### ARTICLE III EASEMENTS

All Easements set forth in the Declarations are extended to Phase V, Section One-B and all Common Elements and Lots therein.

### ARTICLE IV MINIMUM STANDARDS FOR SITE IMPROVEMENTS

**SECTION 1.** Each dwelling built on the Phase V, Section One-B Lots shown on the above referenced plat, shall have a minimum square footage of 1800 square feet of enclosed, heated dwelling area. The term "enclosed, heated dwelling area" shall mean the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas.

**SECTION 2. Setbacks:** All improvements to all Lots must comply with Onslow County setback requirements for a development of this type. The establishment of inflexible building setback lines for location of houses on Lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any Lot shall be controlled by and must be approved absolutely by the Architectural Review Committee; provided, however, that no structure shall be constructed closer to a Lot line than is permitted by applicable governmental regulations. Further, absent extraordinary circumstances set forth below, the Architectural Review Committee shall approve no plans unless the following minimum setback requirements are met:

Front yard Lot 1-5	25 feet from Lot line
Front yard for all other Lots	30 feet from Lot line
Side yard	8 feet from Lot line
Corner street side yard	20 feet from Street
Rear yard	15 feet from Lot line

Setbacks for Lots in all other phases or annexed properties shall be set by Declarant in its sole discretion. It is possible that future phases may have Villa Lots or townhouses, which could have less setbacks than those set forth above.

The Architectural Review Committee shall have the right to approve deviations from each of these setback requirements upon application of an individual lot owner if, for reasons of topography or septic approvals, strict compliance creates a hardship if such approval does not violate the applicable governmental regulations or approvals. If required by Onslow County, each plot plan must receive zoning approval prior to the commencement of any construction.

#### ARTICLE V LOT AND BUFFER AREA WETLANDS

All wetlands conveyed with individual lots and located within the 20' buffer (As shown on Master Plan Dated 9-24-10) shall remain in their present natural state or order. Wetlands on lots or located within the 20' buffer area may not be filled or excavated, however, they may be mowed and maintained by the individual lots owners for aesthetic, maintenance and surveying purposes. This Article may not be amended or modified without the express written consent of the U.S. Army Corps of Engineers, Wilmington District.

#### ARTICLE VI MITIGATED CONSERVATION AREAS

The areas shown on the recorded plat entitled "Mimosa Bay Phase 5, Section One-B, dated August 30, 2011, and recorded in Map Book 62, at Page 234 of the Onslow County Registry on October 12, 2011 as conservation areas shall be maintained in perpetuity in their natural or mitigated condition. No person or entity shall perform any of the following activities on such conservation area:

- a. fill, grade, excavate or perform any other land disturbing activities
- b. cut, mow, burn, remove, or harm any vegetation
- c. construct or place any roads, trails, walkways, building, mobile homes signs, utility poles or towers, or any other permanent or temporary structures
- d. drain or otherwise disrupt or alter the hydrology or drainage ways of the conservation area
- e. dump or store soil, trash, or other waste
- f. graze or water animals, or use for any agricultural or horticultural purpose

These covenants apply to Phase V, Section One-B of Mimosa Bay Subdivision only.

This covenant is intended to ensure continued compliance with the mitigation condition of a Clean Water Act authorization issued by the United State of America, U.S. Army Corps of Engineers, Wilmington District, Action ID 2005-674067, and therefore may be enforced by the United States of America. This covenant is to run with the land, and shall be binding on the Owner, and all parties claiming under it. This Article may not be amended or modified without the express written consent of the U. S. Army corps of Engineers, Wilmington District.

IN TESTIMONY WHEREOF, Declarant has caused this Declaration to be signed in its limited liability company name by its MEMBER-MANAGER as of the day and year first above written.

BLUE MARLIN, L.L.C.

By:  (SEAL)  
MEMBER-MANAGER

STATE OF NORTH CAROLINA  
COUNTY OF New Hanover

I, Sheri S. Smothers, Notary Public, certify that Gordon P. Frieze, Jr. personally came before me this day and acknowledged that he is the MEMBER-MANAGER of BLUE MARLIN, L.L.C., a Limited Liability Corporation, and that he, as MEMBER-MANAGER, being authorized to do so, executed the foregoing on behalf of said Limited Liability Corporation.

Witness my hand and seal, this the 23 day of September, 2011.

Sheri S. Smothers  
Notary Public

My commission expires: Aug. 29, 2016

(SEAL)



22V



Doc ID: 005591160002 Type: CRP  
Recorded: 02/02/2012 at 01:04:06 PM  
Fee Amt: \$26.00 Page 1 of 2  
Onslow County, NC  
Rebecca L. Pollard Reg. of Deeds  
BK 3719 PG 921-922

STATE OF NORTH CAROLINA  
ONSLow COUNTY

AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR MIMOSA BAY SUBDIVISION

THIS AMENDMENT, made as of 25<sup>th</sup> January 2012, by Blue Marlin, LLC, hereinafter referred to as Declarant or Developer for the purposes hereinafter stated. (The designation Declarant or Developer as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context);

WITNESSETH:

WHEREAS, Declarant has heretofore filed a certain Declaration of Covenants Conditions and Restrictions for Mimosa Bay Subdivision Phase V, Section One-A, recorded in Book 3571 at pages 547-552 of the Onslow County Registry; and

WHEREAS, Declarant desires to amend said Declaration as hereinafter stated.

NOW, THEREFORE, Declarant hereby amends the Declaration of Covenants, Conditions and Restrictions for Mimosa Bay Subdivision Phase V, Section One-A recorded in Book 3571 at pages 547-552 as follows:

Article VI, Mitigated Conservation Areas is amended as follows:

The areas shown on the recorded plat entitled "Mimosa Bay Phase 5, Wetland Preservation Tract" dated June 22, 2011, and recorded in Map Book 63 at page 87 of the Onslow County Registry on December 22, 2011 as conservation areas shall be maintained in perpetuity in their natural or mitigated condition. No person or entity shall perform any of the following activities on such conservation area:

- a. fill, grade, excavate or perform any other land disturbing activities
- b. cut, mow, burn, remove, or harm any vegetation
- c. construct or place any roads, trails, walkways, building, mobile homes, signs, utility poles or towers, or any other permanent or temporary structures
- d. drain or otherwise disrupt or alter the hydrology or drainage ways of the conservation area
- e. dump or store soil, trash, or other waste
- f. graze or water animals, or use for any agricultural or horticultural purpose

These covenants apply to Phase V, Section One-A of Mimosa Bay Subdivision only.

This covenant is intended to ensure continued compliance with the mitigation condition of a Clean Water Act authorization issued by the United State of America, U.S. Army Corps of Engineers, Wilmington District, Action ID SAW-2005-00764, and therefore may be enforced by the United States of America. This covenant is to run with the land, and shall be binding on the Owner, and all parties claiming under it. This Article may not be amended or modified without the express written consent of the U. S. Army corps of Engineers, Wilmington District.

IN TESTIMONY WHEREOF, Declarant has caused this Amendment to be signed in its name by its Manager.

BLUE MARLIN, LLC

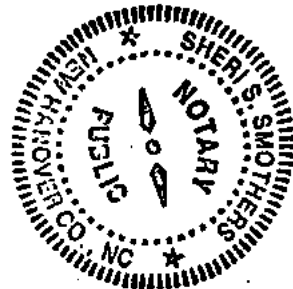
By: *Gordon P. Frieze, Jr.*  
Gordon P. Frieze, Jr., Manager

STATE OF NORTH CAROLINA  
COUNTY OF PENDER

I, *Sheri S. Smothers* a Notary Public in and for the aforesaid County and State, do hereby certify that Gordon P. Frieze, Jr., Manager of Blue Marlin, LLC, 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 *25* day of *January*, 2012.

*Sheri S. Smothers*  
Notary Public

My Commission Expires: *Aug. 29, 2014*



env

Doc ID: 009531170002 Type: CRP  
 Recorded: 02/02/2012 at 01:08:12 PM  
 Fee Amt: \$26.00 Page 1 of 2  
 Onslow County, NC  
 Rebecca L. Pollard Reg. of Deeds  
 BK 3719 pg 923-924

STATE OF NORTH CAROLINA  
 ONSLOW COUNTY

**AMENDMENT TO DECLARATION  
 OF COVENANTS, CONDITIONS AND RESTRICTIONS  
 FOR MIMOSA BAY SUBDIVISION**

THIS AMENDMENT, made as of 25<sup>th</sup> January 2012, by Blue Marlin, LLC, hereinafter referred to as Declarant or Developer for the purposes hereinafter stated. (The designation Declarant or Developer as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context);

**WITNESSETH:**

WHEREAS, Declarant has heretofore filed a certain Declaration of Covenants Conditions and Restrictions for Mimosa Bay Subdivision Phase V, Section One-B, recorded in Book 3666 at pages 50-55 of the Onslow County Registry; and

WHEREAS, Declarant desires to amend said Declaration as hereinafter stated.

NOW, THEREFORE, Declarant hereby amends the Declaration of Covenants, Conditions and Restrictions for Mimosa Bay Subdivision Phase V, Section One-B recorded in Book 3666 at pages 50-55 as follows:

Article VI, Mitigated Conservation Areas is amended as follows:

The areas shown on the recorded plat entitled "Mimosa Bay Phase 5, Wetland Preservation Tract" dated June 22, 2011, and recorded in Map Book 63 at page 87 of the Onslow County Registry on December 22, 2011 as conservation areas shall be maintained in perpetuity in their natural or mitigated condition. No person or entity shall perform any of the following activities on such conservation area:

- a. fill, grade, excavate or perform any other land disturbing activities
- b. cut, mow, burn, remove, or harm any vegetation
- c. construct or place any roads, trails, walkways, building, mobile homes, signs, utility poles or towers, or any other permanent or temporary structures
- d. drain or otherwise disrupt or alter the hydrology or drainage ways of the conservation area
- e. dump or store soil, trash, or other waste
- f. graze or water animals, or use for any agricultural or horticultural purpose

These covenants apply to Phase V, Section One-A of Mimosa Bay Subdivision only.

This covenant is intended to ensure continued compliance with the mitigation condition of a Clean Water Act authorization issued by the United State of America, U.S. Army Corps of Engineers, Wilmington District, Action ID SAW-2005-00764, and therefore may be enforced by the United States of America. This covenant is to run with the land, and shall be binding on the Owner, and all parties claiming under it. This Article may not be amended or modified without the express written consent of the U. S. Army corps of Engineers, Wilmington District.

IN TESTIMONY WHEREOF, Declarant has caused this Amendment to be signed in its name by its Manager.

BLUE MARLIN, LLC

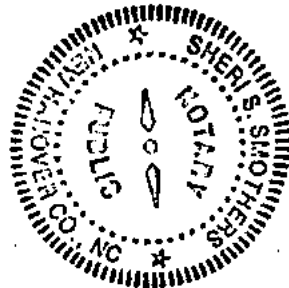
By: *Gordon P. Frieze, Jr.*  
Gordon P. Frieze, Jr., Manager

STATE OF NORTH CAROLINA  
COUNTY OF PENDER

I, *Sheri S. Smothers* a Notary Public in and for the aforesaid County and State, do hereby certify that Gordon P. Frieze, Jr., Manager of Blue Marlin, LLC, 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 *25* day of *January*, 2012.

*Sheri S. Smothers*  
Notary Public

My Commission Expires: *Aug. 29, 2016*



Page 1 of 2  
Returned



Doc ID: 010082290002 Type: CRP  
Recorded: 09/28/2012 at 03:30:44 PM  
Fee Amt: \$26.00 Page 1 of 2  
Onslow County, NC  
Rebecca L. Follard Reg. of Deeds

BK 3856 PG 202-203

STATE OF NORTH CAROLINA  
ONSWLOW COUNTY

AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR MIMOSA BAY SUBDIVISION PHASE V, SECTION ONE-B

THIS AMENDMENT, made as of September 26, 2012, by Blue Marlin, L.L.C,  
hereinafter referred to as Declarant or Developer, for the purposes hereinafter stated:

WITNESSETH:

WHEREAS, Declarant has heretofore filed a certain Declaration recorded in Book 3666 at  
pages 50-55 of the Onslow County Registry; and

WHEREAS, Declarant desires to amend said Declaration as hereinafter stated.

NOW, THEREFORE, Declarant hereby amends the Declaration of Covenants, Conditions  
and Restrictions for Mimosa Bay Subdivision Phase V, Section One-B recorded in Book 3666 at  
pages 50-55 as follows:

1. Article II, Section 1, lots 102 thru 110 are changed to the following lot numbers per  
the recording of a revision map recorded in Map Book 65, Pages 51 and 51A.

Lot 102 is now lot 617

Lot 103 is now lot 616

Lot 104 is now lot 615

Lot 105 is now lot 614

Lot 106 is now lot 613

Lot 107 is now lot 612

Lot 108 is now lot 611

Lot 109 is now lot 610

Lot 110 is now lot 609

2. All Lots shown on that map entitled "Map of Revision, Mimosa Bay, Phase Five Section One-B" recorded in Map Book 65, Pages 51 and 51A of the Onslow County Registry are made subject to the Declaration of Covenants, Conditions and Restrictions for Mimosa Bay Subdivision Phase V, Section One-B recorded in Book 3666 at pages 50-55.

IN TESTIMONY WHEREOF, Declarant has caused this Amendment to be signed in its name by its Manager.

BLUE MARLIN, LLC

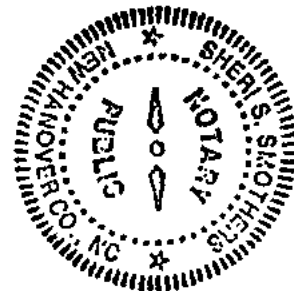
By: Gordon P. Frieze, Jr.  
Gordon P. Frieze, Jr.  
Manager

STATE OF NORTH CAROLINA  
COUNTY OF PENDER

I, Sheri S. Smothers a Notary Public in and for the aforesaid County and State, do hereby certify that Gordon P. Frieze, Jr., Manager of Blue Marlin, LLC, 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 26 day of September, 2012.

Sheri S. Smothers  
Notary Public

My Commission Expires: August 29, 2016



Returned

Doc ID: 010858260004 Type: CRP  
Recorded: 06/14/2015 at 02:51:58 PM  
Fee Amt: \$26.00 Page 1 of 4  
Onslow County, NC  
Rebecca L. Pollard Reg. of Deeds  
EX 4007 PG 584-587

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR MIMOSA BAY SUBDIVISION  
PHASE V, SECTION TWO-A

This Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision PHASE V, Section Two-A ("Phase V, Section Two-A Declarations") made the 14 day of JUNE, 2015, by BLUE MARLIN, L.L.C., hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated:

WITNESSETH:

WHEREAS, Blue Marlin, L.L.C. ("Declarant") is the owner of certain real property in Onslow County, North Carolina, known as MIMOSA BAY, PHASES I, II, III, IV and V, Sections One-A and One-B, as shown on plats recorded in the Office of the Register of Deeds of Onslow County, North Carolina, in Map Book 48, Page 171; Map Book 48, Page 239; Map Book 49, Page 140; Map Book 50, Page 79; Map Book 50, Page 125; Map Book 51, Page 46; Map Book 50, Page 191; Map Book 50, Page 231; Map Book 50, Page 95; Map Book 50, Page 192; Map Book 51, Page 44; Map Book 61, Page 166 and Map Book ~~66~~, Page ~~170~~ to which reference is made for a more particular description, and also owns the Property that is known as MIMOSA BAY, PHASE V, Section Two-A, as shown on a plat recorded in the Office of the Register of Deeds of Onslow County, North Carolina, in Map Book ~~46~~, Page ~~178~~ to which reference is made for a more particular description (hereinafter "Mimosa Bay Phase V, Section Two-A" or "Phase V, Section Two-A"); and

WHEREAS, the Mimosa Bay Subdivision is subject to Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision filed June 16, 2005, which are recorded in Book 2464 at Pages 372 through 402 and those filed March 10, 2006, which are recorded in Book 2615 at Pages 688 through 690 of the Register of Deeds for Onslow County ("Declarations"); and

WHEREAS, pursuant to Article VII of the Declarations, the Declarant has the right to include Phase V, Section Two-A within the Mimosa Bay Subdivision and subject Phase V, Section Two-A to the Declarations; and

WHEREAS, the Bylaws of Mimosa Bay Homeowners Association, Inc. ("Bylaws") were filed June 16, 2005 and are recorded of record in the Onslow County Register of Deeds at Book 2464, Pages 403 through

415; and

WHEREAS, the Bylaws provide Declarant with the ability to subject Phase V, Section Two-A to said Bylaws such that all owners of any Lots within Phase V, Section Two-A shall become members of Mimosa Bay Homeowners Association, Inc. and subject to the rights, obligations and responsibilities of the Bylaws;

WHEREAS, Declarant executes this document for the sole purpose of clarifying the entitlement and desire to incorporate Phase V, Section Two-A into the Mimosa Bay Subdivision;

NOW, THEREFORE, in accordance with the recitals which by this reference are made a substantive part hereof, Declarant declares that:

**ARTICLE I  
PHASE V, SECTION TWO-A IS SUBJECT TO  
DECLARATION AND BYLAWS**

All of the property described herein, and, specifically, Mimosa Bay Phase V, Section Two-A, is made subject to Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision filed June 16, 2005, which are recorded in Book 2464 at Pages 372 through 402 and those filed on March 20, 2006, which are recorded in Book 2615 at Pages 688 through 690 of the Register of Deeds for Onslow County and the Bylaws of Mimosa Bay Homeowners Association, Inc. ("Bylaws") were filed June 16, 2005 and are recorded of record in the Onslow County Register of Deeds at Book 2464, Pages 403 through 415 and that such easements, restrictions, covenants and conditions shall burden and be appurtenant to and run with said Mimosa Bay Phase V, Section Two-A properties and be binding on all parties now or hereafter owning said real property and their respective heirs, successors and assigns, having any right, title or interest in the properties in said Mimosa Bay Phase V, Section Two-A properties, or any part thereof, and shall inure to the benefit of each owner thereof and their respective heirs, successors and assigns. Provided however, that if any provision or provisions in said Declarations conflicts with any provision set forth herein, the provision set forth herein shall control.

**ARTICLE II  
IMPERVIOUS COVERAGE**

SECTION 1. The maximum allowable built-upon area per Lot is as follows (this data is for Lots shown on the above-referenced plat plus lots for which the Declarant has an approved storm water plan but which Declarant is under no obligation to subdivide or develop in any particular fashion or for any particular use):

Lots 570-590                      5500 sf

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, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools. Declarant

reserves the right to recalculate the maximum allowable built-upon areas if required or allowed by applicable regulations.

**ARTICLE III  
EASEMENTS**

All Basements set forth in the Declarations are extended to Phase V, Section Two-A and all Common Elements and Lots therein.

**ARTICLE IV  
MINIMUM STANDARDS FOR SITE IMPROVEMENTS**

**SECTION 1.** Each dwelling on the Phase V, Section Two-A Lots shown on the above referenced plat, shall have a minimum square footage of 1800 square feet of enclosed, heated dwelling area. The term "enclosed, heated dwelling area" shall mean the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas.

**SECTION 2. Setbacks:** All improvements to all Lots must comply with Onslow County setback requirements for a development of this type. The establishment of inflexible building setback lines for location of houses on Lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any Lot shall be controlled by and must be approved absolutely by the Architectural Review Committee; provided, however, that no structure shall be constructed closer to a Lot line than is permitted by applicable governmental regulations. Further, absent extraordinary circumstances set forth below, the Architectural Review Committee shall approve no plans unless the following minimum setback requirements are met:

Front yard for all Lots	30 feet from Lot line
Side yard	8 feet from Lot line
Corner street side yard	20 feet from Lot line
Rear yard	15 feet from Lot line

Setbacks for Lots in all other phases or annexed properties shall be set by Declarant in its sole discretion. It is possible that future phases may have Villa Lots or townhouses, which could have less setbacks than those set forth above.

The Architectural Review Committee shall have the right to approve deviations from each of these setback requirements upon application of an individual lot owner if, for reasons of topography or septic approvals, strict compliance creates a hardship if such approval does not violate the applicable governmental regulations or approvals. If required by Onslow County, each plot plan must receive zoning approval prior to the commencement of any construction.

IN TESTIMONY WHEREOF, Declarant has caused this Declaration to be signed in its limited liability company name by its MANAGER as of the day and year first above written.

BLUE MARLIN, L.L.C.

By: Gordon P. Frieze, Jr.  
Gordon P. Frieze, Jr., MEMBER-MANAGER

STATE OF NORTH CAROLINA  
COUNTY OF New Hanover

I, Sheri S. Smothers, Notary Public, certify that Gordon P. Frieze, Jr. personally came before me this day and acknowledged that he is the MEMBER-MANAGER of BLUE MARLIN, L.L.C., a Limited Liability Corporation, and that he, as MEMBER-MANAGER, being authorized to do so, executed the foregoing on behalf of said Limited Liability Corporation.

Witness my hand and seal, this the 23 day of May, 2013.

Sheri S. Smothers  
Notary Public

My commission expires: Aug. 29, 2016  
(SEAL)

Public Notary Seal - New Hanover County, NC



Page 1 of 4  
Returned

Doc ID: 011024330004 Type: CRP  
Recorded: 02/10/2014 at 02:53:21 PM  
Fee Amt: \$26.00 Page 1 of 4  
Onslow County, NC  
Rebecca L. Pollard Reg. of Deeds  
BK 4113 PG 203-206

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR MIMOSA BAY SUBDIVISION  
PHASE V, SECTION THREE

This Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision PHASE V, Section Three ("Phase V, Section Three Declarations") made the 9 day of December, 2013, by BLUE MARLIN, L.L.C., hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated:

WITNESSETH:

WHEREAS, Blue Marlin, L.L.C. ("Declarant") is the owner of certain real property in Onslow County, North Carolina, known as MIMOSA BAY, PHASES I, II, III, IV and V as shown on plats recorded in the Office of the Register of Deeds of Onslow County, North Carolina, in Map Book 48, Page 171; Map Book 48, Page 239; Map Book 49, Page 140; Map Book 50, Page 79; Map Book 50, Page 125; Map Book 51, Page 46; Map Book 50, Page 191; Map Book 50, Page 231; Map Book 50, Page 95; Map Book 50, Page 192; Map Book 51, Page 44; Map Book 61, Page 166; Book 62, Page 234; Book 63, Page 125; Map Book 65, Page 51 and Book 66, Page 178 to which reference is made for a more particular description, and also owns the Property that is known as MIMOSA BAY, PHASE V, Section Three, as shown on a plat recorded in the Office of the Register of Deeds of Onslow County, North Carolina, in Map Book 47, Page 237 to which reference is made for a more particular description (hereinafter "Mimosa Bay Phase V, Section Three" or "Phase V, Section Three"); and

WHEREAS, the Mimosa Bay Subdivision is subject to Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision filed June 16, 2005, which are recorded in Book 2464 at Pages 372 through 402 and those filed March 10, 2006, which are recorded in Book 2615 at Pages 688 through 690 of the Register of Deeds for Onslow County ("Declarations"); and

WHEREAS, pursuant to Article VII of the Declarations, the Declarant has the right to include Phase V, Section Three within the Mimosa Bay Subdivision and subject Phase V, Section Three to the Declarations; and

WHEREAS, the Bylaws of Mimosa Bay Homeowners Association, Inc. ("Bylaws") were filed June 16, 2005 and are recorded of record in the Onslow County Register of Deeds at Book 2464, Pages 403 through

415; and

WHEREAS, the Bylaws provide Declarant with the ability to subject Phase V, Section Three to said Bylaws such that all owners of any Lots within Phase V, Section Three shall become members of Mimosa Bay Homeowners Association, Inc. and subject to the rights, obligations and responsibilities of the Bylaws;

WHEREAS, Declarant executes this document for the sole purpose of clarifying the entitlement and desire to incorporate Phase V, Section Three into the Mimosa Bay Subdivision;

NOW, THEREFORE, in accordance with the recitals which by this reference are made a substantive part hereof, Declarant declares that:

**ARTICLE I  
PHASE V, SECTION THREE IS SUBJECT TO  
DECLARATION AND BYLAWS**

All of the property described herein, and, specifically, Mimosa Bay Phase V, Section Three, is made subject to Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision filed June 16, 2005, which are recorded in Book 2464 at Pages 372 through 402 and those filed on March 20, 2006, which are recorded in Book 2615 at Pages 688 through 690 of the Register of Deeds for Onslow County and the Bylaws of Mimosa Bay Homeowners Association, Inc. ("Bylaws") were filed June 16, 2005 and are recorded of record in the Onslow County Register of Deeds at Book 2464, Pages 403 through 415 and that such easements, restrictions, covenants and conditions shall burden and be appurtenant to and run with said Mimosa Bay Phase V, Section Three properties and be binding on all parties now or hereafter owning said real property and their respective heirs, successors and assigns, having any right, title or interest in the properties in said Mimosa Bay Phase V, Section Three properties, or any part thereof, and shall inure to the benefit of each owner thereof and their respective heirs, successors and assigns. Provided however, that if any provision or provisions in said Declarations conflicts with any provision set forth herein, the provision set forth herein shall control.

**ARTICLE II  
IMPERVIOUS COVERAGE**

SECTION 1. The maximum allowable built-upon area per Lot is as follows (this data is for Lots shown on the above-referenced plat plus lots for which the Declarant has an approved storm water plan but which Declarant is under no obligation to subdivide or develop in any particular fashion or for any particular use):

544-608    5500 SF  
704-706    5500 SF

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, coquina and parking

areas, but does not include raised, open wood decking, or the water surface of swimming pools. Declarant reserves the right to recalculate the maximum allowable built-upon areas if required or allowed by applicable regulations.

**ARTICLE III  
EASEMENTS**

All Easements set forth in the Declarations are extended to Phase V, Section Three and all Common Elements and Lots therein.

**ARTICLE IV  
MINIMUM STANDARDS FOR SITE IMPROVEMENTS**

**SECTION 1.** Each dwelling on the Phase V, Section Three Lots shown on the above referenced plat, shall have a minimum square footage of 1800 square feet of enclosed, heated dwelling area. The term "enclosed, heated dwelling area" shall mean the total enclosed area within a dwelling which is heated by a common heating system; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas.

**SECTION 2. Setbacks:** All improvements to all Lots must comply with Onslow County setback requirements for a development of this type. The establishment of inflexible building setback lines for location of houses on Lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any Lot shall be controlled by and must be approved absolutely by the Architectural Review Committee; provided, however, that no structure shall be constructed closer to a Lot line than is permitted by applicable governmental regulations. Further, absent extraordinary circumstances set forth below, the Architectural Review Committee shall approve no plans unless the following minimum setback requirements are met:

Front yard for all Lots	30 feet from Lot line
Side yard	8 feet from Lot line
Corner street side yard	20 feet from Lot line
Rear yard	15 feet from Lot line

Setbacks for Lots in all other phases or annexed properties shall be set by Declarant in its sole discretion. It is possible that future phases may have Villa Lots or townhouses, which could have less setbacks than those set forth above.

The Architectural Review Committee shall have the right to approve deviations from each of these setback requirements upon application of an individual lot owner if, for reasons of topography or septic approvals, strict compliance creates a hardship if such approval does not violate the applicable governmental regulations or approvals. If required by Onslow County, each plot plan must receive zoning approval prior to the commencement of any construction.

IN TESTIMONY WHEREOF, Declarant has caused this Declaration to be signed in its limited liability company name by its MANAGER as of the day and year first above written.

BLUE MARLIN, L.L.C.

By: *Gordon P. Frieze, Jr.*  
Gordon P. Frieze, Jr., MEMBER-MANAGER

STATE OF NORTH CAROLINA  
COUNTY OF *New Hanover*

I, *Sheri S. Smother*, Notary Public, certify that Gordon P. Frieze, Jr. personally came before me this day and acknowledged that he is the MEMBER-MANAGER of BLUE MARLIN, L.L.C., a Limited Liability Corporation, and that he, as MEMBER-MANAGER, being authorized to do so, executed the foregoing on behalf of said Limited Liability Corporation.

Witness my hand and seal, this the *9* day of *Dec.*, 2013.

*Sheri S. Smother*  
Notary Public

My commission expires: *Aug 29, 2016*  
(SEAL)

FAKins Corel 9 Files\KRM\Minosa Bay\rest cov Phase V SEC 3.doc



Page 1 of 2  
Returned

Doc ID: 012105730002 Type: CRP  
Recorded: 06/08/2016 at 01:01:43 PM  
Fee Amt: \$26.00 Page 1 of 2  
Onslow County, NC  
Rebecca L. Pollard Reg. of Deeds  
BK 4298 PG 658-659

STATE OF NORTH CAROLINA  
ONSLow COUNTY

RESTATEMENT OF AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR MIMOSA BAY SUBDIVISION

THIS AMENDMENT, made as of May 5, 2015, by Blue Marlin, LLC, hereinafter referred to as Declarant or Developer for the purposes hereinafter stated. (The designation Declarant or Developer as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context);

WITNESSETH:

WHEREAS, Declarant has heretofore filed a certain Amendment to Declaration recorded in Book 3344 at pages 356-357 of the Onslow County Registry; and

WHEREAS, lots 1001, 1002, 1003 and 1004 were mapped as part of Phase III but were permitted for Built Upon Areas under Phase IV; and

WHEREAS, Declarant desires to restate said Declaration as hereinafter stated; and

WHEREAS, the Amendment to Declaration dated 21 December 2009 and recorded in Book 3344 at pages 356-357 of the Onslow County Registry is intended, by the recording of this Restatement of Amendment to Declaration, to be rescinded and rendered null and void and of no legal effect.

NOW, THEREFORE, Declarant hereby amends the Declaration of Covenants, Conditions and Restrictions for Mimosa Bay Subdivision Phase IV recorded in Book 2826 at pages 168-173 as follows:

1. Article II, Section 1, is amended to add lots 1001, 1002, 1003 and 1004, each with a maximum allowable built-upon area of 4200 square feet.
2. Lots 1001, 1002, 1003 and 1004, as shown on that map recorded in Map Book 56, Page 24 of the Onslow County Registry are hereby made subject to that Declaration of Covenants, Conditions and Restrictions recorded in Book 2464, Pages 372-402 of the Onslow County Registry.

Declarant also hereby states that that Amendment to Declaration recorded in Book 3344 at pages 356-357 of the Onslow County Registry is hereby rescinded and rendered null and void and of no legal effect.

IN TESTIMONY WHEREOF, Declarant has caused this Amendment to be signed in its name by its Manager.

BLUE MARLIN, LLC

By: Gordon P. Frieze, Jr.  
Gordon P. Frieze, Jr.  
Manager

STATE OF NORTH CAROLINA  
COUNTY OF PENDER

I, Sheri S. Smotter a Notary Public in and for the aforesaid County and State, do hereby certify that Gordon P. Frieze, Jr., Manager of Blue Marlin, LLC, 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 5 day of May, 2015.

Sheri S. Smotter  
Notary Public

My Commission Expires: Aug. 29, 2016



F:\Kim's Corel 8 Files\KIM\Mimosa Bay\amendment 2 restrictions.3-4.doc

3  
200  
Returned



Doc ID: 012888010003 Type: CRP  
Recorded: 07/07/2016 at 09:07:57 AM  
Fee Amt: \$28.00 Page 1 of 3  
Onslow County, NC  
Rebecca L. Pollard Reg. of Deeds

EX 4478 PG 153-155

STATE OF NORTH CAROLINA  
ONSWLOW COUNTY

AMENDMENT TO ALL DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR MIMOSA BAY SUBDIVISION PHASES I THROUGH V

THIS AMENDMENT, made as of 30 June 2016, by Schooner Bay Holdings, LLC and Mimosa Bay Homeowners Association, Inc., hereinafter referred to as Declarant or Developer for the purposes hereinafter stated:

WITNESSETH:

WHEREAS, Declarant has heretofore filed certain Declarations and Amendments recorded in Book 2464 at page 372; Book 2615, page 688; Book 2615, page 691; Book 2775, page 423; Book 2799, page 137; Book 2826, page 168; Book 2963, page 226; Book 3344, page 356; Book 3571, page 547; Book 3666, page 50; Book 3719, page 921; Book 3719, page 923; Book 3856, page 202; Book 4007, page 584; Book 4113, page 203 and Book 4298, page 658; and

WHEREAS, Declarant desires to further amend said Declarations as hereinafter stated; and

WHEREAS, the amendments herein were unanimously approved by those present and voting, which constituted more than a 2/3's vote of the general membership of the Mimosa Bay Homeowners Association, Inc. at its annual meeting held on June 4, 2016.

NOW, THEREFORE, Declarant hereby amends the Declaration of Covenants, Conditions and Restrictions for Mimosa Bay Subdivision recorded in Book 2464 at pages 372-402 as follows:

Article III, Section 4 (p. 8) of the Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision (CCR) recorded in Book 2464 at pages 372-402 are amended by adding the following at the end of Section 4:

The Declarant may, in its sole discretion, allow the membership of the Executive Board to be elected by the general membership of the Homeowners Association, with the Declarant retaining the following rights:

- (a) Representation on Board. Declarant shall have the right to designate not less than one member of the Board.
- (b) Designee not present at meeting. In the event that a meeting is held at which the Declarant's designee is not present, any action taken shall not be implemented until not less than thirty (30) days after Declarant has been made aware of such action and has had an opportunity to respond to the Board. Declarant shall be made actually aware of such action within five (5) days of the decision on such action.
- (c) Veto by Declarant. Declarant shall have the right to veto any decision or action proposed by the Board that, in the opinion of Declarant in its sole discretion, would be detrimental to the future development of the subdivision and the marketing thereof. Declarant shall be made aware of any decision or action taken by the Board within five (5) days of such. Declarant shall have fourteen (14) days from acknowledged receipt of such action to notify the Board of its decision to veto the decision or action under consideration. The failure of Declarant to so notify the Board of its veto within fourteen (14) days of such acknowledged receipt shall be construed as a decision not to veto such action.

Article VII of the Declaration of Covenants, Conditions and Restrictions For Mimosa Bay Subdivision (CCR) are amended by adding the following:

Section 4: Review, Approval and Enforcement

- A. The Executive Board of the Association has the authority to appoint an Architectural Control and Maintenance Committee (ACMC) to receive, review, approve or deny, and enforce the provision of this Article VII after the initial home construction is completed.
- B. Procedures for any enforcement proceedings shall be as set forth in the Planned Community Act (Chapter 47F of the North Carolina General Statutes).

IN TESTIMONY WHEREOF, Declarant has caused this Amendment to be signed in its name by its Manager.

SCHOONER BAY HOLDINGS, LLC

By: William G. Allen  
WILLIAM G. ALLEN  
Manager

STATE OF FLORIDA  
COUNTY OF COLLIER

I, Tracey A. Benavides a Notary Public in and for the aforesaid County and State, do hereby certify that William G. Allen, Manager of Schooner Bay Holdings, LLC, 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 29 day of JUNE, 2016.

Tracey A. Benavides  
Notary Public

My Commission Expires: 1/2/18



MIMOSA BAY HOMEOWNERS  
ASSOCIATION, INC.

By: Gordon P. Frieze  
Gordon P. Frieze  
President

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, Shari S. Smothers, a Notary Public of the County and State aforesaid, do hereby certify that Gordon P. Frieze personally came before me this day and acknowledged that he is President of Mimosa Bay Homeowners Association, Inc., a corporation and that he in such representative capacity and being authorized to do so, voluntarily executed the foregoing on behalf of the corporation. Witness my hand and official stamp or seal, this 30 day of June, 2016.

Shari S. Smothers  
Notary Public

My commission expires: Aug. 29, 2016

F:\TERR\Mimosa-amendment-6-6-16





Doc ID: 013013060004 Type: CRP  
Recorded: 09/01/2018 at 02:21:28 PM  
Fee Amt: \$29.00 Page 1 of 4  
Onslow County, NC  
Rebecca L. Pollard Reg. of Deeds  
BK 4505 PG 537-540

STATE OF NORTH CAROLINA  
ONSWLOW COUNTY

AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR MIMOSA BAY SUBDIVISION PHASE I

THIS AMENDMENT, made as of August 19, 2016, by Blue Marlin, L.L.C, hereinafter referred to as Declarant or Developer, MBS, LLC hereinafter referred to as Lender and Jerry A. Mannen, Jr. Substitute Trustee, hereinafter referred to as Trustee, for the purposes hereinafter stated:

WITNESSETH:

WHEREAS, Declarant has heretofore filed a certain Declaration recorded in Book 2464 at pages 372-402 of the Onslow County Registry; and

WHEREAS, Declarant desires to amend said Declaration as hereinafter stated; and

WHEREAS, Lender holds a deed of trust, as recorded in Book 3444, Page 883 of the Onslow County Registry and Declarant has requested that Lender and Trustee join in the execution of this instrument to show their agreement to the changes to be made to the maximum allowable built upon area of lots which are part of the collateral of said deed of trust; and

WHEREAS, Lender and Trustee have agreed to join in the execution of this instrument for the purpose stated hereinabove.

WHEREAS, the Stormwater Management Permit applicable to certain lots in this Phase has been amended to change the maximum allowable built-upon area per Lot.

NOW, THEREFORE, Declarant hereby amends the Declaration of Covenants, Conditions and Restrictions for Mimosa Bay Subdivision Phase I recorded in Book 2464 at pages 372-402 as follows:


1. Article VIII, Section 4, is amended as follows:

	<u>Current Impervious</u>	<u>Additional Impervious</u>	<u>Total Impervious</u>
Lot 8	6500 sf	-1000 sf	5500 sf
Lot 23	6000 sf	-1000 sf	5000 sf
Lot 24	6000 sf	-1000 sf	5000 sf
Lot A-2	7000 sf	-1000 sf	6000 sf
Lot A-3	7000 sf	-1000 sf	6000 sf

2. All other impervious surfaces for lots listed on the Declaration of Covenants, Conditions and Restrictions for Mimosa Bay Subdivision Phase I, recorded in Book 2464 at pages 372-402 and amended, remain the same.

IN TESTIMONY WHEREOF, Declarant has caused this Amendment to be signed in its name by its Member-Manager.

BLUE MARLIN, LLC

By:   
Gordon P. Frieze, K, Member-Manager

STATE OF NORTH CAROLINA  
COUNTY OF New Hanover

I, Sheri S. Smother, a Notary Public in and for the aforesaid County and State, do hereby certify that Gordon F. Frieze, Jr., Member-Manager of Blue Martin, LLC, 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 31 day of August, 2016.

Sheri S. Smother  
Notary Public

My Commission Expires: August 29, 2021



MBS, LLC  
By: [Signature]  
John (Vincent) Member-Manager  
John

STATE OF NORTH CAROLINA  
COUNTY OF New Hanover

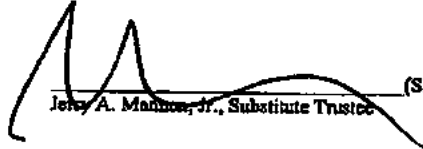
I, Lisa D. Matthis, a Notary Public in and for the aforesaid County and State, do hereby certify that John (Vincent), Member-Manager of MBS, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company. Witness my hand and notarial seal this the 31 day of AUGUST, 2016.

Lisa D. Matthis  
Notary Public

My Commission Expires: 10-1-18

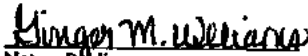
Notary Seal Affixed  
Verified By [Signature]



 (SEAL)  
Jerry A. Mannen, Jr., Substitute Trustee

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, GINGER M. WILLIAMS, Notary Public in and for the aforesaid County and State, do hereby certify that Jerry A. Mannen, Jr., Substitute Trustee personally appeared before me this day and acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein.  
Witness my hand and notarial seal this the 25 day of AUGUST, 2016.

  
Notary Public

My Commission Expires: 7-24-21

FSM005 Cord & File (LMA) Merco Dig/Amendment 2 rev. 1/15/16





Doc ID: 013013070002 Type: CRP  
Recorded: 09/01/2016 at 02:22:01 PM  
Fee Amt: \$28.00 Page 1 of 2  
Onslow County NC  
Rebecca L. Pollard Reg. of Deeds  
BK 4505 PG 541-542

STATE OF NORTH CAROLINA  
ONSLow COUNTY

AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR MIMOSA BAY SUBDIVISION PHASE III

THIS AMENDMENT, made as of August 19, 2016, by Blue Marlin, L.L.C, hereinafter referred to as Declarant or Developer, for the purposes hereinafter stated:

WITNESSETH:

WHEREAS, Declarant has heretofore filed a certain Declaration recorded in Book 2615 at pages 691-694 of the Onslow County Registry; and

WHEREAS, the Stormwater Management Permit applicable to certain lots in this Phase has been amended to change the maximum allowable built-upon area per Lot.

NOW, THEREFORE, Declarant hereby amends the Declaration of Covenants, Conditions and Restrictions for Mimosa Bay Subdivision Phase III recorded in Book 2615 at pages 691-694 as follows:

1. Article II, Section 1, is amended as follows:

	<u>Current Impervious</u>	<u>Additional Impervious</u>	<u>Total Impervious</u>
Lot 110	4200 sf	800 sf	5000 sf
Lot 112	4200 sf	800 sf	5000 sf

Lot 115	4200 sf	800 sf	5000 sf
Lot 121	4200 sf	1350 sf	5550 sf
Lot 126	4200 sf	500 sf	4700 sf
Lot 134	4200 sf	300 sf	4500 sf
Lot 135	4200 sf	400 sf	4700 sf
Lot 138	4200 sf	800 sf	5000 sf
Lot 139	4200sf	400 sf	4600 sf

2. All other impervious surfaces for lots listed on the Declaration of Covenants, Conditions and Restrictions for Mimosa Bay Subdivision Phase III, recorded in Book 2615 at pages 691-694- and amended, remain the same.

IN TESTIMONY WHEREOF, Declarant has caused this Amendment to be signed in its name by its Member-Manager.

BLUE MARLIN, LLC

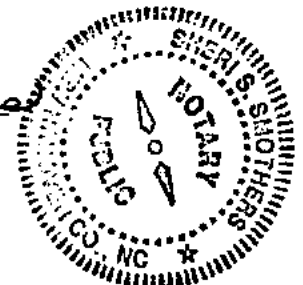
By: Gordon P. Frieze, Jr.  
Gordon P. Frieze, Jr., Member-Manager

STATE OF NORTH CAROLINA  
COUNTY OF New Hanover

I, Ashli S. Smothers a Notary Public in and for the aforesaid County and State, do hereby certify that Gordon P. Frieze, Jr., Member-Manager of Blue Marlin, LLC, 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 31 day of August, 2016.

Ashli S. Smothers  
Notary Public

My Commission Expires: August 29, 2021



Doc ID: 013013080002 Type: CRP  
Recorded: 09/01/2016 at 02:22:25 PM  
Fee Amt: \$25.00 Page 1 of 2  
Onslow County, NC  
Rebecca L. Pollard Reg. of Deeds  
BK 4505 Pg 543-544

STATE OF NORTH CAROLINA  
ONSLow COUNTY

AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR MIMOSA BAY SUBDIVISION PHASE V, SECTIONS ONE-A and ONE-B

THIS AMENDMENT, made as of August 19, 2016, by Blue Marlin, L.L.C, hereinafter referred to as Declarant or Developer, for the purposes hereinafter stated:

WITNESSETH:

WHEREAS, Declarant has heretofore filed certain Declarations recorded in Book 3571 at pages 547-552 and Book 3666, Pages 50-55, both of the Onslow County Registry; and

WHEREAS, Declarant desires to amend said Declarations as hereinafter stated; and

WHEREAS, some of the lots listed in Article II (Impervious Coverage) of the above referenced Declarations are not located in Phase V, Sections One-A and One-B and are therefore not subject to said Declarations.

NOW, THEREFORE, Declarant hereby amends the Declaration of Covenants, Conditions and Restrictions for Mimosa Bay Subdivision Phase V, Section One-A recorded in Book 3571 at pages 547-552 and the Declaration of Covenants, Conditions and Restrictions for Mimosa Bay Subdivision Phase V, Section One-B recorded in Book 3666 at pages 50-55 to delete the references to Lots 44 through 101 and Lots 112 through 254 as being a part of Phase V, Sections One-A and One-B.

All other impervious surfaces for lots listed on the Declaration of Covenants, Conditions and Restrictions for Mimosa Bay Subdivision Phase V, Section One-A recorded in Book 3571 at pages 547-552 and amended and the Declaration of Covenants, Conditions and Restrictions for Mimosa Bay Subdivision Phase V, Section One-B recorded in Book 3666 at pages 50-55 and amended, remain the same.

IN TESTIMONY WHEREOF, Declarant has caused this Amendment to be signed in its name by its Manager.

BLUE MARLIN, LLC  
By: *Gordon P. Frieze, Jr.*  
Gordon P. Frieze, Jr.  
Manager

STATE OF NORTH CAROLINA  
COUNTY OF *New Hanover*

I, *Sheri S. Smother* a Notary Public in and for the aforesaid County and State, do hereby certify that Gordon P. Frieze, Jr., <sup>Manager</sup> of Blue Marlin, LLC, 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 *31* day of *August*, 2016.

*Sheri S. Smother*  
Notary Public



My Commission Expires: *August 29, 2021*

PAKIMS CORBL & FILESKIMMIMOSA BAYAMENDMENT 2 RESTRICTIONS.PH 5 SEC 1-A & B IMPERV SURF.DOCK

2  
Returned



Doc ID: 018906720002 Type: CRP  
Recorded: 02/07/2017 at 09:35:45 PM  
Fee Amt: \$25.00 Page 1 of 2  
Onslow County NC  
Rebecca L. Pollard Reg. of Deeds

BK 4574 Pg 593-594

STATE OF NORTH CAROLINA  
ONslow COUNTY

AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR MIMOSA BAY SUBDIVISION PHASE IV

THIS AMENDMENT, made as of August 19, 2016, by Blue Marlin, L.L.C, hereinafter referred to as Declarant or Developer, for the purposes hereinafter stated:

WITNESSETH:

WHEREAS, Declarant has heretofore filed a certain Declaration recorded in Book 2826 at pages 168-173 of the Onslow County Registry; and

WHEREAS, the Stormwater Management Permit applicable to certain lots in this Phase has been amended to change the maximum allowable built-upon area per Lot.

NOW, THEREFORE, Declarant hereby amends the Declaration of Covenants, Conditions and Restrictions for Mimosa Bay Subdivision Phase IV recorded in Book 2826 at pages 168-173 as follows:

1. Article II, Section 1, is amended as follows:

	<u>Current Impervious</u>	<u>Additional Impervious</u>	<u>Total Impervious</u>
Lot 194	4200 sf	1500 sf	5700 sf
Lot 196	4500 sf	1500 sf	6000 sf

Lot 197	4200 sf	1500 sf	5700 sf
Lot 198	4200 sf	1500 sf	5700 sf
Lot 205	4200 sf	600 sf	4800 sf
Lot 210	4200 sf	300 sf	4500 sf
Lot 212	4500 sf	600 sf	5100 sf
Lot 220	4200sf	800 sf	5000 sf
Lot 1002	4200 sf	200 sf	4400 sf

2. All other impervious surfaces for lots listed on the Declaration of Covenants, Conditions and Restrictions for Mimosa Bay Subdivision Phase IV, recorded in Book 2826 at pages 168-173 and amended, remain the same.

IN TESTIMONY WHEREOF, Declarant has caused this Amendment to be signed in its name by its Member-Manager.

BLUE MARLIN, LLC

By: Gordon P. Frieze, Jr.  
Gordon P. Frieze, Jr., Member-Manager

STATE OF NORTH CAROLINA  
COUNTY OF New Hanover

I, Sheri S. Smother a Notary Public in and for the aforesaid County and State, do hereby certify that Gordon P. Frieze, Jr., Member-Manager of Blue Marlin, LLC, 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 27 day of September 2016.



Sheri S. Smother  
Notary Public

My Commission Expires 09/2021  
MIMOSA BAY CONDO & PLESTON W/ MIMOSA BAY AND MIMOSA BAY RESTRICTIONS PH IV IMPERV SURF DOCS

Type: CONSOLIDATED REAL PROPERTY  
Recorded: 1/26/2018 1:28:19 PM  
Fee Amt: \$26.00 Page 1 of 2  
Onslow County, NC  
Rebecca L. Pollard Reg. of Deeds

**BK 4729 PG 741 - 742**

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

**AMENDMENT TO ALL DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR MIMOSA BAY SUBDIVISION PHASE 1 THROUGH V**

THIS AMENDMENT, made as of 23<sup>rd</sup> January 2018, by Schooner Bay Holdings, LLC; hereinafter referred to as Declarant or Developer for the purposes hereinafter stated:

WITNESSETH:

WHEREAS, Declarant has heretofore filed certain Declarations and Amendments recorded in Book 2464 at Page 372; Book 2615, Page 688; Book 2615, Page 691; Book 2775, Page 423; Book 2799, Page 137; Book 2826, Page 168; Book 2963, Page 226; Book 3344, Page 356; Book 3571, Page 547; Book 3666, Page 50; Book 3719, Page 921; Book 3719, Page 923; Book 3856, Page 202; Book 4007, Page 584; Book 4113, Page 203 and Book 4298, Page 658; and

WHEREAS, Declarant desires to further amend said Declarations as hereinafter stated; and

NOW, THEREFORE, Declarant hereby amends the Declaration of Covenants, Conditions and Restrictions for Mimosa Bay Subdivision recorded in Book 2464 at Pages 372-402 as follows:

The Declarant does hereby incorporate all the lots of Mimosa Bay, Phase Five, Section Four recorded in Map Book 74 at Page 52-52A of the Onslow County Registry and subject said lots to the covenants and restrictions as are applicable in the prior recorded restrictions as amended.

Submitted electronically by Nathan M. Garren, Attorney at Law in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the Onslow County Register of Deeds.

**Book: 4729 Page, 1977-Current: 741 Seq: 1**

IN TESTIMONY WHEREOF, Declarant has caused this Amendment to be signed in its name by its Manager.

SCHOONER BAY HOLDINGS, LLC

BY: [Signature]  
Jon T. Vincent, Manager

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

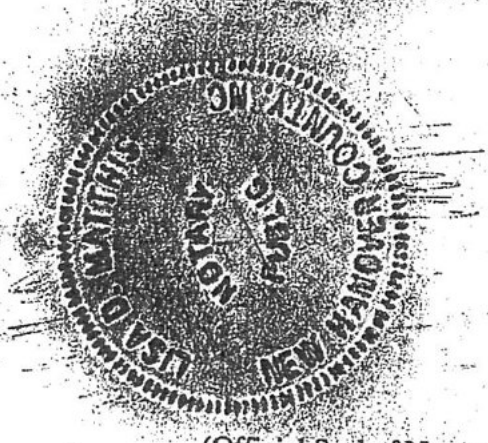
I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Jon T. Vincent, Manager of Schooner Bay Holdings, LLC, a North Carolina limited liability company. [CHECK ONE]  (i) I have personal knowledge of the identity of the principal; or  (ii) I have seen satisfactory evidence of the principal's identity by a current state or federal identification, with the principal's photograph, in the form of a

Date: January 23, 2018.

[Signature]  
Notary Public Signature

LISA D. MATTHIS  
Notary Public's Printed Name

My Commission Expires: 10-1-18



(Official Seal of Notary)

**MIMOSA BAY**  
**BYLAWS WITH AMENDMENTS THRU 2/12/2018**

13  
50.00

Doc ID: 000807480013 Type: CRP  
Recorded: 08/16/2008 at 01:08:14 PM  
Fee Amt: \$50.00 Page 1 of 13  
Onslow County, NC  
Mildred M Thomas Register of Deeds  
BK 2464 Pg 403-415

Return to: Biberstein + Nunalee  
P.O. Box 428  
Burgaw, NC 28525

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

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, arbitral, 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.  
Gordon P. Frieze, Jr., Member/Manager

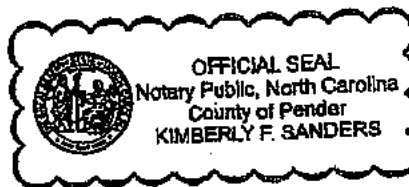
NORTH CAROLINA  
ONslow COUNTY

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 15<sup>th</sup> day of June, 2005.

Kimberly F. Sanders  
Notary Public

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



The foregoing certificate of Kimberly F. Sander 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 396, Page 16, this the 16 day of June, 2005, at 1:08 o'clock P.m.

Michael M. Khoury  
Register of Deeds

STATE OF NORTH CAROLINA  
ONSLow COUNTY



Doc ID: 013642890002 Type: CRP  
Recorded: 08/14/2017 at 03:03:49 PM  
Fee Amt: \$26.00 Page 1 of 2  
Onslow County, NC  
Rebecca L. Pollard Reg. of Deeds

BK 4674 PG 106-107

AMENDMENT NUMBER ONE TO BYLAWS  
FOR MIMOSA BAY HOMEOWNERS' ASSOCIATION, INC.

THIS AMENDMENT, made as of \_\_ March 2017, by MIMOSA BAY HOMEOWNERS' ASSOCIATION, INC., hereinafter referred to as Mimosa Bay HOA for the purposes hereinafter stated:

WITNESSETH:

WHEREAS, Mimosa Bay HOA has heretofore filed Bylaws for Mimosa Bay Homeowners' Association, Inc. recorded in Book 2464 at page 403 of the Onslow County Registry; and

WHEREAS, Mimosa Bay HOA desires to amend said Bylaws as hereinafter stated.

NOW, THEREFORE, Mimosa Bay HOA hereby amends the Bylaws for Mimosa Bay Homeowners' Association, Inc. recorded in Book 2464 at page 403 of the Onslow County Registry as follows:

1. Article III, Section 3.6. Quorum, is amended by deleting it in its entirety and replacing it as follows:

Section 3.6. Quorum. Unless provided otherwise by the Association's Articles of Incorporation, Declaration or these Bylaws, the presence at a meeting of Members of ten percent (10%) of the votes entitled to be cast on a matter, represented in person or by proxy, shall constitute a quorum for any action. Once a Member is present or represented by proxy for any purpose at a meeting, such Member is deemed present for quorum purpose for the remainder of the meeting.

2. This Amendment was adopted by the general membership at the regular annual meeting with a quorum present, by two thirds of the votes cast, after due notice of the Amendment contained in the Notice of Annual Meeting.

IN TESTIMONY WHEREOF, Mimosa Bay HOA has caused this Amendment to be signed in its name by its Secretary on behalf of its membership and Board of Directors..

MIMOSA BAY HOMEOWNERS' ASSOCIATION, INC.

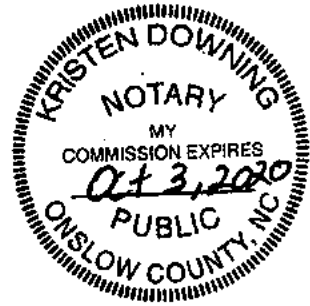
By: Windy Sipe (SEAL)  
Windy Sipe, Secretary

STATE OF NORTH CAROLINA  
COUNTY OF PENDER

Nc I, Kristen Downing, a Notary Public for Onslow County, State of Nc, certify that Windy Sipe personally came before me this day and acknowledged that she/he is Secretary of Mimosa Bay Homeowners' Association, Inc., a corporation, and that she/he as Secretary ~~President~~, being authorized to do so, voluntarily executed the foregoing on behalf of the corporation.  
This the 22 day of April, 2017.

Kristen Downing  
Notary Public

My Commission Expires: Oct 3, 2020



**MIMOSA BAY**  
**DECLARATION OF CONSERVATION**

6  
29.00



Doc ID: 000807500008 Type: CRP  
Recorded: 06/16/2005 at 01:08:44 PM  
Fee Amt: \$29.00 Page 1 of 6  
Onslow County, NC  
Mildred M Thomas Register of Deeds

BK 2464 PG 416-421

Return to: Biberstein + Nussle  
P.O. Box 428 Burgaw NC 28405  
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. Riving

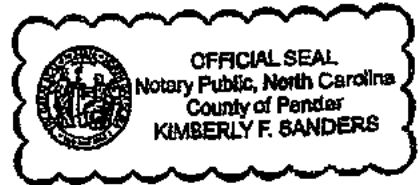
STATE OF NORTH CAROLINA  
COUNTY OF Pender

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 8<sup>th</sup> 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 01:08:39 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 + Nuralee  
P.O. Box 428  
Burgaw NC 28425

STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

THIS INSTRUMENT made and entered into this 13<sup>th</sup> 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

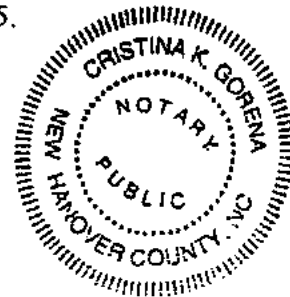
STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

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 13<sup>th</sup> day of June, 2005.

[Signature]

Notary Public  
My Commission Expires: 4/17/2008



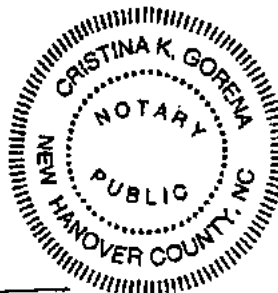
STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

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 13<sup>th</sup> day of June, 2005.

[Signature]

Notary Public  
My Commission Expires: 4/17/2008



IN NC STATE OF NORTH CAROLINA, ONSLAW COUNTY  
foregoing certificate(s) of Cristina K. Gorena

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

