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Onslow County, NC
Rebecca L. Pollard Reg. of Deeds
BK 3639 PG 295-325

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NORTH CAROLINA
ONSLow COUNTY

**MASTER DECLARATION OF
COVENANTS AND RESTRICTIONS
(SF/MULTIPHASE)
VILLAGE AT FOLKSTONE
(47F-1-101 et seq.)**

THIS DECLARATION OF RESTRICTIVE COVENANTS, is made this 16TH day of AUGUST, 2011, by the **FOSE PROPERTIES, LLC**, a North Carolina Limited Liability Company ("**Declarant**") of Onslow County, North Carolina.

BACKGROUND STATEMENT

WHEREAS, Declarant is the owner of or may acquire a certain tract of land located in Onslow County, North Carolina, (hereinafter referred to as "Development Area") and being more particularly described on Exhibit A;

AND WHEREAS, Declarant is constructing on a portion of the development area a "residential subdivision" which may include community facilities for the benefit of the community, with a planned mix of residential housing types, which may include without limitation detached single family homes and townhouses (hereinafter referred to as "Project");

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AND WHEREAS, pursuant to 47F-1-101 et seq., Declarant desires to provide for the preservation and enhancement of the property values and amenities within said community and to provide for the maintenance of common areas, properties and improvements located thereon, and to this end desires to subject Project property to the covenants, restrictions, easements, charges and liens as are hereinafter set forth, each and all of which are for the benefit of said real property and each present and future owner thereof;

AND WHEREAS, pursuant to 47F-1-101 et seq., the Declarant also desires to provide and allow for the submission of additional "sections" to the Project as said phases are developed and completed, and to provide for equality of rights, privileges and obligations of all lot owners in all phases of the Project by adding additional phases by amendment to this Declaration by the recording of an Amendment hereto.

DECLARATION

NOW THEREFORE, it is hereby declared that the Project property described herein is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth; said property being more particularly described as follows:

BEING all of that property as shown on Exhibit A-1 ("Project Area"), attached hereto and incorporated herein by reference as if fully set forth, and being known generally as Village of Folkstone.

1. DEFINITIONS:

Section 1. "Association" shall mean and refer to **THE VILLAGE AT FOLKSTONE COMMUNITY SERVICES ASSOCIATION, INC.**, a North Carolina corporation, its successors and assigns, which shall be formed by the Declarant as provided in this Declaration.

Section 2. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners, the public, or both, and specifically shall mean any storm water control or disposal improvements, piers, walkways, streets, if any, which may be constructed. "Common Area" shall specifically include any streets conveyed to the Association which have not yet been accepted by the North Carolina Department of Transportation.

Section 3. "Declarant" shall mean and refer to **FOSE PROPERTIES, LLC**, a North Carolina limited liability company, its successors and assigns.

Section 4. "Declaration" shall mean and refer to this instrument, as may from time to time be amended.

Section 5. "Living Unit" or "Unit" shall mean and refer to any portion of a structure situated upon the Properties designed and intended for use and occupancy as a residence by a single family,

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including without limitation detached single family homes, townhouse homes, patio homes and condominium units.

Section 6. "Property" or "Properties" shall mean and refer to any of the real property which is or may be subject to this Declaration or Supplemental Declaration.

Section 7. "Lot" shall mean and refer to any plot of land or condominium unit as defined in N.C.G.S. 47C-1-103, shown upon any recorded subdivision map of the Properties with the exception of the Common Area, and includes any improvements thereon, if any.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties but shall not include those having such interest merely as security for the performance of an obligation.

Section 9. "Parcel" shall mean and refer to a portion or part of real property, together with the improvements located thereon, which becomes subject to this Declaration. This term shall include any additions to the existing Properties as herein provided.

Section 10. "Supplemental Declaration" shall mean and refer to any declaration of covenants, restrictions, easements, charges and liens recorded by the Declarant, or its successors and assigns, which applies to a specific Parcel within the Properties.

Section 11. "Project Property or Area" shall mean the total of the real property incorporated herein and described hereinabove in Exhibit A-1, together with all structures and other improvements thereon, together with such other portions of the Development Area as may from time to time be added to and incorporated in the Project Area by amendment of this Declaration.

Section 12. "Development Area" shall include that property described in Exhibit A, all or part of which may from time to time be submitted to and made subject to the terms of this Declaration.

2. RETENTION OF DECLARANT RIGHTS:

Section 1. Declarant, for itself, its successors and assigns, reserves the right herein, but shall not be obligated, to submit additional property in one (1) or more separate phases to the provisions of the North Carolina Planned Community Act and to the provisions of this Declaration. The property, or a portion thereof, which may be made subject to this Declaration is described on "Exhibit A" hereof as "Development Area". The additions, if any, to the Project shall be made on a portion of portions of said property to be selected by Declarant, it being understood that any or all of said property not utilized by Declarant for the purpose of lots for addition to the Project, as provided in this Declaration, may be, from time to time, otherwise developed by Declarant, its successors and assigns, or for such other development as Declarant may in its sole discretion determine, subject to applicable governmental regulation and control, if any.

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The submission of one or more additional phases or sections as herein provided shall not obligate Declarant to submit further additional phases or sections to the provisions of this Declaration. PROVIDED, FURTHER, that Declarant may cause other development to occur on the property described on "Exhibit A" hereof, from time to time, whether or not it has developed, or plans to develop, any of the additional property.

At such time, and from time to time, as any additional Phase is subjected to this Declaration the Project Area will consist of the property described hereinabove, such property as may have been previously added thereto by amendment together with such additional property as may then be added by amendment to this Declaration.

Section 2. Declarant hereby reserves all Special Declarant Rights and Development Rights described or set out in N.C.G.S. Section 47F -1-103 (28) and Section 47F-3-103(d). Any or all of such Special Declarant Rights and Development Rights may be exercised as to any portion or all of the Property at any time until Declarant Rights have been terminated according to statute. The transfer of Special Declarant Rights and Development Rights shall be done pursuant to N.C.G.S. Section 47F 3-104.

Section 3. Sales Offices. Other provisions of this Declaration or the Bylaws notwithstanding, Declarant may maintain offices for the sale of Lots and models. Declarant shall have the right to (1) re-locate, discontinue and reestablish within the Project any such offices or models until all Lots have been conveyed to Owners other than a Declarant; and (2) change the use of such offices or models, provided that they shall be used only for sales purposes or models. Notwithstanding anything to the contrary herein, the Declarant's right to use Lots owned or leased by it as sales or models shall continue so long as Declarant owns at least one (1) lot.

Section 4. Declarant Rights Defined: "Special Declarant Rights" or "Declarant Rights" shall include but shall not be limited to, any right (a) to complete improvements indicated on plats and plans filed with the declaration; (b) to exercise any development right; (c) to maintain sales offices, management offices, signs advertising the planned community, and models; (d) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (e) to make the planned community part of a larger planned community or group of planned communities; (e) to make the planned community subject to a master association; or (f) to appoint or remove any officer or Board of Directors member of the association or any master association during any period of declarant control.

Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the county in which this Declaration is recorded. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit A in any manner whatsoever.

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The Declarant shall have the rights (a) to use or grant the use of a portion of the Common Area for the purpose of aiding in the sale, or rental, or management of Lots; (b) to use portions of the Property for parking for prospective purchasers or lessees of Lots and such other parties as the Declarant determines; (c) to erect and display signs, billboards and placards and store and keep the same on the property; (d) to distribute audio and visual promotional material upon the Common Area; and (e) to use or permit to be used any Lot which it owns or leases as a sales and/or rental office, management office or laundry and maintenance facility. The Declarant shall have an easement for access to such facilities and activities shall include specifically the right to use residences owned by the Declarant, if any, and any which may be owned by the Association.

So long as Declarant continues to have rights under this paragraph, no person or entity shall record any declaration of restrictions and protective covenants or similar instrument affecting any portion of the Properties without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of restrictions and protective covenants or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

3. SUPPLEMENTAL DECLARATIONS/EXPANSION OF PROPERTIES INTO DEVELOPMENT AREA: Declarant shall have the right, from time to time, to record Supplemental Declarations for portions ("Parcels") of the Properties which may designate specific use and other restrictions within said Parcel, may create Common Areas within such Parcel for the use only of Owners of Lots in said Parcel, and may create an internal owners association within said Parcel; provided, however, no Supplemental Declaration shall avoid membership in the Association by Owners of Lots in said Parcel, nor shall any Supplemental Declaration modify or amend the terms of this Declaration or of any prior Supplemental Declaration for another Parcel.

4. COMMON AREAS:

Section 1. Maintenance: The Association shall be responsible for the exclusive management and control of the Common Areas and all improvements located thereon, except as otherwise may be provided for in a Supplemental Declaration. This paragraph specifically empowers, but does not limit other powers, the Association to control and regulate the hours and periods of operation of all recreational facilities in the development area, and all maintenance of landscaping in the Development area, even if in areas subject to a Sub-association created by amendment to this Declaration or the recording of a Supplemental Declaration. Subject to any statutory requirement, the Association shall have the right to lease any portion of the Common Area to any management or operating entity for purposes consistent with the goals and ends of the owners and Association.

Section 2. Owner's Easement of Enjoyment:

(a) Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(1) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

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- (2) the right of the Association to limit the number of guests of members;
- (3) the right of the Association to suspend the right to use the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid and for any infraction of its published rules and regulations;
- (4) the right of the Association to lease, dedicate or transfer all or any part of the Common Area to any management or operating entity, public agency, authority, or utility for such purposes subject to such conditions as may be agreed to by the Association.
- (5) the right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

(b) Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. Recreational facilities, if any, situated upon the Properties may be utilized by guests of Owners or tenants subject to the rules and regulations of the Association governing said use and as established by its Board of Directors.

Section 3. Restriction on Alienation: Notwithstanding anything contained herein to the contrary, the Association shall not alienate in any way or transfer all or any part of the Common Areas without the prior approval of all holders of outstanding first priority mortgages against any of the Properties that are subject to this Declaration; provided, however, this restriction shall not be applicable to grants of easements for utilities, storm sewer, sanitary sewer, road right of ways and other conveyances for dedication to the public.

5. ASSOCIATION AND MANAGEMENT: Management of the affairs of the Association shall be the right and responsibility of the Board of Directors of the Association provided, however, that subject to NCGS 47F-3-103(d), Declarant shall appoint and remove all members of the Board of Directors and officers, until the end of the period of Declarant control. Declarant Control shall end upon the sale of the last Lot by Declarant in the subdivision.

5.1 ASSOCIATION/ STREETS/ROADS:

Section 1. Declarant or declarant's successors in interest shall cause to be formed an Association as a not for profit corporation pursuant to Chapter 55A of the North Carolina General Statutes, prior to the conveyance of any property to the Association.

Section 2. The non-state maintained road(s) allowed under the any subdivision regulations and which are a part of this subdivision have been designed and will be built to the standards of said ordinance. It is the intention of the Declarant to dedicate the streets to the State of North Carolina Department of Transportation or a political subdivision of the State of North Carolina or a

governmental entity or authority for ownership and maintenance and Declarant shall make its best efforts and undertake all steps necessary to so dedicate the streets.

The purpose of the association and any assessments imposed by the association shall be as set out elsewhere in this Declaration and specifically include the obligation to maintain in passable condition all roads and streets within the subdivision that may hereinafter be transferred to the Association, until and unless the streets are dedicated and accepted by the State of North Carolina Department of Transportation or a political subdivision of the State of North Carolina or a governmental entity or authority for ownership and maintenance. .

Until conveyance to the Homeowners Association or maintenance is assumed by the State of North Carolina or another entity, streets within the subdivision shall be maintained by the Declarant. In the event dedication is not allowed or accepted by the State of North Carolina or a political subdivision of the State of North Carolina or a governmental entity or authority for ownership and maintenance, then after conveyance to Homeowners Association, streets within the subdivision shall be maintained by the Association. The obligation of the Homeowners Association to maintain the streets and roads in the subdivision shall continue until such time as the North Carolina Department of Transportation or a political subdivision of the State of North Carolina or a governmental entity or authority for ownership and maintenance has accepted said roads into its system.

Prior to conveyance to the Association, Declarant will obtain an Engineer's certification that the roads are built to State of North Carolina Department of Transportation standards for acceptance into the State system.

Section 3. Upon the acceptance of the subdivision streets by the North Carolina Department of Transportation, the Association, if formed, shall be dissolved, unless the Association has been conveyed other property or unless a majority of the members vote, at a Special Meeting of the Association, to not dissolve the Association.

Section 4. Notwithstanding anything to the contrary contained herein, the Declarant shall retain the right and authority, and the Association and all owners of lots subject to this Declaration hereby grant authority to the Declarant and its assigns, the right and power to act on their behalf for the purpose of and in furtherance of the dedication of streets in this subdivision. The Association and lot owners agree that those streets and rights of ways shown on the recorded plats referred to in this Declaration or any amendment hereto may, without further approval or the joinder of the said lot owners, be dedicated to the State of North Carolina Department of Transportation or any political subdivision of the State of North Carolina or any governmental entity or authority created by governmental action for the purpose of, but not limited, holding title to such property for the purpose of roads, streets or utilities.

The Association and the lot owners also agree that any dedication of the streets may be undertaken and may be effected by the Declarant and/ or its assigns. Such act of the Declarant

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and/or its assigns, shall have the effect to dedicate those streets and rights of ways shown on the recorded plats referred to in this Declaration or any amendment hereto may, without further approval or the joinder of the Association or said lot owners.

6. ARCHITECTURAL CONTROL COMMITTEE:

Section 1. Except for original and initial construction and subsequent modification of improvements by the Declarant on any Lot which such construction is and shall be exempt from the provisions of this provision, no building, wall, fence, landscaping, berm or hedge which act as a fence or privacy inducing structure, pier, dock, ornamentation, or other structure or improvements of any nature shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure and landscaping as may be required by the Architectural Control Committee have been approved in writing by the Architectural Control Committee.

Each building, wall, fence or other structure or improvements of any nature, together with any ornamentation or landscaping, shall be erected, placed or altered upon the premises only in accordance with the plans and specifications and plot plan so approved.

Any change in the appearance of any building, wall, fence or other structure or improvements and any change in the appearance of the landscaping (excepting the planting of flowers and shrubs indigenous to the area), shall be deemed an alteration requiring approval. The Architectural Control Committee shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph.

Section 2. The Architectural Control Committee shall make all efforts to cooperate with the owner or agent in effecting a prompt and reasonable response to any submission. Within 30 days after receipt of all required information, the Architectural Control Committee shall submit in writing to the owner of the lot a response stating whether or not the requested improvements are approved. Unless a response is given by the Architectural Control Committee within 30 days, the plan shall be deemed approved. The response of the Architectural Control Committee may be an approval, a denial, an approval with conditions or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was inadequate and the 30 day time period for response shall only commence upon the receipt of the requested additional information. Conditional approvals may be granted and if approval with conditions is granted and thereafter construction begins, the construction shall be deemed approved by the owner of the lot of the conditions imposed.

Section 3. Refusal of approval of plans, specifications and plot plans or any of them may be based upon any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of the Architectural Control Committee shall deem sufficient. The Architectural Control Committee shall make the following affirmative findings before any plans are approved:

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(a) That the improvements sought to be constructed will not have a negative economic impact on any other lot within the subdivision.

(b) That all required specific buildings standards and other conditions contained within the Restrictive Covenants, By Laws and other subdivision documents have been met.

(c) That the improvements are architecturally compatible with proposed or constructed improvements on other lots within the subdivision.

(d) That the natural features of the lot have been retained to the maximum extent possible.

Section 4. The paint, coating, stain and other exterior finishing colors on all buildings may be maintained as that originally installed, without prior approval of the Architectural Control Committee, but prior approval by the Architectural Control Committee shall be necessary before any such exterior finishing color is changed.

Section 5. Until such time as the sale of the last numbered lot in the subject property is evidenced by the recordation of a deed therefore, all rights, privilege, powers and authority granted herein to the initial Architectural Control Committee, to whom the specific power to act hereunder is expressly conveyed, shall be exercised by the Declarant, its successors or assigns. The Declarant may assign its powers hereunder to an Architectural Control Committee, but so long as Declarant Control shall exist, the Declarant shall appoint a majority of the Architectural Control Committee. Thereafter, all representatives shall be appointed by the Board of Directors of the Association. Except as set out above, the Architectural Control Committee shall be composed of three (3) owners appointed by the Board and shall serve at the pleasure of the Board.

In the event of the dissolution of Declarant or the failure of Declarant to specifically assign the rights, privileges, powers and authority hereunder prior to the sale of the last numbered lot to the homeowners association or an Architectural Control Committee, or in the event the association has not been formed, then any owner may provide notice to each owner by registered mail of a meeting to be held not less than 30 days thereafter, where the owners may elect, by a majority vote of those present and a quorum having been obtained, an Architectural Control Committee. The said committee shall be composed of three (3) owners and who shall serve until the next meeting. At any time after the initial meeting, the individual owners of record of three (3) lots may call a meeting to be held after 30 days notice by registered mail to all of the other said lot owners of record, and may elect a new Architectural Control Committee, fill any vacancies on the Architectural Control Committee, or remove the members of the existing Architectural Control Committee. A quorum for any meeting of individual lot owners shall be the owners of at least ten percent (10%) of the lots in the subdivision known as the subject property.

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