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FOR REGISTRATION REGISTER OF DEED  
TAMMY THEUSCH BEASLEY  
NEW HANOVER COUNTY, NC  
2014 DEC 30 12 11 04 PM  
BK 5859 PG 2877-2894 FEE \$34.00

INSTRUMENT # 2014034844

SPACE ABOVE LINE FOR RECORDING DATA

STATE OF NORTH CAROLINA

Prepared by/return to Poyner Spruill LLP (CHR)  
P O Box 1801  
Raleigh, NC 27602-1801

COUNTY OF NEW HANOVER

Cross index to Declaration of Condominium for Barefoot Square  
Business Condominium recorded  
in Book 5481, Page 2180, New Hanover County Registry

**DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS (this "Agreement") is made as of this 15th day of December, 2014, by and between **BAREFOOT FLOORING, INC.**, a North Carolina limited liability company ("Barefoot"), with a mailing address of 2901 Castle Hayne Rd, Castle Hayne, NC 28429, and **FIRST COMMUNITY BANK**, a Virginia banking corporation ("FCB"), and FCB and Barefoot are sometimes referred to collectively herein as the "Parties"), with a mailing address of 110 N J K. Powell Blvd., Whiteville, NC 28472.

Recitals

A Barefoot is the owner of certain real property in Cape Fear Township, New Hanover County, North Carolina, more particularly described on **Exhibit A** attached hereto and incorporated herein by reference (the "Barefoot Property").

B FCB is the owner of the real property more particularly described on **Exhibit B** attached hereto and incorporated herein by reference (the "FCB Property"), which FCB acquired by trustees deed (the "Trustee's Deed") recorded in the Office of the Register of Deeds for New Hanover County (the "Registry") on April 17, 2014 in Book 5808 at Page 2452

C The FCB Property is subject to that certain Declaration of Condominium of Barefoot Square Business Condominium (as the same has or may be further amended, the "Declaration") recorded in Book 5481, Page 2180, aforesaid Registry

D. FCB was assigned all rights as Declarant under the Declaration pursuant to the terms of that certain Assignment of Declarant's Rights ("Assignment") recorded on March 28, 2014, in Book 5805, Page 339, aforesaid Registry.

E. As part of its approval of the development of the Barefoot Property and the FCB Property, the North Carolina Department of Environment and Natural Resources (“NCDENR”) required that certain permanent storm water drainage and impoundment facilities be constructed on areas located on both the Barefoot Property and the FCB Property. Barefoot has constructed a permanent stormwater detention pond within the area identified on Exhibit C (such pond, together with all permanent stormwater collection, drainage and impoundment facilities currently installed and located on the FCB Property and the Barefoot Property, the “Development Drainage Facilities”) The areas in which the Development Drainage Facilities are located are herein referred to collectively as the “Development Drainage Area”. The Development Drainage Facilities were constructed in accordance with existing NCDENR stormwater management permit number SW8060909 (the “Permit”)

F. In accordance with Title 15A NCAC 2H 1000 and S.L. 2006-246 (the “Management Regulations”), deed restrictions and protective covenants are required for High Density Commercial Subdivisions where lots will be subdivided and sold and runoff will be treated in an engineered stormwater control facility Deed restrictions and protective covenants are necessary to ensure that the development maintains a built-upon area consistent with the design criteria used to size the stormwater control facility.

G Prior to FCB’s foreclosure of the FCB Property as more particularly described in the Trustee’s Deed, the Development Drainage Area was located on real property owned or under the common control of Barefoot. As a result of the Foreclosure, the development Drainage Area is now located on parcels of land with separate ownership and control Accordingly, this Agreement is necessary to ensure that the FCB Property and the Barefoot Property is and will continue to be in compliance with the Permit and Management Regulations.

H. At the time of recording of this Agreement, only the FCB Property and the Barefoot Property use the Development Drainage Facilities

I The Parties desire to create new rights, duties and obligations by and between themselves and their respective successors and assigns, all on the terms more particularly set forth herein regarding the shared use of the Development Drainage Facilities

NOW, THEREFORE, for and in consideration for the mutual promises contained herein, and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows

1. Recitals, Definitions The foregoing Recitals, each and all being true and correct, are incorporated into this Agreement by this reference as a material part hereof. For the purposes of this Agreement, in addition to any definitions set forth elsewhere herein, the following terms shall have the following meanings:

- (a) “Association” shall have the meaning given to it in the Declaration.
- (b) “Common Areas” shall have the meaning given to it in the Declaration.
- (c) “Common Expenses” shall have the meaning given to it in the Declaration

(d) “Development Drainage Facilities Maintenance Costs” means those out-of-pocket expenses incurred by the Owner of the Barefoot Property in performing the maintenance, repair or replacement of the Development Drainage Facilities.

(e) “Owner” shall mean the record owner of any Parcel, and “Owners” shall mean all of the record owners of all of the Parcels.

(f) “Parcel” means any portion of the FCB Property (specifically including, without limitation, any Unit located on or comprising any portion of the FCB Property) or the Barefoot Property, and any subdivision thereof by an Owner after the date hereof, and which now or hereafter discharges storm water into the Development Drainage Facilities

(g) “Property” means all of the FCB Property and the Barefoot Property, and other property which now or hereafter discharges storm water into the Development Drainage Facilities.

(h) “Property Owner” means the Barefoot Property Owner and/or the FCB Property Owner, as applicable.

(i) “Pro Rata Share” shall mean fifty-five percent (55%), except as otherwise provided in Section 9 of this Agreement below in regards to Development Drainage Facilities Maintenance Costs in excess of Ten Thousand Dollars (\$10,000.00) for a calendar quarter.

(j) “Unit” shall have the meaning given to it in the Declaration.

(k) “Unit Owner” shall have the meaning given to it in the Declaration

(l) “User” shall mean any Owner, any lessee or sublessee of a Parcel, and any of their respective customers, invitees, employees and agents

2 Grant of Easements, Barefoot to FCB Barefoot does hereby give, grant and convey unto FCB and its Users, and their respective successors and assigns, for the benefit of the FCB Property, a permanent non-exclusive easement over, under and across the Barefoot Property for the purpose of stormwater drainage, retention and/or detention only, said easement being specifically over, under and across the Development Drainage Area, for the purpose of permitting storm water to flow from the FCB Property across the Barefoot Property to and to accumulate in the Development Drainage Facilities located in the Development Drainage Area on the Barefoot Property TO HAVE AND TO HOLD the land herein described unto FCB, its successors and assigns, for the aforesaid uses and purposes and none other (except as otherwise provided in this Agreement), it being agreed that the rights and easement herein granted are appurtenant to and run with the FCB Property.

3 Grant of Easements, FCB to Barefoot FCB does hereby give, grant and convey unto Barefoot and its Users, and their respective successors and assigns, for the benefit of the Barefoot Property, a permanent non-exclusive easement over, under and across the FCB Property for the purpose of stormwater drainage, retention and/or detention only, said easement being

specifically over, under and across the Development Drainage Area, for the purpose of permitting storm water to flow from the Barefoot Property across the FCB Property to and to accumulate in the Development Drainage Facilities located in the Development Drainage Area on the FCB Property. In addition to the foregoing, FCB does hereby give, grant and convey unto Barefoot, and its successors and assigns, for the benefit of the Barefoot Property, a permanent non-exclusive easement over, under and across the FCB Property for the purpose of constructing, installing, operating, inspecting, repairing, replacing and maintaining the Development Drainage Facilities located or to be located on the FCB Property TO HAVE AND TO HOLD the land herein described unto Barefoot, its successors and assigns, for the aforesaid uses and purposes and none other (except as otherwise provided in this Agreement), it being agreed that the rights and easement herein granted are appurtenant to and run with the Barefoot Property.

4. Covenants and Restrictions The following covenants are intended to ensure ongoing compliance with the Permit The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Permit. These covenants are to run with the land and be binding on all persons and parties claiming under them. The covenants may not be altered or rescinded without the express written consent of the NCDENR Division of Energy, Mineral and Land Resources (or its successor in function). Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality

(a) Maximum Allowable Built Upon Area The maximum allowable built upon area for the FCB Property and the Barefoot Property is 42,961 square feet. The maximum built-upon area per lot, in square feet, for the Barefoot Property is 21,222, and for the FCB Property is 21,839. This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right of way between the front lot line and the edge of the pavement Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools.

(b) Runoff All runoff from the built-upon areas on the FCB Property and the Barefoot Property must drain into the permitted system. This may be accomplished through a variety of means including roof drain gutters which drain to the street, grading the lot to drain toward the street, or grading perimeter swales to collect the lot runoff and directing them into a component of the stormwater collection system Lots that will naturally drain into the system are not required to provide these additional measures.

(c) Permits The owner of each lot, whose ownership is not retained by Barefoot, is required to submit a separate stormwater permit application to the Division of Water Quality and receive a permit prior to construction

(d) Buffer The project and each lot will maintain a 30 foot wide vegetated buffer between all impervious areas and surface waters. For projects located in the 20 coastal counties a 50 foot wide vegetated buffer must be maintained.

5. Cost of Initial Construction and Previous Costs FCB and Barefoot agree that FCB shall have no obligation to contribute towards or to reimburse Barefoot for any of the costs of construction, maintenance or repair of the Development Drainage Facilities incurred prior to the date of this Agreement. However, FCB agrees to reimburse and pay to Barefoot, within ten (10) days after the execution of this Agreement by FCB, an amount equal to one-half (1/2) of the Development Drainage Facilities Maintenance Costs incurred by Barefoot after March 28, 2014, which one-half amount is \$600.00. If this Agreement is executed after Barefoot pays the October 2014 Development Drainage Facilities Maintenance Costs, FCB also shall immediately reimburse Barefoot for one-half of such October Maintenance Costs.

6. Maintenance From and after the Date of this Agreement, the Barefoot Property Owner shall be responsible, at its sole cost and expense, for payment of all Development Drainage Facilities Maintenance Costs. The Barefoot Property Owner shall maintain the Development Drainage Facilities and the Development Drainage Area in compliance with the Permit and all laws and regulations and in good condition and repair, and shall conduct all work in a lien free manner. So long as the Barefoot Property Owner is solely responsible for maintenance and repair of the Development Drainage Facilities and the Development Drainage Area as provided herein, the Barefoot Property Owner shall indemnify and hold FCB and any Owner of the FCB Property harmless from and against any and all costs associated with the Development Drainage Facilities and the Development Drainage Area including, but without limitation, any violations issued and any fines assessed by NCDENR. Except in the case of emergency, in which notice may be given after entry, the Barefoot Property Owner shall give reasonable prior notice to the other Owners of any work to be done relating to the Development Drainage Facilities and shall restore the ground surface of the affected area to the same condition as existed prior to such work. The Barefoot Property Owner is hereby granted a nonexclusive right, privilege and easement appurtenant to the Barefoot Property over and across the FCB Property for the limited purpose of operating, maintaining, repairing, replacing, and reconstructing the Development Drainage Facilities and the Development Drainage Area. Notwithstanding the foregoing, the FCB Property Owner agrees to reimburse the Barefoot Property Owner for the FCB Property Owner's Pro Rata Share of the actual Development Drainage Facilities Maintenance Costs as more particularly described in Sections 8 and 9 below.

A fence ("Fence") surrounds the stormwater detention pond. Each Property Owner agrees to be responsible for the repair of any damage or alteration (by bending, breaking or otherwise) to the Fence that is caused by any User of its Property. Each and every one of the Parties understand and agree that notwithstanding the location of the Fence on the Property, or any other structures, improvements, fences, walls or barriers as may be located on the Property from time to time, the boundary between the FCB Property and the Barefoot Property shall be in the place shown as the boundary between Tract A and Tract B as shown on that certain Subdivision Plat entitled "Barefoot Square Subdivision of Lot 1 of MB 42/100" recorded in Map Book 55, Page 81, New Hanover County Registry. Nothing contained herein shall prevent the Parties from relocating the boundary between the Property from time to time by a written instrument duly executed and acknowledged by the requisite parties, duly recorded in the Registry.

7. Insurance The Owner of the Barefoot Property and the Owner of the FCB Property each shall keep in full force and effect a policy of commercial general liability

insurance which shall provide for a limit of not less than One Million (\$1,000,000.00) Dollars for personal or bodily injury or death to any one person, a limit of not less than Two Million (\$2,000,000.00) Dollars for personal or bodily injury or death to any number of persons arising out of any one occurrence, and a limit of not less than One Million (\$1,000,000.00) Dollars in respect of any instance of property damage. With respect to any liability insurance policy required to be maintained hereunder, the Owner shall (a) insure that its liability policy contains a provision naming that Owner as insured and the other Owners as additional insured; (b) reasonably endeavor to obtain a waiver of subrogation with respect to such policy by the insurer as to any claims against the other Owners, (c) reasonably endeavor to obtain a provision that such policy may not be canceled, subjected to nonrenewal or substantially modified without first providing at least thirty (30) days prior written notice to the other Owners, and (d) furnish to any other Owner requesting the same evidence that the insurance described above is in full force and effect and in compliance with the provisions of this Section. The policies may be in the form of a general coverage or floater policy covering the Owner's Parcel and other property. It shall be a default hereunder if any Owner fails to maintain such insurance coverage.

8. Development Drainage Facilities Maintenance Costs Contribution Beginning on the date of this Agreement (the "Effective Date"), the Owner of the FCB Property agrees to pay its Pro Rata Share of the actual annual Development Drainage Facilities Maintenance Costs incurred by the Owner of the Barefoot Property in accordance with this Agreement. As more particularly described below, the Owner of the FCB Property shall pay its Pro Rata Share of the Development Drainage Facilities Maintenance Costs quarterly. In the event the Effective Date occurs on a day other than the first day of a calendar quarter, the Owner of the FCB Property's Pro Rata Share of the actual annual Development Drainage Facilities Maintenance Costs for that quarter shall be prorated on the basis of the number of days from the Effective Date to the end of that calendar quarter to the total number of days in such quarter.

9. Maintenance Contribution Payments Within ten (10) business days after the end of each calendar quarter, the Owner of the Barefoot Property shall submit to the Owner of the FCB Property an itemized description of its actual Development Drainage Facilities Maintenance Costs incurred for such completed calendar quarter ("Quarterly Notice") Upon request, the Owner of the Barefoot Property shall promptly provide the Owner of the FCB Property with supporting documentation of Development Drainage Facilities Maintenance Costs identified in a Quarterly Notice. The Owner of the FCB Property agrees to pay the Pro Rata Share of the Development Drainage Facilities Maintenance Costs as shown in the Quarterly Notice for such preceding calendar quarter to the Owner of the Barefoot Property within thirty (30) days of its receipt of the Quarterly Notice. The Owner of the Barefoot Property shall submit its first Quarterly Notice to the Owner of the FCB Property by January 10, 2015. This first Quarterly Notice shall cover all Development Drainage Facilities Maintenance Costs incurred for the period beginning on the Effective Date and ending on December 31, 2014. In the event that any Quarterly Notice contains a total sum of actual Development Drainage Facilities Maintenance Costs in excess of Ten Thousand Dollars (\$10,000.00) for such quarter, then the Owner of the FCB Property shall pay the Pro-Rata Share for the first Ten Thousand Dollars (\$10,000.00) and, for any amounts in excess of Ten Thousand Dollars (\$10,000.00), the FCB Property Owner's Pro Rata Share shall be reduced to fifty percent (50%). If the Owner of the FCB Property fails to pay the FCB Property Owner's Pro Rata Share within thirty (30) days after the Owner of the Barefoot Property's issuance of the Quarterly Notice, the Owner of the FCB Property will pay to

the Owner of the Barefoot Property an amount equal to the FCB Property Owner's Pro Rata Share plus a late payment fee of \$25 00. For each thirty (30) day period thereafter that the Quarterly notice remains unpaid, the Owner of the FCB Property will pay to the Owner of the Barefoot Property an additional late payment fee of \$25.00 for each additional thirty (30) day period that the Quarterly Notice remains unpaid

10 Indemnification. The Owners shall each indemnify, defend and hold the other Owners harmless from any claim, loss, or liability arising out of or related to any default or violation of this Agreement by the indemnifying Owner or its associated Users This Section shall not apply to the extent the liability is covered by an applicable insurance policy.

11. Taxes and Assessments Each Owner shall pay, or cause to be paid, prior to delinquency, all taxes and assessments with respect to its Parcel, and the buildings and other improvements located thereon It shall be a default hereunder if any Owner fails to pay any tax bill prior to the date such taxes are delinquent

12 Amendment. Except as provided elsewhere herein, this Agreement may not be modified in any respect whatsoever, or rescinded in whole or in part, except with the consent of all of the Owners of the Parcel(s) affected by the modification at the time of such modification and, if required, by NCDENR, and then only by a written instrument duly executed and acknowledged by the requisite parties, duly recorded in the Registry

13. Estoppel Certificates From time to time upon request in writing from an Owner, each Owner agrees to execute, acknowledge and deliver to such requesting party a statement in writing certifying to the requesting party or its designee that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), that such requesting party is current in its construction, maintenance and other obligations under this Agreement, and any other factual data relating to this Agreement which such Owner may reasonably request. The party receiving such request shall execute and deliver such written statement to the requesting party within fifteen (15) days of its receipt of such written statement.

14 Binding Effect; Duration This Agreement shall inure to the benefit of and be binding upon the Parties, their heirs, successors and assigns. Each easement, covenant, condition, agreement and restriction contained herein shall be appurtenant to and for the benefit of all of the Property, and shall run with the title to the FCB Property and the Barefoot Property, and shall be binding upon each and every successor-in-interest of the parties hereto, regardless of whether the deed or other instrument of conveyance by which such successor-in-interest acquires title shall recite that the Property or any part or Parcel thereof is subject and subordinate to the terms and provisions hereof

15. Default; Lien Right.

(a) General In the event of a default by an Owner with respect to any obligations under this Agreement (a "Defaulting Owner"), then any non-defaulting Owner, in addition to any other remedies it may have available at law or in equity (a) shall have the right to exercise self-help if such default is not cured within thirty (30)

days of receipt of written notice of the default (or immediately without notice in the event of a failure to pay taxes or the existence of an emergency situation) which self-help may include advances of monies to pay unpaid taxes or to cure other defaults of the defaulting Owner; and (b) shall have a lien against the Parcel of the Defaulting Owner and all improvements thereon for any unpaid amount, together with interest on such unpaid amount at the rate of eight percent (8%) per annum (or, if lower, the highest rate permitted by applicable law) The foregoing lien shall be subordinate to the interest of any institutional mortgagee to the extent such institutional mortgagee has recorded a lien prior to the recording of a specific notice of lien pursuant to this Agreement The defaulting party hereby grants to the aggrieved party a non-exclusive right of entry and non-exclusive easements across and under any and all parts of the defaulting party's Parcel (excluding the right to enter any buildings demised to or owned by others) for all purposes reasonably necessary to enable the aggrieved party (acting directly or through agents, contractors, or subcontractors), to perform any of the terms, provision, covenants or conditions of this Agreement which the defaulting party shall have failed to perform, after notice and time to cure, as aforesaid, if owing A claim of lien shall include the following (i) the name of the claimant; (ii) a statement concerning the basis for the claim of lien, (iii) the last known name and address of the Owner according to the tax records of the Parcel against which the lien is claimed; (iv) a description of the Parcel(s) against which the lien is claimed, (v) a description of the work performed or payment made which has given rise to the claim of lien hereunder and a statement itemizing the amount thereof, and (vi) a statement that the lien is claimed pursuant to the provisions of this Agreement, reciting the date, book and page of the recordation hereof The notice shall be duly acknowledged and shall contain a certificate that a copy thereof has been served upon the Defaulting Owner against whom the lien is claimed, either by personal service or by mailing (first class, certified, return receipt requested) to the Defaulting Owner, at the address for mailing of tax statements with respect to the Parcel against which the lien is claimed The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and it may be enforced in any manner allowed by law for the foreclosure of liens

(b) Stormwater Violations and Fines Barefoot acknowledges that Barefoot as the owner of the permit for the Development Drainage Facilities is to be the responsible party for any erosion control and stormwater control issues relating to the Development Drainage Area Barefoot agrees to take such actions and execute such documents as are necessary to cause NCDENR or its successor in function, the State of North Carolina or any agency or political subdivision thereof (jointly and severally, the "Government Authorities", whether one or more) to recognize the Barefoot Property Owner (and not FCB) as the person financially responsible for the Development Drainage Area Regardless of whether or not any one or more of the Government Authorities recognizes the Barefoot Property Owner as the financially responsible person for the Development Drainage Area, Barefoot, for itself and its successors and assigns, agrees that Barefoot and the Barefoot Property Owner shall, jointly and severally, indemnify and hold FCB, the FCB Property Owner, and its members, managers, employees, agents, successors and assigns, from and against any and every cost or expense including, without limitation, court costs and reasonable attorneys' fees, resulting from or incurred in connection with any failure of Barefoot and/or the Barefoot Property Owner to maintain and repair the

Development Drainage Area and the Development Drainage Facilities in full compliance with all applicable laws and regulations and including specifically, but without limitation, any fine imposed by any one or more of the Government Authorities in connection therewith.

Notwithstanding any other provision of this Agreement, in the event that Barefoot or the Barefoot Property Owner receives a report or notice of any potential violation or non-compliance from any one or more of the Government Authorities pertaining to the Development Drainage Area and/or the Development Drainage Facilities, the Barefoot Property Owner shall, promptly upon receipt, provide a copy of such report or notice to the FCB Property Owner (which, notwithstanding the provisions of Section 17 hereof, may be hand delivered, sent by facsimile or by e-mail, or sent by commercial courier service). Barefoot and the Barefoot Property Owner shall be jointly and severally responsible, at their sole cost and expense, for taking such action as is necessary to correct the deficiency identified in the report notice prior to the date set forth therein

If Barefoot and/or the Barefoot Property Owner fail to correct such deficiency and a notice of violation or non-compliance or a fine is issued, the FCB Property Owner may, but shall not be obligated to, take such action and spend such sums as is necessary to cure any violation, non-compliance and/or pay any fine assessed in connection therewith and Barefoot and the Barefoot Property Owner, jointly and severally and within ten (10) days after receipt of an invoice from the FCB Property Owner, pay to the FCB Property Owner for all monies expended by the FCB Property Owner to cure such Violation and/or pay such fine, plus an amount equal to five percent (5%) of such sum for the FCB Owner undertaking the correction of the violation, non-compliance and/or payment of the fine

Nothing herein shall be deemed to apply to, and the FCB Property Owner shall be solely responsible for, any non-compliance, violation, or fine to the extent that same results from FCB or the FCB Property Owner's failure to comply with applicable laws and regulations as they relate to any modification or alteration of the Development Drainage Area or the Development Drainage Facilities after the Effective Date by the FCB Property Owner without the express written consent of the Barefoot Property Owner.

16. Relationship of Agreement to Declaration FCB is the Declarant under the Declaration by virtue of the Assignment Under the terms of the Declaration, the Declarant has the authority to file amendments to the Declaration during the Declarant Control Period (as such term is defined in the Declaration) without the consent or joinder of any other Unit Owner Unless earlier terminated by the sale of all of the Units or another amendment to the Declaration, the Declarant Control Period shall not expire until April 27, 2015 Each and every Unit Owner, and their heirs, successors and assigns shall be bound by the terms of the Declaration as amended by this Agreement By joining in the execution of this Agreement, FCB as Declarant hereby amends the Declaration as follows.

(a) Common Elements. The Development Drainage Facilities and the Development Drainage Area located on the FCB Property is and shall be a part of the Common Elements serving each and every one of the Units.

(b) Common Expenses The FCB Property's Pro Rata Share of the Development Drainage Facilities Maintenance Costs shall be Common Expenses allocated among and assessable against all of the Units and Unit Owners in accordance with their allocated interest in and to the Common Elements as shown on **Exhibit C** to the Declaration.

(c) Covenant to Pay Maintenance Costs. Each and every Unit Owner covenants and agrees to pay the Common Expenses, specifically including, without limitation, the FCB Property's Pro Rata Share of the Development Drainage Facilities Maintenance Costs assessed against such Unit or Unit Owner. Notwithstanding anything to the contrary contained in the Declaration, each and every Unit Owner shall pay its proportionate share of the FCB Property's Pro Rata Share of the actual Development Drainage Facilities Maintenance Costs within thirty (30) days of receipt of any invoice or assessment from the Declarant or the Association showing the amount of the Development Drainage Facilities Maintenance Costs allocated to or assessed against such Unit or Unit Owner as part of the Common Expenses. Failure of any Unit Owner to make such payment in a timely manner shall be a default by such Unit Owner under the Declaration entitling the Association or the Declarant to exercise any remedies available to it under the terms of the Declaration or applicable law against such defaulting Unit Owner, including, without limitation, placing a lien for non-payment of the Development Drainage Facilities Maintenance Costs assessed against such unit as a Common Expense on the Unit owned by the defaulting Unit Owner.

The Parties understand and agree that the FCB Property is subject to a condominium regime as more particularly described in the Declaration. Under the terms of the Declaration, all Common Expenses (including the FCB Property's Pro Rata Share of the Development Drainage Facilities Maintenance Costs) shall be payable by the Association, which is managed and controlled by Declarant until such time as a sufficient number of Units are sold to permit the Unit Owners other than Declarant to elect at least a 2/3 majority of the Association's board of directors. Until such time, all Quarterly Notices shall be submitted to FCB (or any successor Declarant) for payment and collection. The Declarant agrees to provide notice to the Barefoot Property Owner pursuant to Section 17 below of the election of 2/3 of the members of the Association's board of directors by Unit Owners other than Declarant, including the address for notices to the Association. Upon receipt of such notice, the Barefoot Property owner shall deliver all Quarterly Notices to the Association, and shall look solely and exclusively to the Association for payment of any of the FCB Property's Pro Rata Share of the Development Drainage Facilities Maintenance Costs which accrued after the date of the election of 2/3 of the members of the Association's board of directors by Unit Owners other than Declarant, and the Association shall be deemed to be the FCB Property Owner for purposes of this Agreement and the Association shall comply with all the FCB Property Owner obligations set forth herein, and the Barefoot Property Owner and NCDENR may look solely to the Association for such compliance and need not look to or pursue any Unit Owner.

17 Notice Any notices given pursuant to this Agreement shall be in writing, and shall be personally delivered or deposited in the United States certified mail, postage prepaid, return receipt requested, at the following addresses:

If to FCB.	29 College Drive Bluefield, VA 24605 Attn: Robert Anderson
With a copy to:	Poyner Spruill LLP 301 Fayetteville Street, Suite 1900 Raleigh, NC 27601 Attn. Chris Roede
If to Barefoot	Barefoot Flooring 2901 Castle Hayne Rd Castle Hayne, NC 28429 Attn: Dianne Wilson
With a copy to.	Oliver Friesen Cheek, PLLC 405 Middle St, New Bern, NC 28560 Attn: Amy Currin

Upon the conveyance of any Parcel, the notice address for the new Owner shall be provided either: (a) by providing a notice to the other Owners in compliance with the terms of this Section, or (b) through an amendment to this Agreement. Any Owner may change its notice address by providing a notice to the other Owners in compliance with the terms of this Section.

18 Private Agreement Nothing herein is intended, nor shall be construed, to create any rights whatsoever for the benefit of the general public in and to the Property or the improvements constructed thereon, and nothing herein shall be constituted to effect, or intend to effect, a dedication of the Development Drainage Facilities or the Development Drainage Area to the general public.

19. No Use Without Consent. No property other than the FCB Property and the Barefoot Property may use the Development Drainage Facilities or the Development Drainage Area for stormwater control without the prior written consent of the Owner of the Barefoot Property.

20 No Waiver No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act.

21 Time of Essence, Computation of Time Time is of the essence in this Agreement. In computing any period of time prescribed or allowed by this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included. The

last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday under the laws of the United States or the State, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday nor a legal holiday, and the computation of any designated period of time that is calculated from the expiration of a previous period that ended on the next day which is neither a Saturday, Sunday nor a legal holiday shall commence on said next day. For purposes of this Agreement, the term "business day" shall mean any day which is not a Saturday, Sunday or legal holiday

22 Miscellaneous If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each such term, covenant or condition of this Agreement shall be valid and enforceable to the full extent permitted by law. This Agreement shall be construed in accordance with and governed by the laws of the State of North Carolina. This Agreement is an integrated agreement and expresses the complete agreement and understanding of the parties, and all prior or contemporaneous oral agreement or prior written agreement regarding the subject matter hereof shall be merged herein and then extinguished. Each party hereto represents and warrants to the other that the execution of this Agreement and any other documents required or necessary to be executed pursuant to the provisions hereof are valid, binding obligations and are enforceable in accordance with their terms. The instrument may be executed in multiple counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute the same instrument. The Parties hereto understand and agree that each has no fiduciary, trust, guardian, representative, partnership, joint venturer or other similar relationship to or with the other, and no such relationship shall be drawn or implied from this Agreement and/or the actions or inactions of the Parties hereunder or with respect hereto or the Development Drainage Facilities

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**EXHIBIT "A"**

**Barefoot Property**

Being all of Tract A as shown on that certain Subdivision Plat entitled "Barefoot Square Subdivision of Lot 1 of MB 42/100" recorded in Map Book 55, Page 81, New Hanover County Registry