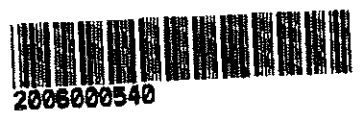


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FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
2006 JAN 04 03:14:52 PM
BK: 4961 PG: 876-894 FEE: \$65.00

INSTRUMENT # 2006000540

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

DECLARATIONS OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF WINDSWEPT SUBDIVISION
PHASE 1 SECTION 1

Prepared by and returned to Calder & Calder, LLP, 703 St. Joseph St., Carolina Beach

This Declaration, made this 4th day of JAN. 2006, by CB
WINDSWEPT, LLC, A North Carolina Limited Liability Company, hereinafter referred
to as "Declarant";

WHEREAS, Declarant is the owner of certain property in New Hanover County,
North Carolina, Which is more particularly described as follows:

Being all of WINDSWEPT Subdivision Phase 1 Section 1, as
recorded in Book 49 at Page 29 in the New Hanover County
Registry.

NOW, THEREFORE, Declarant hereby declares that all of the properties
described above shall be held, sold and conveyed subject to Chapter 47F of the General
Statutes of North Carolina known as the North Carolina Planned Community Act and
subject to the following easements, covenants, and conditions, which are for the purpose
of protecting the value and desirability of, and which shall run with the real property and
be binding on all parties having any right, title or interest in the described properties or
any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each
owner thereof.

Some of the following Covenants are intended to insure ongoing compliance with
applicable North Carolina State Stormwater Management Permits, as issued by the
Division of Water Quality under NCAN 2H.1000. The State of North Carolina is made a
beneficiary of these covenants to the extent necessary to maintain compliance with the
stormwater management permit. The covenants are to run with the land and be binding
on all persons and parties claiming under them. The covenants pertaining to stormwater
may not be altered or rescinded without the express written consent of the State of North

RETURN TO: CALDER & CALDER, ATTORNEYS

DRAWN BY: CALDER & CALDER, ATTORNEYS

Carolina Division of Water Quality. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality.

ARTICLE I
DEFINITIONS

As used herein, the following terms shall mean

Section 1 ASSOCIATION shall mean and refer to WINDSWEPT HOA, INC., a North Carolina non-profit corporation, its successors and assigns, the owners' association organized for the mutual benefit and protection of all the Properties, within Windswept Subdivision, as expanded from time to time, herein after referred to as the Properties. All property owners of lots in WINDSWEPT SUBDIVISION and any adjoining areas hereinafter developed and subjected to this declaration, if any, shall be members of the association, which membership shall be appurtenant to and may not be separated from the ownership of each single family or multi family lot.

Section 2 ARCHITECTURAL REVIEW COMMITTEE (or Architectural Control Committee) shall mean and refer to a committee of no less than three, and no more than five, Lot owners elected at an annual meeting of the Association, or at a Special Meeting duly called for that purpose. The initial committee shall be elected at a special meeting called for that purpose after the period of Developer control has ended. The committee shall, after the period of Declarant control, exercise the architectural review and controls established by this Declaration, and all amendments hereto.

Section 3 OWNER shall mean and refer to the record owner(s), whether one or more persons or entities, of fee simple title to any lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 4 PROPERTIES shall mean and refer to all of WINDSWEPT SUBDIVISION as described above, and any additional properties that may hereafter be brought within the jurisdiction of the Association as herein provided.

Section 5 ADDITIONAL PROPERTIES shall mean and refer to any lands adjoining the Properties or within a one-mile radius thereof, which now are owned or may be hereafter acquired or developed by the Declarant and annexed to and made a part of the properties by the Declarant and subjected to this declaration. No additional properties may be annexed without prior approval of HUD/VA, if so required. The annexation of such additional properties shall become effective by the recording in New Hanover County by the Declarant of an amended declaration for each new section annexed.

Section 6 COMMON AREA shall mean and refer to all real property owned by the Association for the common use and enjoyment of the owners, specifically including all private roads, streets, drives, if any, and all Ponds, Recreation Areas, Passive and

Active, and Pedestrian Easements in Windswept Subdivision. The common area to be owned by the Association at the time of the conveyance of the first lot shall be all the area designated as "common area" on the plat or plats of WINDSWEPT SUBDIVISION, if any, recorded or to be recorded in New Hanover County Registry. The term shall also include any additional property or Lot later designated as Common Area by the Declarant, as provided for herein, and any detention, and/or retention pond(s) located within the subdivision. Common Area in all Sections and Phases shall benefit all other Sections and Phases.

Section 7 COMMON EXPENSES means expenditures made by or financial liabilities of the Association, together with any allocations to reserves. Common Expenses specifically include costs for maintaining and insuring any retention, and/or detention pond(s), and all roads, streets, drives and rights of way in WINDSWEPT Subdivision, as expanded from time to time.

Section 8 DECLARANT shall be used interchangeably with Developer (which shall include singular, plural, masculine and neuter as required by the context) and shall mean and refer to CB WINDSWEPT, LLC, and its successors and assigns, if such successors and assigns should acquire the remaining undeveloped property in WINDSWEPT Subdivision from the Declarant for the purpose of development.

Section 9 DECLARATION shall mean this instrument as it may be from time to time amended or supplemented.

Section 10 EXECUTIVE 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 MEMBERSHIP shall mean and refer to every person or entity that has a membership in the Association.

Section 12 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 of 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 other Master Association during the Declarant control period; (viii) to maintain Architectural Control until such time as Declarant sells or transfers all Lots in the subdivision; and (ix) to delegate any or all of the Declarant's rights permanently or for limited time periods.

Section 13 LIMITED COMMON AREAS AND FACILITIES –WINDSWEPT Subdivision has no Limited Common Area, but if it ever does, it will be for the use of all Lot Owners, unless expressly limited to use by a particular Lot or group of Lots.

Section 14 ADDITIONAL SPECIAL DECLARANT RIGHTS Declarant reserves the right, in its sole discretion, to construct improvements, or to allow construction of improvements, including, but not limited to a swimming pool and related facilities, upon a portion of the Common Area. Upon completion of such improvements Association Dues shall be recalculated to include the costs of insuring and maintaining such improvements.

ARTICLE II PROPERTY RIGHTS AND EASEMENTS

Section 1 OWNERS PROPERTY RIGHTS AND EASEMENT OF ENJOYMENT Every owner shall have and is hereby granted a right and easement of enjoyment in and to the common areas, if any, and all roads, streets, drives and rights of way in Windswept Subdivision, which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- A. The Declarant, and after the period of Declarant control, the Association may make and amend reasonable rules and regulations governing use of the common elements by the owners and non-owner members;
- B. The right of the Declarant, and after the period of Declarant control, the Association to suspend the voting rights and privileges of an owner for any period during which any assessment against his lot remains unpaid and for a period not to exceed (60) days for any violation of its published rules and regulations;
- C. The Declarant, and after the period of Declarant control, the Association may grant a security interest in or convey the Common areas and Recreation areas, or dedicate or transfer all or part of the common areas, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by at least (80%) eighty percent of the members, excluding the developer; provided, however, that the Declarant, and after the period of Declarant control, the Association may without the consent of the Owners grant easements, leases, licenses and concessions through or over the common areas. No conveyance or encumbrance of common elements shall deprive any Lot of its rights of access or support.
- D. The right of the Declarant, and after the period of Declarant control, the Association to impose regulations for the use and enjoyment of the common areas and recreation area, if any, and improvements thereon, which regulation may further restrict the use of the common area.

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. The Declarant reserves the unto itself, its successors and assigns, a perpetual, alienable, and releasable easement and right of way, on, over, and under the ground for men and equipment to erect, maintain, inspect, repair, and use electric and telephone pole, wires, cables, conduits, fences, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveyances or utilities on, in of over each lot, the rights of way of roads and streets, and such other areas as are shown on the plat, of the properties recorded or to be recorded in the office of the Register of Deeds of New Hanover County, provided further, that the Declarant may cut drain ways for surface water whenever such action may appear to the Developer to be necessary in order to maintain reasonable standards of health, safety, and appearance. These easements and rights of way expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. The Declarant further reserves the right to locate wells, pumping stations, and tanks within residential areas on any walkway, or on any residential lot now or subsequently designated for such use or to locate same upon any lot with the permission of the owner of such lot. Such rights may be exercised by any licensee of the Declarant, but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility of service.
- B. The developer reserves the right to subject the real property in this subdivision to a contract with the Progress Energy, their successor or assigns, for the installation of street lighting, which requires a continuing monthly payment to such utility company by each residential customer.
- C. Easements over all private streets and roads, access easements, recreation area and the common areas within the planned community as necessary to provide access, ingress and egress to and the installation of utilities for any property.
- D. 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.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1 Every owner of a lot shall be a member of the association. Membership shall be appurtenant to and may not be separated from ownership of any lot.

Section 2 Each member shall be entitled to one vote in the affairs of the association 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 the owners of such lot among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

ARTICLE IV
MANAGEMENT AND CONTROL

Management for the affairs of the Association, excepting architectural control, shall be the right and responsibility of its board of directors in accordance with the declaration and the by-laws; PROVIDED, HOWEVER, that all of the powers and duties of the Board of Directors may be exercised by the Declarant until such time as 75% of the lot have been sold and conveyed by the Declarant to purchasers or until January 2010, whichever occurs first. Management and control may be transferred to the lot owners at any time but no later than 36 months after the happening of either of the above events. The Developer may maintain architectural control until all lots have been sold, or until such control shall be expressly relinquished to the Association in writing, whichever occurs earliest.

ARTICLE V
COVENANTS AND ASSESSMENTS

Section 1 Creation of the lien and personal obligation for assessments. Each lot owner covenants and agrees to pay to the Association the following assessments (collectively the "assessments"):

- A. Annual assessments.
- B. Special assessments.
- C. Insurance assessments.
- D. Ad valorem Tax assessments.
- E. Working capital assessments.

These 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 charges are assessed. Such charges and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such lot at the time the assessment fell due. The personal obligation for delinquent assessments shall not

pass to the owner's successors in title unless expressly assumed by them, or a lien for such charges has been filed in the Office of the Clerk of Court of New Hanover County prior to transfer of title to such successor; however, such charges remain a lien on the Lot, in any event.

Section 2 Purpose Of Annual Assessments The annual assessments levied by the association shall be used to promote the recreation, health, safety and welfare of the owners and residents of the planned community and for the maintenance, repair, and replacement of the common elements, any limited common elements, any repairs or reconstructions of units required or allowed by this Declaration, and any retention/detention pond(s) located within the subdivision. The funds arising from said assessments of charges, may be used for, but is not limited to, any or all of the following purposes: Operations, maintenance and improvements of the common areas, including all private roads, streets and rights-of-way, and any limited common areas, 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 areas and limited common areas in good operating order and repair.

Section 3 Annual Assessments Annual assessments shall be in an amount to be fixed from year to year by the Board of Directors which may establish different rates from year to year as it may deem necessary for the purposes set forth in Section 2 above. The amount of the annual assessment against each lot for any given year shall be fixed at least 30 days in advance of the annual assessment period, provided, however that the first annual assessment shall be set prior to the conveyance of the first lot to an owner at or prior to the closing of their lots. Written notice of each annual assessment thereafter shall be sent to every owner subject thereto. The due date shall be established by the Board of Directors, and the Board of Directors shall have the authority to require the assessments to be paid in pro rata monthly 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 specific lot have been paid. The Initial Dues are set at \$300.00 per year, billed monthly, \$25.00 per month, or quarterly, \$75.00 per quarter.

At such time as a pool, clubhouse, or other improvements are constructed on the common area, the annual dues may increase.

Section 4 Initial Working Capital Assessment Each purchaser of a lot from the Declarant, or its successor, shall pay to the Association a Working Capital assessment of \$100.00.

Section 5 Special Assessments For Capital Improvement 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 purpose of defraying in whole or in part, the cost of any common area improvements or maintenance. Any such assessment shall

have the assent of two-thirds of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6 Insurance Assessments The Board of Directors on behalf of the Association as a common expense, shall at all times keep the property of the Association, if any, insured against loss or damage by fire or other hazards and other such risks, including, but not limited to, directors' liability and public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect the Properties and common area, which insurance shall be payable in case of loss to the Association for all the members. The Association shall have the sole authority to deal with the insurer in the settlement of all claims. Such insurance shall be obtained without prejudice to the right of each member to insure his personal property for his own benefit at his own expense. In no event shall the insurance purchased by the members or their mortgagees. The Association reserves the right to assess members in an amount sufficient to pay the cost of all such deductibles and insurance premiums not included as a component of the annual assessment. These insurance assessments shall include but are not limited to Ad valorem tax assessments.

Section 7 Rate of Assessment The Association may differentiate in the amount of Assessments charged when a reasonable bases for distinction exists, such as between vacant lots and those with completed structures which can legally be occupied, or when any other substantial difference exists between lots. However, Assessments must be fixed at a uniform rate for all lots similarly situated.

Section 8 Commencement of Assessments Assessments for each lot shall commence **upon the date of closing by an owner from the Declarant.**

Section 9 Effect of Nonpayment of Assessments and Remedies of the Association Any Assessment not paid within Thirty (30) days after the due date shall bear interest from the due date at the highest interest rate allowable by law. The Association may bring an action at law against the owner personally obligated to pay the same, and/or foreclose the lien against the property and may pursue any other legal or equitable remedy available. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common area or by abandoning his lot. 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 is left 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 New Hanover County. 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. The Trustee for such foreclosure shall be a person or entity appointed in writing by the Board or Officers of

the Association. Fees, charges, late charges fines, interest, reasonable attorney's fees, and other charges imposed pursuant to Sections 47F-3-102, 47F-3-107, 47F-3-107.1 and 47F-3-115 of the 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 tax lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of the 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, or other purchaser of a lot obtains title to the Lot as a result of foreclosure of a first mortgage or 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 or assigns.
- F. A claim of lien shall set forth the name and addresses 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.

ARTICLE V 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 Control Committee/Board of Directors/Executive Board All duties and responsibilities conferred upon the Architectural Control Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant shall own any Lot within the Property or any Additional Property. The Declarant shall be entitled, during the Declarant control period, to appoint and remove the officers and members of any Executive board.

Section 2 Plan of Planned Community The right to change, alter or redesignate 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 redesignate road, utility, stormwater, and drainage facilities and easements and to

change, alter or redesignate such other present and proposed amenities, common elements, or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable. The Declarant hereby expressly reserves unto itself, its successors and assigns, the right to replat any one (1) or more lots shown on the plat of any subdivision of the property of 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 combination shall be treated as one Lot for purposes of assessments); to eliminate from this declaration of 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 common area, as a public or private roads, or as 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. Declarant specifically reserves the right, but not obligation, to convert one Lot owned by the Declarant, or its successor, to Common Area for the subdivision.

Section 3 Amendment of Declaration by the Declarant. This Declaration may be amended without member approval by the Declarant, or the board of the Association, 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.
- C. To correct any obvious error or inconsistency in drafting, typing, or reproduction.
- 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 property or any Additional Property or to qualify the property or any additional property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency belonging to, sponsored by, or under the substantial control of the United States Governmental 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 the property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from the official of any such corporation or agency, including, without limitation, the Department of Veteran 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, provided that the changes made substantially conform to such request or suggestion. 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.

ARTICLE VI
USE RESTRICTIONS, ARCHITECTURAL CONTROL AND MAINTENANCE

Section 1 Architectural Control and Maintenance After the period of Declarant Control, the Association shall have the right and obligation to control the development and appearance in the Planned Community, subject to the following minimum guidelines:

A. Approval of plans for building and site improvements. No house plans will be approved unless the proposed house shall have a minimum 1000 square feet of enclosed heated square feet, which shall be the total enclosed area within a dwelling, provided, however, that such term does not include terraces, decks, open porches, and like areas, provided further, that shed-type porches, even though attached to the house are specifically excluded from the definition of the aforesaid term "heated square footage".

B. Since 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, no specific setback lines shall be established by this Declaration. 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 Declarant, and after the period of Declarant control, 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.

C. The exterior of all dwellings and other structures must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder, due to strikes, fires, national emergency, natural calamities, or complexity of design and construction.

* D. Fences shall be permitted on any Lot; provided, however, that the design, placement, and materials of any fence are approved by the Declarant, and after the period of Declarant control, by the Architectural Review Committee. No fence shall be permitted any further forward the front corners of the house on the

lot. No chain link fences may be visible from the streets that border the lot. Clotheslines are permitted on lots, however, no clothesline may be visible from the streets that border the lot upon which the clothesline is located.

E. Off street parking for not less than (2) two 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 Declarant, and after the period of Declarant control, by the Architectural Control Committee.

Need to amend to say no more than one car on street

F. The Declarant may, at its option, construct and install sprinkler systems upon some or all of the lots in the development. However after a lot with a sprinkler system has been conveyed by Declarant, it shall be the sole duty and responsibility of the lot owner to thereafter operate and maintain the said system in good operational order and repair, including the repair and replacement of all parts and materials for the irrigation wall and the entire system.

G. It shall be the continuing duty and responsibility of the lot owner to landscape and maintain their lawns and environment in the manner that has been approved by the Declarant, and after the period of Declarant control, by the Architectural Control Committee.

H. The Association reserves the right to rebuild any damaged homes within the property, in the event the owner does not, in order to continue with the conformity of the subdivision

I. 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.

Section 2 - Use Restrictions

A. LAND USE AND BUILDING TYPE No lot shall be used for any purpose other than residential purposes, subject, however, to the rights of the Declarant contained herein, and the right to convert lots to Common Area, or a lot for access to adjacent property. All numbered Lots are restricted for construction of one single family dwelling not to exceed two stories in height (plus such detached garages and other accessory buildings as may be approved in their sole discretion by the Declarant, and after the period of Declarant control, by the Architectural Control Committee).

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, or of other nature as may significantly diminish or destroy the enjoyment of other lots by the owners thereof. It shall be the responsibility of each owner to prevent the development of any unclean, unsightly or unkept 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.

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 whether temporarily or permanently without the written consent of the Declarant, and after the period of Declarant control, by the Association.

D. ANIMALS No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except domestic dogs and cats, or other household pets, provided they are not kept or maintained for commercial purposes, or in such numbers as to create a nuisance prohibited by B., above.

E. TELEVISION 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 Declarant, and after the period of Declarant control, by the Architectural Control Committee; provided, however satellite dishes under 18" in diameter which cannot be seen from the street are permitted.

F. EXTERIOR LIGHTS All light bulbs and other lights installed on any fixture located on the exterior of any building or any lot shall be of clear, white, non-frost or yellow bug bulbs.

G. SIGNS No signs (including "for rent" or "for sale" signs) shall be permitted on any lot or in the common area without permission of the Executive Board, provided, however the Declarant may, so long as it owns any lot, maintain for sale signs on Declarants lots and signs on its lots and in the common area generally advertising the planned community.

H. JUNK VEHICLES No inoperable vehicle will be permitted on the premises. The Association shall have the right to have all vehicles towed away at the owner's expense.

I. SUBDIVIDING Subject to any rights reserved by the Declarant herein, no lot shall be subdivided, or its boundary lines be changed except with the prior written consent of the Declarant during the Declarant control period and thereafter by the Board of Directors of the Association.

J. FENCING In order to maintain compliance with all stormwater permits, no fencing will be allowed on, or along, any drainage or access easement between any lot and any common area, conservation area, or recreation area without the express written consent of the Declarant.

K. IMPERVIOUS SURFACE No more than 2500 square feet of any lot shall be covered by structures or impervious materials. This allotted amount includes any built upon areas constructed within the property boundaries, and that portion of the road right-of-way between the front lot line and the edge of the pavement. Impervious materials include, but is not limited to, structures, asphalt, gravel, concrete, brick, stone, slate, coquina, parking areas, or similar material but do not include raised open wood decking or the water surface of swimming pools. Built upon area in excess of the permitted amount requires a state stormwater management permit modification prior to construction.

All runoff from the built upon areas on the Lot must drain into permitted systems. This may be accomplished through the use of roof drain gutters which drain to the street, grading the lot to drain toward the street, or grading perimeter swales to collect lot runoff and directing them into the stormwater system, or into the street. Lots that naturally drain toward the street are not required to provide these additional measures.

L. SWALES. Swales shall not be filled in, piped, or altered except as necessary to provide driveway crossing.


M. STORMWATER All permitted runoff from out parcels or future development shall be directed into the permitted stormwater control system. These connections to the stormwater control system shall be performed in a manner that maintains the integrity and performance of the system as permitted.

N. MECHANICS No mechanical or maintenance work shall be done on cars or other machinery or equipment in the front or side yard of any home, or in the street in front of any Lot.

O. BOATS AND RECREATIONAL VEHICLES Boats, recreational vehicles, and other similar vehicles shall only be parked on driveways or on pads, the design and location of which must be approved by the Declarant, and after the period of Declarant control, by the Architectural Review Committee, and may not be parked in the front or side yard, or in the street in front of any Lot.

99

- P. LEASES No property shall be leased for less than 6 months.
- Q. MODULAR AND MOBILE HOMES No modular or mobile homes shall be placed on any lot.
- R. WINDOW TREATMENTS Permanent window treatments must be installed on all new homes within 30 days of occupancy.
- S. EXTERIOR MAINTENANCE Each lot owner shall maintain the exterior of all buildings, walls, and other improvements on his lot in good condition and repair, and shall replace worn and rotten parts and shall regularly repaint all painted surfaces and shall not permit the roofs, rain gutters, downspouts, exterior walls, windows, doors, or other exterior portions of the improvements to deteriorate in an unattractive manner. The maintenance referenced herein may be supervised and regulated by the WINDSWEPT SUBDIVISION HOMEOWNERS ASSOCIATION, INC., as hereinafter provided and herein-after referenced as "the Association". In the event that the lot owner shall fail to comply with these maintenance requirements, the Association is hereby expressly authorized, and the lot owner hereby expressly agrees, that said maintenance and/or repair may be effected by the said Association with the expenses incurred for the same to be assessed against the individual lot owner as a special assessment and subject to the regulations regarding liens and assessments as herein set forth.

See  Amendment #1 11-21-08

→ T. ON STREET PARKING PROHIBITED

ARTICLE VII
STORMWATER/RUNOFF FACILITIES

Section 1 Transfer of 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 Declarant is not prohibited under DENR regulations from transferring the Stormwater Permit to the Association, the Association's Manager shall, without any vote or approval of Lot Owners, and within 10 days after being requested to do so, sign all documents required by DENR for the Stormwater Permit to be transferred to the Association. If the Association fails to sign the documents required by this paragraph, the Declarant shall be entitled to specific performance in the courts of North Carolina requiring that the Association Manager signs all documents necessary for the Stormwater Permit to be transferred to the Association. Failure of the Manager 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 Hold Harmless The stormwater retention/detention pond(s) and related facilities constitute Common elements/Area, and the Association is responsible for operation and maintenance of such. The Association shall indemnify and hold

harmless the Declarant, its successors and assigns, from any obligation and costs for operation and maintenance under the stormwater permit after the permit is transferred to the association, as provided for above

ARTICLE VIII
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 lot and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, as the declaration may be amended from time to time, and all Rules and Regulations set by the Declarant, or Executive Board after the period of Developer Control. 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 as 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 amended or terminated by the Lot Owners.

Section 2 Miscellaneous Failure by the association, 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 VIII
RIGHTS OF INSTITUTIONAL LENDERS

Institutional lender or Institutional lenders as the term is used herein, shall mean and refer to banks, savings and loans, savings banks, insurance companies, the veteran's administration, the Federal Housing Authority, the Federal National Mortgage Association, and other reputable mortgage lenders, guarantors, and insurers of such first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any lot, or shall be the owner of any lot, such Institutional Lender or lenders shall have the following rights.

- A. To be furnished with at least one copy of the Annual Financial statement and report of the association, including a detailed statement of annual carrying charges or income collected and operating expenses, such financial statement and report to be furnished by April 15th of each calendar year.
- B. To be given notice of the association of the call of any meeting of the membership to be held for the purpose of considering any proposed

Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.

- C. To be given notice of default in the payment of assessments by an owner of a lot encumbered by a mortgage held by the institutional lender or lenders, such notice to be given in writing and to be sent to the principle office of such Institutional lender or lenders, or to the place which it or they may designate in writing to the Association.
- D. To inspect the books and records of the Association and the Declaration, bylaws and any rules and regulations during normal business hours, and to obtain copies thereof, for a reasonable copying fee.
- E. To be given notice by the Association of any substantial damage to any part of the common area.
- F. To be given notice by the association if any portion of the common area is made the subject matter of any condemnation of eminent domain proceedings or is otherwise sought to be acquired by a condemning authority.

ARTICLE IX GENERAL PROVISIONS

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

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

Section 3. Amendment of Covenants. Except as otherwise provided in these Covenants, the terms herein may not be amended during the period of Developer Control. After the period of Developer Control the terms herein may not be amended unless seventy five percent (75%) of the Lot Owners agree to such amendment at a meeting duly called for the purpose of voting on such changes. Any amendment approved shall be evidenced by a writing setting out such amendment, which shall be signed by all Lot owners approving, and which writing shall be recorded in the Registry of New Hanover County. In no event shall any amendment be effective to remove or modify any of the Declarant's rights without the written approval of the Declarant.

IN WITNESS WHEREOF, CB WINDSWEPT, LLC, the Declarant has caused this instrument to be executed by its duly authorized Member/Managers(s), all the day and year first above written.

CB WINDSWEPT, LLC

By: SOUTHEASTERN ENTERPRISES, INC., Member - Manager

By: [Signature]

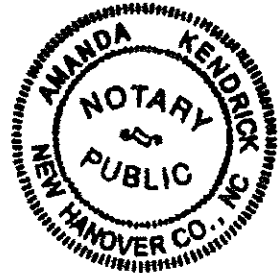
Its: President

STATE OF NORTH CAROLINA COUNTY OF NEW HANOVER

I, Amanda Kendrick, a Notary Public in and for the aforesaid State and County of New Hanover, do hereby certify that Matthew T. Murphy came before me this day and acknowledged that he is PRESIDENT of SOUTHEASTERN ENTERPRISES, INC., the Member/Manager of CB WINDSWEPT, LLC, a North Carolina Limited Liability Company, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by him as its president of the Member/Manager.

Witness my hand and official stamp or seal, this the 4th day of January, 2006.

Amanda Kendrick
Notary Public
My commission expires: 7-14-07





REBECCA P. SMITH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 01/04/2006 03:14:52 PM
Book: RE 4961 Page: 876-894
Document No.: 2006000540
DECL 19 PGS \$65.00
Recorder: STORER, MARVIS ANN

State of North Carolina, County of New Hanover

**YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.**

2006000540

2006000540

3
OK



FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
2006 JUN 09 02:28:13 PM
BK:5034 PG:2771-2773 FEE:\$17.00

INSTRUMENT # 2006032921

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

**AMENDMENT TO DECLARATION
WINDSWEPT SUBDIVISION
PHASE 1 SECTION 2**

THIS AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WINDSWEPT SUBDIVISION, is made on this the 8th day of June, 2006, by **CB WINDSWEPT, LLC**, a North Carolina Limited Liability Company, hereinafter referred to as "DECLARANT"; and

W I T N E S S E T H:

WHEREAS, DECLARANT has previously caused to be recorded a Declaration of Covenants, Conditions And Restrictions For Windswept Subdivision, hereinafter referred to as "DECLARATION", recorded in Book 4961 beginning at page 876 in the New Hanover County Register of Deed Office; and

WHEREAS, DECLARANT reserves the right in Article I, Section 5, to amend the said DECLARATION to include additional properties to Windswept Subdivision, and, in Article V, Section 2 to re-designate roads; and

WHEREAS, CB WINDSWEPT, LLC is still the holder of all Declarant rights contained in the said Declaration and Amendment; and

WHEREAS, DECLARANT now desires to incorporate additional property to Windswept Subdivision, and to specifically designate all roads and streets as being Public, as provided for above.

NOW THEREFORE, Declarant does hereby amend the Declaration for Windswept Subdivision by including within the jurisdiction of the property covered by the said restrictions, as amended, that property more particularly described by that plat recorded in the New Hanover County Registry in Map Book 49 beginning at Page 318, incorporated herein by reference, which property shall be known as Phase 2, Windswept Subdivision.

DRAWN BY: CALDER & CALDER, ATTORNEYS

RETURN TO: CALDER & CALDER, ATTORNEYS

FURTHER THEREFORE, all roads and streets in Windswept, all Phases and Sections are, and will be Public Roads and Streets, yet will be maintained by the Windswept Homeowners Association until and unless that responsibility is accepted by another entity.

FURTHER THEREFORE, the said Phase 2 is subject to all of the terms and conditions contained in the original restrictions recorded in Book 4961 at Page 876, and following, and all amendments, re-recordings, and supplements thereto, specifically including that Conservation Declaration Amendment to be recorded.

Except as specifically amended above, the Declaration remains in full force and effect, unchanged.

The Declarant has caused this document to be executed in its name by its duly authorized Member/Manager, this the day and year first above written.

CB WINDSWEPT, LLC

By: 

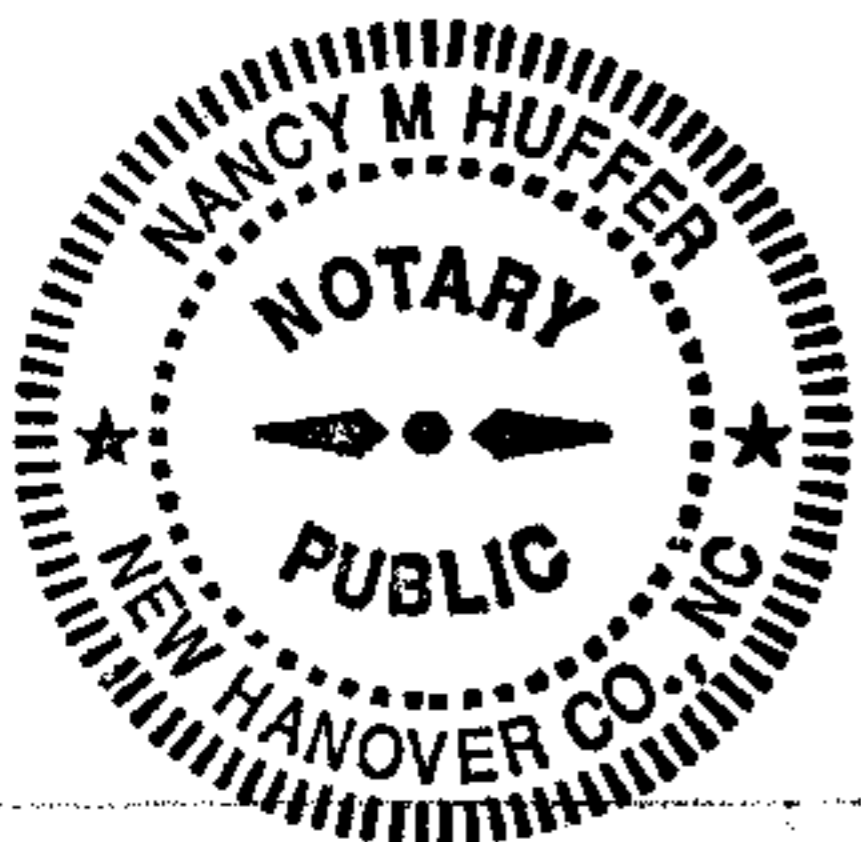
Its: member

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, a Notary Public of the County and State aforesaid, certify that Matt Murphy personally came before me this day and acknowledged that he is member of **CB WINDSWEPT, LLC**, a North Carolina Limited Liability Company, and that by authority duly given and as the act of the Limited Liability Company, the foregoing instrument was signed in its name.

Witness my hand and official stamp or seal, this 8 day of June, 2006.



Nancy M. Huffer
Notary Public

My Commission Expires: 3-17-2007



REBECCA P. SMITH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 06/09/2006 02:28:13 PM
Book: RE 5034 **Page:** 2771-2773
Document No.: 2006032921
AMEND 3 PGS \$17.00
Recorder: PHELPS, MICAH

State of North Carolina, County of New Hanover

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PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.**

2006032921

2006032921

2006



FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
2006 NOV 14 11:55:23 AM
BK:5104 PG:2323-2325 FEE:\$17.00

INSTRUMENT # 2006063067

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

AMENDMENT TO DECLARATION
WINDSWEPT SUBDIVISION
PHASE 2

THIS AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WINDSWEPT SUBDIVISION, is made on this the 14 day of November, 2006, by **CB WINDSWEPT, LLC**, a North Carolina Limited Liability Company, hereinafter referred to as "DECLARANT"; and

WITNESSETH:

WHEREAS, DECLARANT has previously caused to be recorded a Declaration of Covenants, Conditions And Restrictions For Windswept Subdivision, hereinafter referred to as "DECLARATION", recorded in Book 4961 beginning at page 876 in the New Hanover County Register of Deed Office; and

WHEREAS, DECLARANT reserves the right in Article I, Section 5, to amend the said DECLARATION to include additional properties to Windswept Subdivision, and, in Article V, Section 2 to re-designate roads; and

WHEREAS, CB WINDSWEPT, LLC is still the holder of all Declarant rights contained in the said Declaration and Amendment; and

WHEREAS, DECLARANT now desires to incorporate additional property to Windswept Subdivision, and to specifically designate all roads and streets as being Public, as provided for above.

NOW THEREFORE, Declarant does hereby amend the Declaration for Windswept Subdivision by including within the jurisdiction of the property covered by the said restrictions, as amended, that property more particularly described by that plat recorded in the New Hanover County Registry in Map Book 50 beginning at Page 233, incorporated herein by reference, which property shall be known as Phase 2 of Windswept Subdivision.

Ret
Jami - 450-5605

FURTHER THEREFORE, all roads and streets in Windswept subdivision, all Phases and Sections are, and will be Public Roads and Streets, yet will be maintained by the Windswept Homeowners Association until and unless that responsibility is accepted by another entity.

FURTHER THEREFORE, the said Phase 2 Windswept is subject to all of the terms and conditions contained in the original restrictions recorded in Book 4961 at Page 876, and following, and all amendments, re-recordings, and supplements thereto.

Except as specifically amended above, the Declaration, as previously amended, remains in full force and effect, unchanged.

The Declarant has caused this document to be executed in its name by its duly authorized Member/Manager, this the day and year first above written.

CB Windswept, LLC
By: Southeastern Enterprises, Inc.,
Its: Member/Manager

By: [Signature] (SEAL)
Its: President

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

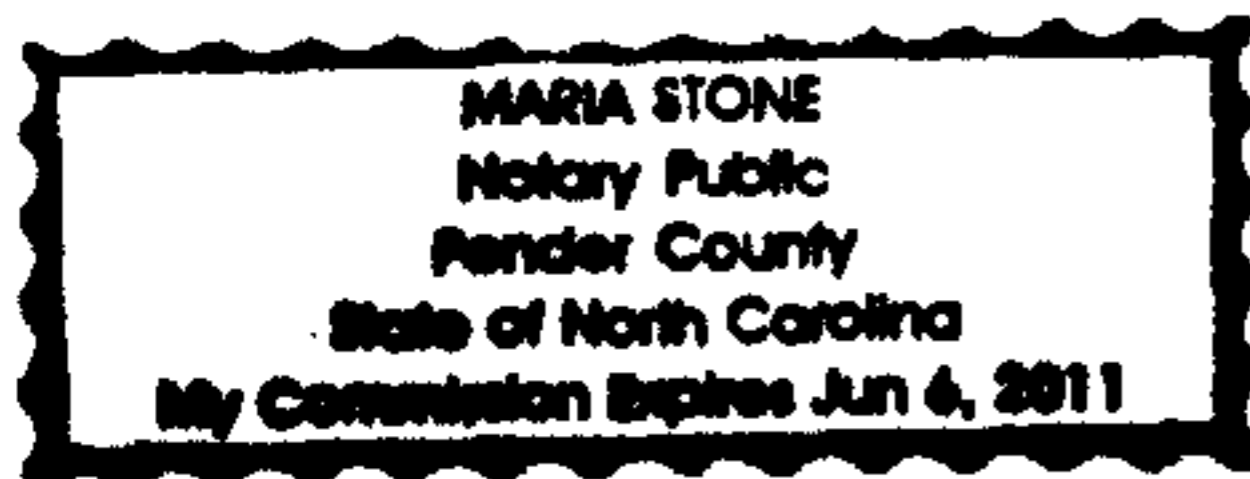
I, a Notary Public of the County and State aforesaid, certify that **Matthew T. Murphy** as **President** of Southeastern Enterprises, Inc., Member/Manager of CB Windswept, LLC personally appeared before me this day and acknowledged the voluntary execution of the foregoing instrument for CB Windswept, LLC, a North Carolina Limited Liability Company as its duly authorized member/manager for the purposes contained therein.

Witness my hand and official stamp on seal, this 25 day of October, 2006.

[Signature]
Notary Public

Printed name: Maria Stone

My Commission Expires: 6/6/2011





REBECCA P. SMITH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 11/14/2006 11:55:23 AM
Book: RE 5104 **Page:** 2323-2325
Document No.: 2006063067
AMEND 3 PGS \$17.00
Recorder: SCOTT, NANCY A

State of North Carolina, County of New Hanover

**YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.**

2006063067

2006063067



FOR REGISTRATION REGISTER OF DEEDS
JENNIFER H. MACNEISH
NEW HANOVER COUNTY, NC
2009 APR 16 11:12:06 AM
BK:5396 PG:2831-2834 FEE:\$20.00

INSTRUMENT # 2009013224

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

**AMENDMENT TO DECLARATION
WINDSWEPT SUBDIVISION
ALL PHASES AND SECTIONS**

DRAWN BY & RETURNED TO CALDER & CALDER, LLP, 703 ST JOSEPH ST, CAR.BCH.

THIS AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WINDSWEPT SUBDIVISION, is made on this the 21st day of November, 2008, by **CB WINDSWEPT, LLC**, a North Carolina limited liability company, hereinafter referred to as "DECLARANT"; and

WITNESSETH:

WHEREAS, DECLARANT has previously caused to be recorded a Declaration of Covenants, Conditions And Restrictions For Windswept Subdivision, hereinafter referred to as "DECLARATION", recorded in Book 4961 beginning at page 876 in the New Hanover County Register of Deed Office, and as amended from time to time; and

WHEREAS, the Declaration allows for amendments to be made to the Declaration; and

WHEREAS, a duly called Special Meeting was held on October 22nd, 2008; and

WHEREAS, at the Special Meeting an amendment as set out hereafter was approved in accord with the Declaration and Bylaws; and

WHEREAS, DECLARANT now desires to incorporate the amendment in the Declaration by recordation of this record of its approval.

NOW THEREFORE, the Declaration of Windswept Subdivision, all phases and sections, is hereby amended as follows:

A new paragraph is hereby added to Article VI, Section 2, as paragraph T, which paragraph is as follows:

T. **ON STREET PARKING PROHIBITED.**

There shall be no parking of vehicles, trailers or similar, except in garages, on driveways or on concrete approved pads permitted by the Homeowners Association (HOA), except as expressly permitted by the HOA in writing;

There shall be no parking of vehicles, trailers, or similar in any road, street, right of way or easement, except as expressly permitted by the HOA in writing;

Emergency service vehicles and public utility vehicles will be permitted to park on the streets;

Homeowners/Tenants will be required to apply with the Homeowners Association to register any guests or other person/entity that desire to be permitted to park on any street longer than 72 hours;

Any vehicles permitted to park on the street by the provisions mentioned above, shall not be parked parallel on the street with another vehicle at any time, and shall have the permit issued by the Homeowners Association clearly displayed.

During the period of Declarant control application to park on the streets shall be made to the Declarant.

The HOA has the right to have any vehicles parked in violation of this provision towed and stored at the owner's expense.

Except as specifically amended above, the Declaration, as previously amended, remains in full force and effect, unchanged.


The Declarant has caused this document to be executed in its name by its duly authorized Member/Manager, this the day and year first above written.

CB WINDSWEPT, LLC

By: SeCof, LLC – Member/Manager

By: Southeastern Properties, Inc – Member/Manager

By:


Matthew T. Murphy

Its: President

ACKNOWLEDGMENT IS ON FOLLOWING PAGE

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

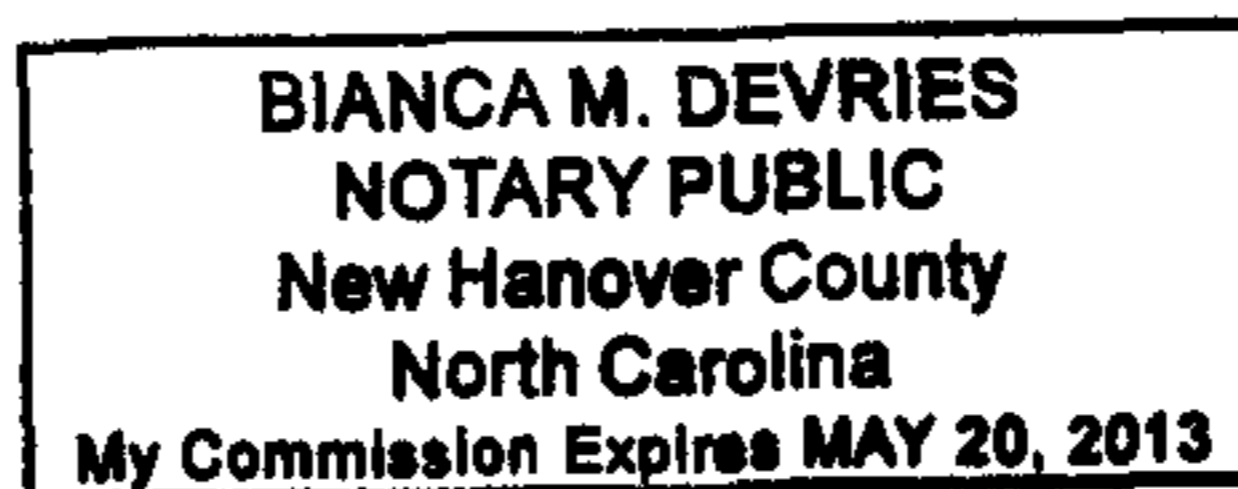
I, a Notary Public of the County and State aforesaid, certify that **Matthew T. Murphy**, as **President of Southeastern Enterprises, Inc., Member/Manager of SeCof, LLC, Member/Manager of CB Windswept, LLC** personally appeared before me this day and acknowledged the execution of the foregoing instrument for **CB Windswept, LLC, a North Carolina limited liability company** as its duly authorized Member/Manager.

Witness my hand and official stamp or seal, this 21st day of November, 2008.

Bianca M. Devries
Notary Public

Printed name: Bianca M. Devries

My Commission Expires: 5/20/2013





JENNIFER H. MACNEISH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 04/16/2009 11:12:06 AM

Book: RE 5396 Page: 2831-2834

Document No.: 2009013224

4 PGS \$20.00

Recorder: CRESWELL, ANDREA

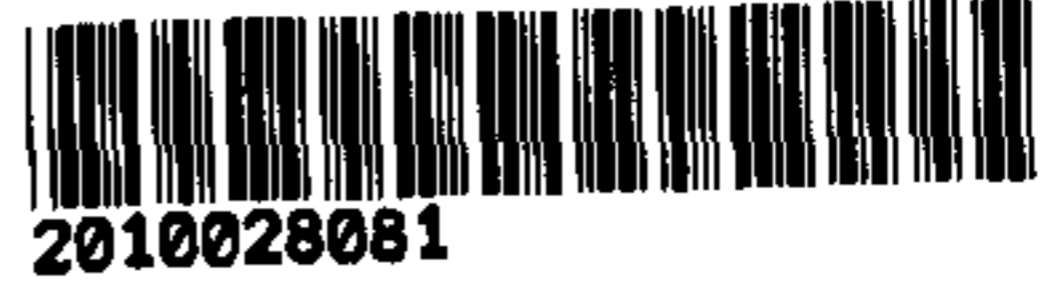
State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

2009013224

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19
68



FOR REGISTRATION REGISTER OF DEED:
JENNIFER H. MACNEISH
NEW HANOVER COUNTY, NC
2010 OCT 07 08:43:49 AM
BK:5516 PG:742-761 FEE:\$68.00

INSTRUMENT # 2010028081

STATE OF NORTH CAROLINA

DECLARATION OF
WINDSWEPT TOWNHOMES
PHASE 3 WINDSWEPT SUBDIVISION

COUNTY OF NEW HANOVER

THIS DECLARATION, made this 30 of September, 2010, by CB WINDSWEPT, LLC, hereinafter called "Declarant" (whether one or more persons, firms or corporations). The designation Declarant 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.)

Some of the following Covenants are intended to insure ongoing compliance with North Carolina State Stormwater Management Permit Number SW8 050627, as issued by the Division of Water Quality under NCAN 2H.1000. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit. The covenants are to run with the land and be binding on all persons and parties claiming under them. 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. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality.

WITNESSETH:

WHEREAS, DECLARANT has previously caused to be recorded a Declaration of Covenants, Conditions And Restrictions For Windswept Subdivision, hereinafter referred to as "the DECLARATION" or the "MASTER DECLARATION", recorded in Book 4961 beginning at page 876 in the New Hanover County Register of Deed Office; and

WHEREAS, DECLARANT reserves the right in Article I, Section 5, to amend the said DECLARATION to include additional properties to Windswept Subdivision, and, in Article V, Section 2 to re-designate roads; and

WHEREAS, CB WINDSWEPT, LLC is still the holder of all Declarant rights contained in the said Declaration and Amendment; and

* Windswept

WHEREAS, DECLARANT now desires to incorporate additional property to Windswept Subdivision, and to specifically designate all roads and streets as being Public, as provided for above.

NOW THEREFORE, Declarant does hereby amend the Declaration for Windswept Subdivision by including within the jurisdiction of the property covered by the said restrictions, as amended, that property more particularly described by that plat recorded in the New Hanover County Registry in Map Book _____ beginning at Page _____, incorporated herein by reference, which property shall be known as Phase 3 of Windswept Subdivision. Except as specifically amended or excluded herein, those Covenants, Conditions And Restrictions for Windswept Subdivision recorded in Book 4961 beginning at page 876, as previously amended, shall apply to the property that is the subject of this instrument.

FURTHER THEREFORE, Declarant hereby submits said property to TOWNHOMES ownership pursuant to Chapter 47F of the General Statutes of North Carolina as amended, known as the "Planned Unit Development Act" (herein the "Act"), and to that end does hereby publish and declare that all of the said property to be known as "WINDSWEPT TOWNHOMES" which shall be held, sold, and conveyed subject to the terms and provisions of the Act, the terms and provisions of which shall apply hereto and control, except as herein modified by the following easements, restrictions, covenants, conditions, uses and obligations which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

Unless it is plainly evident from the context that a different meaning is intended, the following words and terms shall have the following meanings:

A. Act. The North Carolina Planned Unit Development Act, Chapter 47F of the North Carolina General Statutes.

B. Additional Properties. Shall mean and refer to any lands adjoining the Properties or within a one-mile radius thereof, which now are owned or may be hereafter acquired or developed by the Declarant and annexed to and made a part of the properties by the Declarant and subjected to this declaration. The annexation of such additional properties shall become effective by the recording in New Hanover County by the Declarant of an amended declaration for each new section annexed.

C. Allocated Interests. The undivided interests in the Common Elements, the Common Expense liability, and in the Association allocated to each Unit.

D. **Assessment.** A share of the funds required for the payment of Common Expenses that from time to time is assessed against the Unit Owner by the Association.

E. **Master Association.** The non-profit incorporated Association known as WINDSWEPT HOA, INC., the entity responsible for the operation of the Windswept Subdivision. Which Association shall be operated in the manner set forth in the Declaration, as amended from time-to-time.

F. **Sub-Association.** An unincorporated group comprised of the owners of the Townhouse Lots whose purpose is to decide all matters relating to maintenance and upkeep of the Townhomes and Townhome common area. One vote on such matters shall be allocated to each Townhome lot, except that the Declarant shall have 3 votes for each Townhome lot it owns. All decisions shall be by simple majority of the vote of all Units.

G. **Building.** All structures and improvements now or hereafter erected upon the property.

H. **Common Elements or Common Areas.** Shall specifically include all the roads and streets, and any and all areas so designated on the plat(s) of the townhome development. Each Townhome lot shall be assessed an amount, set annually, for repair, maintenance and reserves for road repairs; this amount shall be the same amount assessed to each lot in other phases of Windswept Subdivision.

I. **Common Expenses.** Expenditures made by or financial liabilities of the Associations, together with any allocations to reserves. It is expressly understood and agreed that expenses relating solely to the Townhome section(s) shall be accounted for separately on the books of the Master Association.

J. **Common Expense Liability.** The liability for Common Expenses allocated to each Townhome Unit pursuant to the Act, this Declaration, and the By-Laws, if applicable.

K. **Townhome.** The real estate parcels that are designated as such for separate ownership and the Limited Common Area associated with each Townhouse.

L. **Townhome Documents.** The Declaration and this Declaration and the Rules and Regulations, if any, and all other Exhibits attached hereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents shall be amended from time to time.

M. **Declarant.** CB Windswept, LLC, its grantees, successors and assigns.

N. **Declaration.** This Instrument as it may be from time to time amended or supplemented.

O. **Development Rights.** Among those rights hereby reserved by the Declarant are to add additional phases to the development, to make additions to or to change the

configuration of the Townhome Units and to change or revise the Common Elements or Limited Common Expenses within the townhome development.

P. Limited Common Elements or Limited Common Areas. These terms shall be used interchangeably to mean and refer to those portions of the Common Elements that are allocated as such for the exclusive use of a particular Unit, as more specifically defined herein, if any.

Q. Property or Townhome Property. The real estate described above, together with the Buildings and improvements located thereon, and such additional properties as may be subsequently subjected to this Declaration by Supplemental Declaration in the manner herein provided.

R. Supplemental Declaration. A document filed by Declarant to change the configuration of the Townhome Units and to change or revise the Common Elements or Limited Common Elements within the Townhome Development in the manner provided herein, or to add additional properties as may be subsequently subjected to this Declaration by Supplemental Declaration.

S. Unit or Townhome Unit. A part of the Property that is to be subject to private ownership, as designated on the exhibits attached to this Declaration and as further defined in the Act. This terms are synonymous with Lot or Townhome Lot and Townhouse Lot or Townhouse Unit.

T. Unit Owner or Owner. A person or entity, or any combination thereof, that owns a Unit. These terms are synonymous with Lot Owner or Townhome Lot Owner.

U. Plats or Plans: the plats and plans required to be filed with the New Hanover County Register of Deeds, including those plats or plans for the Townhomes entitled "WINDSWEPT TOWNHOMES" being duly recorded in Map Book ____ beginning at Page ____ of the New Hanover County Registry, as the same may amended from time to time.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

A. Declarant submits only that portion of the land described above upon which Phase 3 of Windswept Subdivision is to be constructed. Nevertheless, Declarant hereby reserves the right and option, but not the obligation, to expand the property subject to this Declaration by adding all or any portion or portions of the land described in Exhibit "A-1" to the coverage of this Declaration. The Developer also retains the right to add contiguous, or nearly contiguous, tracts to the project at its sole discretion, in which case the maximum number of units would be increased.

Any extension shall occur, if at all, by the recordation of one or more amendments to this Declaration and one or more supplementary plats as required by law. Each amendment to the Declaration shall be called a "Supplemental Declaration" or "Amended Declaration" and shall be executed by the Declarant or its successors and assigns. The recordation of any such supplemental declaration and expansion of the property subject to this Declaration effectuated thereby, shall not require consent or ratification of any unit owner.

The real property that is, and shall be submitted to this Declaration is that real estate shown on that plat recorded in Plat Book _____, at Page _____ of the New Hanover County Registry.

B. Additional Properties may be annexed to and made a part of the properties by the Declarant and subjected to this declaration in multi additions. The annexation of such additional properties shall become effective by the recording in New Hanover County by the Declarant of an amended declaration for each new section annexed.

C. The Common Areas, Common Elements, and facilities, if any, are shown upon the Plats and Plans recorded in Map Book _____ Page _____ of New Hanover County Registry. All roads and streets are Common Area.

D. The Limited Common Expenses and facilities, if any, are also shown on the Plats and Plans of the Property recorded in Map Book _____, Page _____ of the New Hanover County Registry.

E. Each Unit shall be conveyed and treated as an individual Property capable of independent use and fee simple ownership, and the Unit Owners of each Unit shall also own, as an appurtenance to the ownership of each said Unit conveyed, a equal prorata undivided interest in the Common Areas.

F. Limited Common Elements and facilities may be shown on the aforesaid-recorded plat of the Property as recorded in the New Hanover County Registry. Each Unit Owner will have the exclusive right to use of the Limited Common Elements designated for use by each Unit.

ARTICLE III USE RESTRICTIONS

Except as amended or replaced herein, or necessarily altered by the terms of this Declaration, those restriction set out in Article VI Section 2 of the said Declaration recorded in Book 4961 beginning at Page 876 are incorporated herein by reference. The use of the Property shall be in accordance with the following provisions:

A. Each of the Units shall be occupied only for residential purposes, including vacation rentals. No Unit may be divided or subdivided into a smaller Units nor any portion thereof sold or otherwise transferred without the consent of all Unit Owners and compliance with the Act.

B. No Unit owner or resident, including tenants, guests and invitees, may keep or store a junk vehicle on the premises, Common Area or Limited Common Area.

C. No Unit owner or resident, including tenants, guests and invitees, may use any golf course adjacent to the development except in full compliance with the applicable membership requirements, fees, rules and regulation for that golf course.

D. The Common Elements, Common Areas, Limited Common Areas and facilities shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Unit.

E. No use or practice shall be permitted in the Townhome Development that reasonably could be considered the source of annoyance to residents or interfering with the peaceful possession and proper use of the Property by its residents. All parts of the Property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate, nor any fire hazard allowed to exist. No Owner shall permit any use of his/her Unit or of the Common Elements that will increase the rate of insurance upon the Townhome Development Property or any part thereof. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Rental of less than the whole unit is prohibited.

F. Reasonable regulations concerning the use of the Townhome Development Property may be made and amended from time to time by the Unit Owners' Association of WINDSWEPT (herein referred to as the "ASSOCIATION").

G. Each Unit Owner shall maintain, repair and replace, at is or her own expense, all portions of his or her Unit and associated Limited Common Area, except as may be otherwise provided in this Declaration.

H. No Unit Owner shall alter any Common Elements without the prior written consent of all members of the ASSOCIATION. Except as allowed herein, no Unit Owner shall fix any object to the Common elements or in any manner change the appearance of the Common Elements without first obtaining the written consent of the ASSOCIATION.

I. Converting any Unit to timeshare unit ownerships, per Chapter 93A of the North Carolina General Statutes or any successor statute, or other forms of fractional ownership, is expressly prohibited within the Townhome Development.

J. No animals, livestock or poultry of any kind shall be raised, bred, kept or maintained on any Unit or in any dwelling except certain domestic household pets, such as may be otherwise provided by rules and regulations approved all members of the ASSOCIATION. The rules and regulations may regulate, permit or prohibit the kind and number of domestic household pets. Domestic household pets may not be raised, bred, kept or maintained for any commercial purposes. All household pets shall be kept on a leash at all times when outside the Unit, unless in a fenced in area, and animal waste must be

immediately removed. Such pets may not be permitted to run at large at any time. Owners of pets on the Property shall control excessive barking or other disturbances caused by the pets.

K. Unit Owners shall not park or store any camper, trailer, boat trailer, trailer vehicle, or similar vehicle anywhere on the Property. No trucks shall be permitted except for standard 2-ton pickup trucks, or smaller sized trucks. All tools or other materials stored in vehicles for overnight parking shall be kept out of sight. No striped, wrecked or partially wrecked, or junk motor vehicle or part thereof, or any motor vehicle not displaying a current valid inspection sticker shall be permitted to be parked or kept on the Property

L. No burning of wood, leaves, trash, garbage or household refuse or burning as a means of clearing brush shall be permitted on the Property.

M. Garbage and trash shall be disposed by Unit Owners in accordance with rules and regulations approved by all members of the Association.

N. No laundry or wash shall be dried or hung outside any Unit, unless within fenced in areas.

O. There shall be no obstruction of the Common Elements that prohibits maintenance of any utilities located therein.

P. In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Elements is caused through or by the negligent or willful act or omission of a Unit Owner, or by any member of a Unit Owner's family, guests, invitees, licensees, agents, occupants, users, or tenants, then the expenses incurred by the ASSOCIATION for such maintenance, repair, or replacement shall be a personal obligation of such Unit Owner. If the Unit Owner fails to repay the expenses incurred by the ASSOCIATION within 30 days after notice to the Unit Owner of the amount owed, then the failure to so repay shall be a default by the Unit Owner under the provisions of this Section, and such expenses shall automatically become a Default Assessment enforceable in accordance with Article IX herein.

Q. There shall be no parking of any vehicle, trailer, or similar, in the streets, rights-of-way or easement areas. All parking shall be limited to garages and driveways. No vehicle, trailer, or similar, may be parked so as to block any sidewalk, if any.

R. The Developer, and after the period of Developer control, the Association, shall have exclusive control over any yard decorations in any front or side yards. No such decorations shall be allowed without the approval of the Developer, and after the period of Developer control, the Association.

S. The maximum built upon area ("BUA") per lot, in square feet, is as follows:

Lot #	BUA	Lot #	BUA
84	2,500	85-100	2,211

This allocated 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 payment. 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.

T. Each lot will maintain a 50' vegetated buffer between all impervious area and surface waters.

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

V. Except as specifically provided herein, the general laws relating to Party Walls and negligent damage to property shall apply.

ARTICLE IV EASEMENTS

A. All Common Elements are hereby subjected to an easement for the repair, maintenance, expansion, reduction, inspection, removal, relocation or other service of or to all gas, electricity, television, telephone, water, plumbing, sewer, utility, drainage or other lines or other Common Elements, whether or not the cause of any or all to those activities originates in the Unit in which the work must be performed.

C. Easements are hereby declared and granted, and the Board may hereafter declare, grant or assume easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, gas mains, telephone and television wires and equipment and electrical conduits, and wires over, under, along and on any portion of the Common Area.

D. All easements and rights described herein are easements appurtenant, and shall run with the land by whomsoever owned, and shall inure to the benefit of and be binding on the undersigned, their successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement 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.

E. The Declarant reserves the right to subject the real property in this subdivision to a contract with Progress Energy, or similar Utility provider, for the installation of street lighting, which contract requires a continuing monthly payment to Progress Energy, or similar Utility provider, by each residential customer.

F. An easement is hereby granted to all police, fire protection, ambulance and similar persons, companies or agencies performing emergency services, to enter upon the Units and Common Areas, and Limited Common Areas in the performance of their duties.

ARTICLE V
ENFORCEMENT

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

B. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any of the other provisions that shall remain in full force and effect.

ARTICLE VI
NOTICE

The name and address of the initial process agent to receive service of process in any matters affecting the Property is as follows:

Kenneth R. Coffey
1202 North Lake Park Blvd., Ste A
Carolina Beach, New Hanover County, NC 28428

The process agent may be changed by recording in the New Hanover County Registry a memorandum of change signed by the then acting process agent.

ARTICLE VII
TAXES

Each individual Unit and its undivided interest in the Common Elements and facilities shall be deemed to be a separate parcel and shall be separately assessed and taxed for all types of taxes authorized by law, including but not limited to special ad valorem levies and special assessments. Each Unit Owner shall be liable solely for the amount of taxes against his individual Unit and Undivided Interest in the Common Elements and facilities and shall not be affected by the consequence resulting from the tax delinquency of any other Unit Owner. Neither the Townhomes Property, nor any of the Common Elements and facilities may be deemed to be a separate parcel for the purpose of taxation.

ARTICLE VIII
INSURANCE

The Association shall maintain, to the extent available, casualty insurance upon the Townhome Property in the name of, and the proceeds thereof shall be payable to, the Association, as trustee for all Townhome Unit Owners and Mortgagees as their interests may appear, and be disbursed as set out herein. Such insurance shall be in an amount equal to not less than one hundred percent (100%) full insurable value of the Property on a replacement cost basis exclusive of land, excavations, foundations and other items normally excluded from property policies, and shall insure against such risks and contain such provisions as the Board from time to time shall determine, or as may be required by the Federal Housing Administration, Veterans Administration or Federal National Mortgage Association.

The Association shall maintain public liability insurance for the benefit of the Townhome Unit Owners, Occupants, the Association, the Board, the managing agent, if any, the Declarant, and their respective officers, directors, agents and employees, in such amounts and with such coverage as shall be determined by the Board; provided that the public liability insurance shall be for at least One Million Dollars (\$1,000,000) per occurrence for death, bodily injury and property damage. Said insurance shall comply in all respects to the requirements of the Act and shall contain a severability-of-interest endorsement precluding the insurer from denying liability because of negligent acts of any insured; insure all of such benefited parties against such liability arising out of or in connection with the use, ownership or maintenance of the Common Elements, and the streets, sidewalks and public spaces adjoining the development; and insure the Association, the Board, the manager, if any, and their respective officers, directors, agents and employees against such liability arising out of or in connection with the use or maintenance of the Units.

If available at reasonable cost, fidelity coverage shall be maintained by the Association in commercial blanket form covering each director and officer of the Association, any employee or agent of the Association and any other person handling or responsible for handling funds of the Association in the face amount of at least the greater of (i) one and one-half (1-1/2) times the estimated annual operating expenses and reserves of the Association, or (ii) the sum of three months' aggregate assessments on all Units plus the Association's reserve funds. Such bonds shall contain an appropriate endorsement to cover persons who serve without compensation. The premium on such bonds shall be a Common Expense.

All contracts of property insurance on the Townhome property purchased by the Association shall be for the benefit of all of the Unit Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association or its authorized representative as insurance trustee under this Declaration. Each Unit Owner and his mortgagee, if any, shall be beneficiaries of each insurance policy in the percentage of the Unit Owner's undivided interest in the Townhome Development whether or not stated therein. The sole duty of the Association or its authorized representative as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust

for the purposes stated herein. Proceeds of master insurance received by the insurance Trustee shall be distributed to or for the benefit of the beneficiaries in the following manner:

- (i) Proceeds shall be first paid to cover the cost of reconstruction and repair of any damage covered.
- (ii) Proceeds shall then be paid to the Trustee to reimburse it for cost reasonably incurred in discharging its duties as Trustee; and
- (iii) Any remaining proceeds shall then be distributed to beneficiary or beneficiaries of the trust, as their interests may appear.

ARTICLE IX ASSESSMENTS

Assessments against Unit Owners by the Board of Managers made pursuant to the Master Declaration and this Declaration shall, if not paid when due, create a lien in favor of the ASSOCIATION against the Unit of the defaulting owner as provided in Chapter 47F, both of the North Carolina General Statutes, and shall be collectible as provided therein.

There will be a Working Capital assessment of Two Hundred Fifty Dollars (\$250.00) and a prorata share of the current monthly assessment due, all due at the closing of the initial purchase of each Unit from the Developer.

Regular assessments shall be established for: 1) upkeep of all of the grounds of Phase 3 of the development, including, but not limited to all yards except those enclosed within fencing for the exclusive use of a particular Unit; 2) the upkeep and maintenance of signage and common area of Phase 3; 3) upkeep and reserves for maintenance of the exterior of the dwelling structures, excluding glass, of Phase 3; and 4) any Master Insurance policy premiums as required or allowed by the Article VIII hereof. The roads within Windswept (all Phases) shall be maintained by the Association for the benefit of all of Windswept, now Phase 1 Sections 1 and 2, and Phase 2, and the Unit Owners in the Townhomes section shall pay to the Association an additional assessment for 1) upkeep and reserves for maintenance of the roads and streets within Windswept development (all Phases); 2) upkeep and reserves for maintenance of the trails, walks, and sidewalks within the development, if any, per the Master Declarations (all Phases); 3) any and all utilities to the general Common Areas; and such other reserves and common expenses as may be determined by the Declarant, and after the period of Declarant control, the Association; this assessment is initially set at \$300.00 per unit per year per Lot and Unit, and will be determined by the Declarant, and after the period of Declarant control, the Association, and assessed equally on all Lots and Units.

Each Unit shall be assessed equally for regular and special assessments, except and unless a unit owner or unit owners are responsible for the need for the assessment, in which case those units may be separately assessed.

Special assessment liens may be created for any common expense that is not the sole responsibility of the Owner of a Unit. Special assessments may arise for maintenance of utilities located in the Common Area. However, if the need for the maintenance arises due to the actions, or in actions, of one Unit Owner, that Unit Owner shall be solely responsible for the costs of repair.

Each Unit shall have separate insurance for contents and personal property, separate water and sewer service, electricity, trash collection, telephone, cable, and other utility billings.

The lien created by this Article shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit shall not affect the lien of any assessment, except that the sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of any assessment against the Unit that first became due prior to such sale or transfer.

Fees, charges late charges, fines and interest charged pursuant to the Act and this Declaration are enforceable as assessments under the Section. If an assessment is payable in installments, the full amount of the assessment becomes immediately due and payable when the first installment thereof remains unpaid in such manner, and the full amount of the assessment shall constitute a lien from the time of such filing. The Association's lien may be foreclosed as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes of North Carolina. The Trustee for such foreclosure shall be a person or entity appointed by the Association.

All monetary fines, penalties, interest or other charges or fees levied against a Unit Owner pursuant to this Declaration, or any expense of the ASSOCIATION that is the obligation of a Unit Owner or that is incurred by the ASSOCIATION on behalf of the Unit Owner pursuant to this Declaration, and any expense (including without limitation attorneys' fees) incurred by the ASSOCIATION as a result of the failure of a Unit Owner to abide by this Declaration, constitutes a "**Default Assessment**," enforceable as provide in this Declaration below and in accordance with the Act. Any installment of an assessment, which is not paid when due, shall be delinquent. If such an assessment installment becomes delinquent, or if any Default Assessment is levied, the ASSOCIATION may unilaterally cause the ASSOCIATION to take any or all of the following actions in their sole discretion:

- (a) Assess a late fee for each delinquency equal to four percent (4%) of the amount due;
- (b) Charge interest from the date of delinquency at an interest rate equal to the lesser of (i) ten percent (10%) per annum or (ii) the maximum legal rate allowed in the state of North Carolina per annum (the "Default Rate");
- (c) Suspend the voting rights of the Unit Owner or the right of the Unit Owner to use any recreational amenity of the Townhomes, if any, during any period of delinquency;

(d) Accelerate all remaining assessment installations for the fiscal year in question so that unpaid assessments for the remainder of the fiscal year shall be due and payable at once;

(e) Bring an action at law against any Unit Owner personally obligated to pay the delinquent assessment charges;

(f) File a statement of lien with respect to the Unit and foreclose as set forth in more detail below.

(g) Assess a fine against the defaulting Unit Owner of up to \$150.00.

(h) Fees, fines, late charges, interest, reasonable attorneys charges, and other charges imposed by Sections 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 of the Act are enforceable as assessments.

Any assessment or portion thereof that is not paid when due shall be delinquent. If any delinquent assessment or any portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at the Default Rate and in addition, a late fee may be assessed as provided above. The Association may bring an action in the name of the ASSOCIATION (and at the expense of the ASSOCIATION) against the Unit Owner personally obligated to pay the same, and may foreclose the lien against the Unit in the same manner as provided in North Carolina for the foreclosure of deeds of trust, or both, and, in either event, interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. The ASSOCIATION may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments.

ARTICLE X

Additional Covenants and Easements

Maintenance of Townhouse Lots. The Association shall be responsible for performing, or causing to be performed, on behalf of the Owners of the Townhouse Units, the following:

(a) maintenance, including, mowing, fertilizing, watering, pruning, and replacing of, and controlling disease and insects on, as needed, all lawns and landscaping installed in the Townhouse Common Area as part of the initial construction on the Townhouse Lots and replacements thereof, except that the Association shall have no responsibility for lawns or landscaping within any Limited Common Area, or the rear yard of any Townhouse Lot if the yard has been enclosed by the addition fencing along the rear lot boundary; and

(b) the following maintenance of improvements erected or installed as part of the original construction on the Townhouse Lots, and replacements thereof:

(i) structural portions and exterior façade of the dwelling on each Townhouse Lot, including the foundation or slab;

(ii) painting of all exterior painted portions of any dwelling, including any exterior doors, shutters, fascia on the dwelling, and any fence erected along the Townhouse Lot boundaries as part of the original construction on the Townhouse Lots or replacements thereof ("**Boundary Fences**");

(iii) caulking of the exterior portions of all windows and doors:

(iv) repair and/or replacement, as necessary, of the roofs (including shingles and roof decking) of dwellings, including the roofs of any porches built as part of the original construction of the dwelling or replacements thereof;

(v) cleaning, repair and replacement of gutters and downspouts;

(vi) pressure cleaning, repair, and replacement of sidewalks, if applicable;

(c) repair and replacement, as necessary, of any front porch, stoop, patio or deck installed as part of the original construction on a Townhouse Lot;

(d) repair and replacement, as necessary, of any Boundary Fences:

(e) operation, maintenance, repair and replacement, as necessary, of any irrigation equipment (including, without limitation, any sprinklers, pumps, wells, water lines and time clocks, wherever located) serving the Townhouse Lots and Townhouse Common Areas, except that the Association shall have no responsibility for any sprinklers or other irrigation equipment installed by the Owner of occupant of any Townhouse Lot; and

(f) termite treatment of all exterior walls and foundations of a dwelling: provided, however, that the Association shall not be liable if such treatment proves to be ineffective.

Notwithstanding the above, the Board may, upon request of an Owner, permit the Owner to maintain landscaping within the rear yard of the Townhouse Lot, subject to the right of Association to reassume responsibility for such maintenance of any time if the Board determines, in its judgment, that the Owner is not maintaining such landscaping to the Townhouse Community-Wide Standard. If the Board permits an Owner to maintain landscaping within the rear yard of the Owner's Townhouse Lot, there shall be no reduction or abatement in the Service Area Assessments due on any Townhouse Lot hereunder by reason of the Owner providing such Maintenance.

The Association shall not be responsible for any maintenance or repairs to any chimney, fireplace, window or door (other than painting as provided above), anything contained within any dwelling, or any landscaping, improvements or modifications added or made to any Townhouse Lot after the conveyance of the Townhouse Lot to the first Owner following completion of the initial improvements thereon.

Maintenance of all other portions of the Townhouse Lots, including any landscaping or improvements installed by the Owners or occupants of any Townhouse Lot, shall be the responsibility of the respective Owners.

All maintenance on Townhouse Lots shall be performed in a manner and on a schedule consistent with the Community-Wide Standard.

ARTICLE XI
ARCHITECTURAL CONTROL

The Declarant, and after the period of Declarant Control, the Association, shall have the right and obligation to control the development and appearance in all Phases and Sections of the Planned Community.

ARTICLE XII
BINDING EFFECT

The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the ASSOCIATION or the owner of any Unit subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

ARTICLE XIII
AMENDMENT

This Declaration may be amended at any time and from time to time by an instrument in writing executed by the Declarant as long as Declarant owns no less than 20% of the Units, or by the holders of sixty-seven percent (67%) of the votes in WINDSWEPT Phase 3 and other Townhouse phases in Windswept subdivision, and any such amendment shall be effective upon the recording of such Amendment(s) in the Office of the Register of Deeds for New Hanover County.

The Master Declaration may be amended as specified therein.

The Declarant may amend this Declaration at any time prior to December 31, 2015, in order to add additional phases to the development.

The Declarant, its successors or assigns, may file Supplemental Declarations from time to time authorizing, approving, and detailing the reconfiguration, renovation and remodeling of the Units, Common Elements, and Common Areas. In the event of any disagreement between the owners of the Units as to what is fair, proper and appropriate and in order to prevent a stalemate which would result in a detriment to all concerned parties it is agreed that any dispute or disagreement that can't be settled to the satisfaction of both Unit Owners within thirty days will be submitted to binding arbitration in accordance with

Arbitration as set forth in North Carolina General Statute Chapter 1 Article 45C, the Revised Uniform Arbitration Act, and settled in that manner.

ARTICLE XIV
THE ASSOCIATION

A. Except as specified herein, the Association shall be organized and operated as specified in the Master Declaration.

B. **Membership.** Every Unit Owner shall be a member of the ASSOCIATION. Membership shall be appurtenant to and may not be separated from ownership of any Unit. No Unit Owner, whether one or more persons, will have ore than one membership per Unit owned, but all of the persons owning each Unit will be entitled to rights of membership and use and enjoyment appurtenant to such ownership.

C. **Voting Rights.** Except as otherwise provided herein, in the Master Declaration, or in the By-Laws, each Lot or Unit shall be entitled to vote in ASSOCIATION matters. When more than one person holds an interest in any Lot Unit, all such persons shall be members. The vote for such Unit shall be exercised by one person or alternative persons as the Unit Owners among themselves determine. If more than one of the multiple owners is present at a meeting in person or by proxy, the vote allocated to their Unit may be cast only in accordance with the agreement of a majority in interest of the owners as evidenced by a written designation filed with the secretary of the ASSOCIATION. There is a majority agreement if any of the multiple owners casts the vote allocated to his Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit.

D. **Officers.** The current officers of the Association are the President of the Association, Matthew T. Murphy, and the Secretary/Treasurer, Stephannie Covington.

ARTICLE XV
MISCELLANEOUS

A. No covenant, rule or regulation, other than those set forth herein, may be instituted that primarily affect only the Townhouse Units or Single Family Lots, unless the same are affirmatively approved by at least fifty-one percent (51%) of the affected Owners.

B. A separate budget shall be established for the Townhouse Units based upon the master insurance, maintenance of the buildings and grounds, and other expenses as required or allowed herein. The Association shall annually establish a budget, which budget shall be deemed approved unless 75% of the Townhome Owners object thereto at the annual meeting, or a meeting called for the purpose of reviewing and approving the budget. If a new budget is not ratified, the last preceding budget shall remain in effect until a new budget is approved.

IN TESTIMONY WHEREOF, the Declarant has caused this document to be executed this the 01st day of October, 2010.

DECLARANT:

CB WINDSWEPT, LLC

By: Bermlac, Inc., Member - Manager

By: [Signature]

Its: Member - manager

STATE OF NORTH CAROLINA

COUNTY OF New Hanover

I, a Notary Public in and for the aforesaid State and County of E. Craig Parker, do hereby certify that Ken Coffey came before me this day and acknowledged that he is member-manager of BERMLAC, INC., the Member/Manager of CB WINDSWEPT, LLC, a North Carolina Limited Liability Company, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by him as its president of the Member/Manager.

This the 1st day October, 2010.

E. Craig Parker
Notary Public

Name: E. Craig Parker
My Commission Expires: 12-13-2012

E. CRAIG PARKER
NOTARY PUBLIC
NEW HANOVER, CO., NC

EXHIBIT A

WINDSWEPT, TOWNHOMES

The Survey, Plat, and Plans are recorded in Map Book 59 at Page
208-209 in the New Hanover County Registry.

EXHIBIT A-1

Any or all of that property described in Deed in Book 4912 Page 2556
in the New Hanover County Registry not previously developed or
committed to other purposes.



JENNIFER H. MACNEISH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 10/07/2010 08:43:49 AM

Book: RE 5516 Page: 742-761

Document No.: 2010028081

20 PGS \$68.00

Recorder: JOHNSON, CAROLYN

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

2010028081

2010028081

②



FOR REGISTRATION REGISTER OF DEEDS
JENNIFER H MACNEISH
NEW HANOVER COUNTY, NC
2011 JUL 19 03 55 48 PM
BK 5575 PG 571-573 FEE \$17 00

INSTRUMENT # 2011019448

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

AMENDMENT TO DECLARATION
WINDSWEPT TOWNHOMES
PHASE 3 WINDSWEPT SUBDIVISION

THIS AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WINDSWEPT SUBDIVISION, is made on this the _____ day of 19th July, 2011, by CB WINDSWEPT, LLC, a North Carolina Limited Liability Company, hereinafter referred to as "Declarant", and

WITNESSETH

WHEREAS, DECLARANT has previously caused to be recorded a DECLARATION to include additional properties to the Subdivision, and

WHEREAS, CB WINDSWEPT, LLC is still the holder of all Declarant rights contained in the said Declaration and Amendments, and

WHEREAS, DECLARANT now desires to incorporate additional property into WINDSWEPT Subdivision

NOW THEREFORE, Declarant does hereby amend the Declarations for WINDSWEPT TOWNHOMES in Windswept Subdivision by including within the jurisdiction of property more particularly described by that plat recorded in the New Hanover County Registry in Map Book 56 beginning at Page 69, incorporated herein by reference, which property shall be known as Phase 3, Section 2, Windswept Subdivision

RETURNED TO

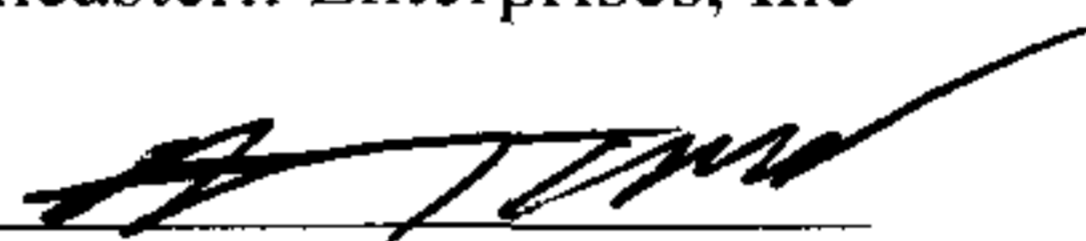
Matthew Murphy

FURTHER THEREFORE, the said Phase 3 is subject to all of the terms and conditions contained in those Declarations in Book 5516 beginning at page 742 and Book 4961 Page 876, as previously amended, all in the New Hanover County Register of Deeds Office

Except as specifically amended above, the Declarations remain in full force and effect, unchanged

The Declarant has caused this document to be executed in its name by its duly authorized Member/Manager, this the day and year first above written

CB WINDSWEPT, LLC
BY SECOF LLC
Its Member/Manager
By Southeastern Enterprises, Inc

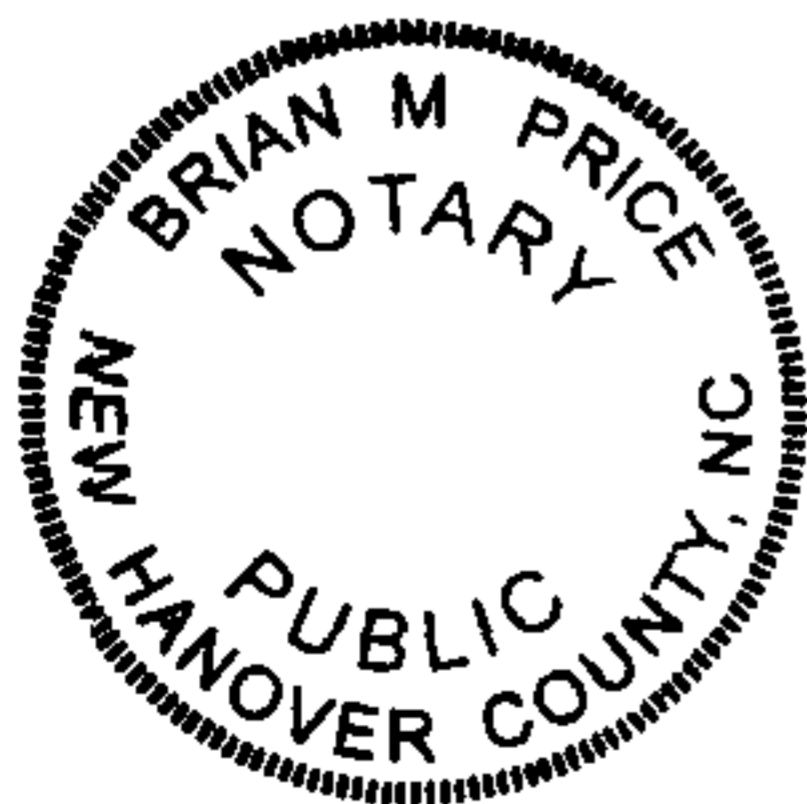

By Matthew T Murphy
Its President

STATE OF NORTH CAROLINA

COUNTY OF New Hanover

I, a Notary Public of the Conty and State aforesaid, certify that Matthew T Murphy personally came before me this day and acknowledged that he is President of Southeastern Enterprises, Inc, Member/Manager of Secof, LLC, which is Member/Manager of CB Windswept LLC, a North Carolina Limited Liability Company, and that by authority duly given and as the act of the Limited Liability Company, the foregoing instrument was signed in its name

Witness my hand and official stamp or seal, this 15th day of July, 2011




Notary Public

My commission expires ~~6-11-2011~~ 6-11-2014



JENNIFER H MACNEISH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 07/19/2011 03:55:48 PM

Book. RE 5575 Page: 571-573

Document No.: 2011019448

3 PGS \$17.00

Recorder: CARTER, CAROLYN

State of North Carolina, County of New Hanover

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2/26



FOR REGISTRATION REGISTER OF DEEDS
JENNIFER H MACNEISH
NEW HANOVER COUNTY, NC
2011 OCT 18 04 27 36 PM
BK 5592 PG 1967-1969 FEE \$26 00

INSTRUMENT # 2011028325

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

AMENDMENT TO DECLARATION
WINDSWEPT TOWNHOMES
PHASE 3 WINDSWEPT SUBDIVISION

THIS AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WINDSWEPT SUBDIVISION, is made on this the _____ day of _____, 2011, by CB WINDSWEPT, LLC, a North Carolina Limited Liability Company, hereinafter referred to as "Declarant", and

WITNESSETH

WHEREAS, DECLARANT has previously caused to be recorded a DECLARATION to include additional properties to the Subdivision, and

WHEREAS, CB WINDSWEPT, LLC is still the holder of all Declarant rights contained in the said Declaration and Amendments, and

WHEREAS, DECLARANT now desires to incorporate additional property into WINDSWEPT Subdivision

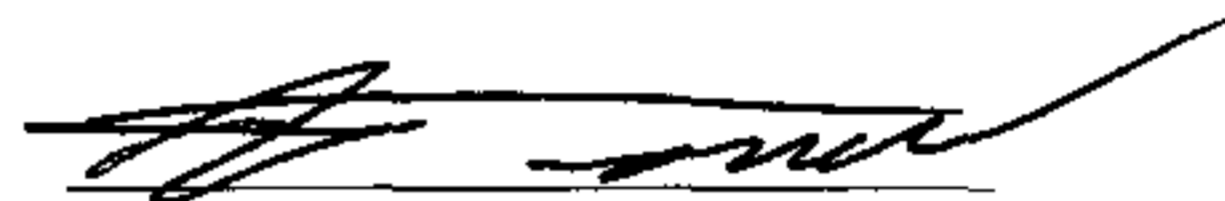
NOW THEREFORE, Declarant does hereby amend the Declarations for WINDSWEPT TOWNHOMES in Windswept Subdivision by including within the jurisdiction of property more particularly described by that plat recorded in the New Hanover County Registry in Map Book 56 beginning at Page 152, incorporated herein by reference, which property shall be known as Phase 3, Section 3, Windswept Subdivision

FURTHER THEREFORE, the said Phase 3 is subject to all of the terms and conditions contained in those Declarations in Book 5516 beginning at page 742 and Book 4961 Page 876, as previously amended, all in the New Hanover County Register of Deeds Office

Except as specifically amended above, the Declarations remain in full force and effect, unchanged

The Declarant has caused this document to be executed in its name by its duly authorized Member/Manager, this the day and year first above written

CB WINDSWEPT, LLC
BY SECOF LLC
Its Member/Manager
By Southeastern Enterprises, Inc

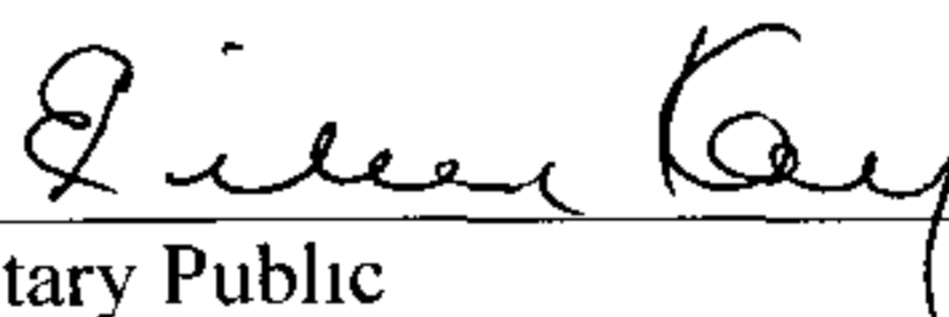

By Matthew T Murphy
Its President

STATE OF NORTH CAROLINA

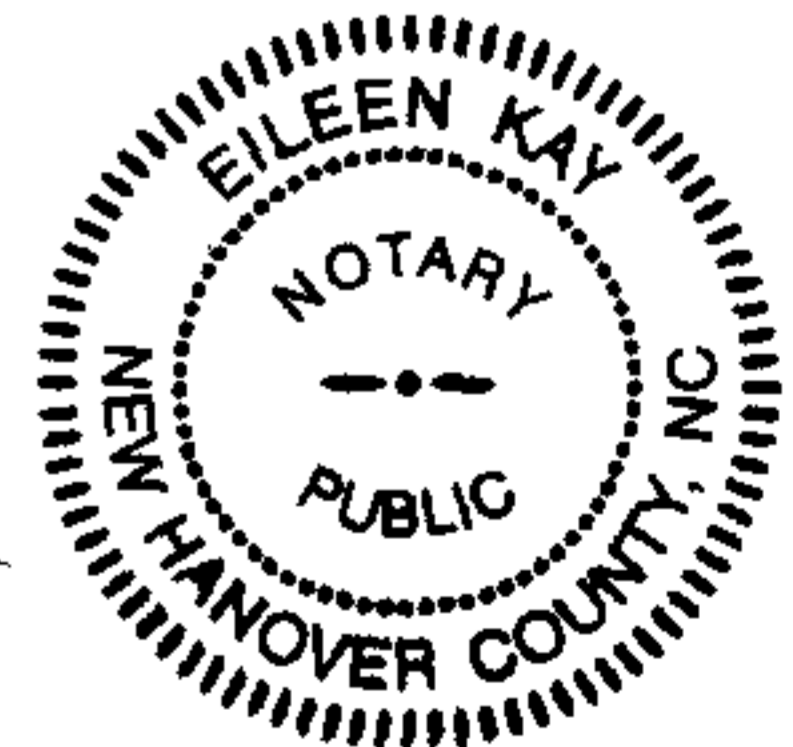
COUNTY OF NEW HANOVER

I, a Notary Public of the County and State aforesaid, certify that Matthew T Murphy personally came before me this day and acknowledged that he is President of Southeastern Enterprises, Inc, a North Carolina Corporation which is Member/Manager of Secof, LLC, which is Member/Manager of CB Windswept LLC, a North Carolina Limited Liability Company, the Grantor, and that by authority duly given and as the act of the Limited Liability Company, the foregoing instrument was signed in its name

Witness my hand and official stamp or seal, this 18 day of OCT, 2011


Notary Public

My commission expires 9-23-2012





JENNIFER H MACNEISH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 10/18/2011 04.27.36 PM
Book: RE 5592 Page: 1967-1969
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Recorder: CRESWELL, ANDREA

State of North Carolina, County of New Hanover

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