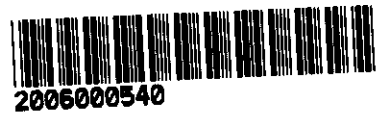


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FOR REGISTRATION REGISTER OF DEEDS  
REBECCA P. SMITH  
NEW HANOVER COUNTY, NC  
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INSTRUMENT # 2006000540

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 4<sup>th</sup> 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may not be altered or rescinded without the express written consent of the State of North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.

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 VECHILES 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.

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.

## 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