

BK011113PG00754

WAKE COUNTY, NC 67
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
11/23/2004 AT 09:19:21

BOOK:011113 PAGE:00754 - 00761

Upon recording return to:
Adrienne Mabry
KB HOME RALEIGH-DURHAM LLC
1100 Navaho Drive, Suite GL3
Raleigh, NC 27609

Cross Reference:
Deed Book 9915; Page 1290-1342

**FIRST AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS
FOR WINDCREST**

THIS AMENDMENT (hereinafter referred to as the "Amendment") to the Declaration of Protective Covenants for Windcrest is made this 22nd day of November, 2004, by **COLONY HOMES, L.L.C.**, a Georgia limited liability company (hereinafter referred to as the "Declarant") and **WINDCREST COMMUNITY ASSOCIATION, INC.**, a North Carolina nonprofit corporation (hereinafter referred to as the "Association").

W I T N E S S E T H:

WHEREAS, Declarant executed that certain Declaration of Protective Covenants for Windcrest which was recorded on February 17, 2003 in Deed Book 9915, page 1290, *et seq.*, in the Wake County Public Registry (hereinafter as supplemented and/or amended from time to time, the "Declaration"); and

WHEREAS, the Association is a non-profit corporation organized under the North Carolina Nonprofit Corporation Act to be the Association named in the Declaration to have the power and authority set forth therein; and

WHEREAS, the Declarant and the Association desire to amend the Declaration as set forth herein and intend for this Amendment to be prospective only; and

WHEREAS, pursuant to Section 12.6 of the Declaration, the Declaration may be amended upon the affirmative vote or written agreement of the Owners to which at least sixty-seven (67%) percent of the Total Association Vote is allocated and the consent of Declarant (until the earlier of: (a) the date that the Declarant no longer owns any property in the Community and Declarant no longer has the right to unilaterally annex additional property to the Community and a certificate of occupancy has been issued for a dwelling on each Lot in the

Community; or (b) the date of recording by Declarant in the real estate records of the county where the Community is located of a written instrument terminating its consent rights); and

WHEREAS, attached hereto as Exhibit "A" and incorporated herein by reference is a certification by the Association, which certification states unequivocally that this Amendment was approved by the affirmative vote or written agreement of the Owners to which at least sixty-seven (67%) percent of the Total Association Vote is allocated, as provided in the Declaration;

NOW THEREFORE, Declarant and the Association hereby adopt this Amendment to the Declaration, hereby declaring that all the property now or hereafter subject to the Declaration shall be held, conveyed, encumbered, used, occupied and improved subject to the Declaration, amended as follows:

1.

The Declaration is hereby amended by deleting Section 5.1 of the Declaration in its entirety and inserting in lieu thereof the following new Section 5.1:

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement of all landscaping and improvements situated on the Common Property. The Association shall also maintain (whether or not constituting Common Property): (a) all Community entry features, including entry area landscaping and any irrigation system and the expenses for water and electricity, if any, provided to all such entry features; (b) all storm water detention/retention ponds and storm water drainage facilities serving the Community, if and to the extent such facilities are not maintained by the owner of such facilities or a government body; (c) all Community recreational facilities; (d) all Community greenbelt and open spaces to the extent such open space is not dedicated and maintained by the Town of Holly Springs; (e) the landscaping improvements located on the front yard of a Lot up to the side yard fence in any Neighborhood designated as a "Village Neighborhood" as provided in Article 6; (f) all property outside of Lots located within the Community which was originally maintained by Declarant; (g) all street trees required by the Town of Holly Springs, North Carolina to be placed on any Lot within the Community; and (h) all perimeter buffer areas shown on the recorded plat(s) of the Community. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community and to enter into easements and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or

replacement and all costs thereof, not paid for by insurance, shall be assessed against the Owner as a specific assessment. All maintenance by the Association shall be performed consistent with the Community-Wide Standard.

2.

The Declaration is hereby amended by deleting Section 8.27 of the Declaration in its entirety and inserting in lieu thereof the following new Section 8.27:

8.27 Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or for any other purpose. The side of all window treatments, with the exception of stained wood blinds or shutters, which can be seen at any time from the outside of any structure located on a Lot must be white or off-white.

3.

The Declaration is hereby amended by deleting Section 8.29 of the Declaration in its entirety and inserting in lieu thereof the following new Section 8.29:

8.29 Buffer Areas. All areas designated as "Buffer Areas" on the Master Plan or the recorded plat(s) of the Community shall be left in their undisturbed, natural state and no improvements may be constructed, erected, placed or allowed to remain thereon except utility lines and easements and pedestrian and vehicular access ways (including streets and roads); provided, however, Declarant and the Association and the Owner of any Lot adjacent to such areas (with the prior written consent of the Architectural Review Committee) may plant trees, flowers and shrubs in such areas, subject to further provisions of this paragraph. For all areas within the Community designated as "Neuse River Buffers" (hereafter "NRBs"), all Owners, the Declarant and the Association shall abide by all local, state and federal regulations concerning such NRBs, including, but not limited to, those rules contained in the North Carolina Administrative Code at 15 N.C.A.C. §§ 2B.0233 through .0242.

4.

Unless otherwise defined herein, the words used in this Amendment shall have the same meaning as set forth in the Declaration.

5.

This Amendment shall be effective only upon being recorded in the records of the Register of Deeds of Wake County, North Carolina and shall be enforceable against current Owners of a Lot subject to the Declaration.

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6.

Except as herein modified, the Declaration shall remain in full force and effect.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarant hereby executes this instrument under seal on the date first above written.

DECLARANT: COLONY HOMES, L.L.C., a Georgia limited liability company

By: Patrick G. Sullivan (SEAL)
Name: Patrick G. Sullivan
Title: Director of Land Development

STATE OF North Carolina
COUNTY OF Harnett

I, a Notary Public of the County and State aforesaid, certify that Patrick G. Sullivan personally appeared before me this day and acknowledges that he/she is the Dir. of Land Dev. of Colony Homes, L.L.C., a Georgia 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 its Director of Land Development

Witness my hand and official stamp or seal, this 22nd day of November, 2004



Susan M. Harp
Notary Public

My Commission Expires: July 30, 2007

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Association hereby executes this instrument under seal on the date first above written.

ASSOCIATION: **WINDCREST
COMMUNITY ASSOCIATION,
INC.,** a North Carolina nonprofit corporation

ATTEST:
Patricia E. Handelle
Secretary

By: *John O'Donnell*
Name: JOHN O'DONNELL
Title: President

[AFFIX CORPORATE SEAL]

STATE OF North Carolina
COUNTY OF Harnett

I, a Notary Public, do hereby certify that John O'Donnell personally came before me this day and acknowledged that he/she is Secretary of Windcrest Community Association, Inc., a North Carolina nonprofit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by Patricia E. Handelle as its Secretary.

In presence of my hand and official stamp or seal, this 24 day of November, 2004



Susan M. Harper
Notary Public

My Commission Expires: July 30, 2007

Exhibit "A"

**CERTIFICATION OF VALIDITY OF
FIRST AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS FOR
WINDCREST**

By the authority of its Board of Directors, the Windcrest Community Association, Inc. hereby certifies that the foregoing instrument was approved by the affirmative vote or written agreement of the Owners to which at least sixty-seven (67%) percent of the Total Association Vote is allocated, as provided in the Declaration (as defined in such instrument).

As of the 22nd day of November, 2004.

**WINDCREST
COMMUNITY ASSOCIATION,
INC.**, a North Carolina nonprofit
corporation

By: [Signature]
Name: JOHN O'DONNELL
Title: President

ATTEST:
[Signature]
Secretary

[AFFIX CORPORATE SEAL]

STATE OF North Carolina
COUNTY OF Harnett

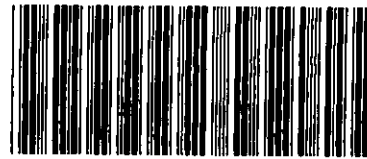
I, a Notary Public, do hereby certify that John O'Donnell personally came before me this day and acknowledged that he/she is Secretary of Windcrest Community Association, Inc., a North Carolina nonprofit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by Patricia E. Hackett as its Secretary.

Witness my hand and official stamp or seal, this 22nd day of November, 2004



[Signature]
Notary Public

My Commission Expires: July 30, 2007
[OFFICIAL SEAL]



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Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.



Wake County Register of Deeds
Laura M. Riddick
Register of Deeds

North Carolina – Wake County

The foregoing certificate ___ of Susan M Harpe

_____ Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By: James Morgan
Assistant/Deputy Register of Deeds

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
8 # of Pages