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Brunswick County—Register of Deeds
Robert J. Robinson
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STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

SECOND AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS OF WESTPORT AT SOUTH HARBOUR VILLAGE

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This Second Amendment to the Declaration of Covenants, Conditions, and Restrictions of WESTPORT AT SOUTH HARBOUR VILLAGE, made the 5th day of February, 2004, by POINT ASSOCIATES, L.L.C., a North Carolina Limited Liability Company, hereinafter referred to as "Developer"; and WESTPORT HOA, INC., hereinafter referred to as the "Association";

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WITNESSETH:

WHEREAS, Developer is the original owner of a certain subdivision of real property in Brunswick County, North Carolina, known as WESTPORT AT SOUTH HARBOUR VILLAGE; and

WHEREAS, Developer did, on September 18, 2000, cause a certain "DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS WESTPORT AT SOUTH HARBOUR VILLAGE" (hereinafter the "Declaration") to be recorded in the Office of the Brunswick County Register of Deeds in Book 1403 at Page 742; and

WHEREAS, WESTPORT HOA, INC. (hereinafter sometimes referred to as the "Association"), is the nonprofit association which has been formed to manage the association of the homeowners within said subdivision; and

WHEREAS, Developer and the Association did, on September 5, 2003, cause a certain "FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS WESTPORT AT SOUTH HARBOUR VILLAGE" (hereinafter the "First Amendment to the Declaration") to be recorded in the Office of the Brunswick County Register of Deeds in Book 1802 at Page 860, said First Amendment to the Declaration being thereafter re-recorded in Book 1827 at Page 742 of said Registry; and

WHEREAS, Developer and the Association have recognized the need to further amend the said Declaration and have therefore agreed to jointly execute this Second Amendment to the Declaration and to record same in the Office of the Register of Deeds of Brunswick County, North Carolina;

NOW, THEREFORE, the Developer, as provided in the Declaration, as amended, and the Association, as evidence of its consent to this action, do hereby declare that the DECLARATION OF

Return to Stevens, McGhee
Morgan, Lennon & Toll

COVENANTS, CONDITIONS, AND RESTRICTIONS WESTPORT AT SOUTH HARBOUR VILLAGE recorded in Book 1403 at Page 742 of the Brunswick County Registry, and the "First Amendment to the Declaration" recorded in the Office of the Brunswick County Register of Deeds in Book 1802 at Page 860, said First Amendment to the Declaration being thereafter re-recorded in Book 1827 at Page 742 of said Registry, and each of them, are, pursuant to and as provided by the terms of said Declaration, and said First Amendment to the Declaration, further amended as follows:

ARTICLE VII, "ASSESSMENTS" is deleted in its entirety and the following is substituted in lieu thereof:

"ARTICLE VII
ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed for the Owner's Lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association Annual, Special, and all other assessments herein described (collectively the "Assessments").

The 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 Assessments are made. Each Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when 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.

Section 2. Purposes of Assessments. The Assessments levied by the Association may be used for any or all of the following purposes--operation, maintenance and improvement of the Common Property and any drainage or utility easements within the Subdivision; landscaping and/or fencing of easements reserved over Lots; enforcing this Declaration; paying taxes and any insurance premiums on or for the Common Property and any drainage or utility easements within the Subdivision, legal and accounting fees and governmental charges; establishing working capital; and in addition, doing any other things necessary or desirable to further the above purposes, as set forth in the budget or amended budget adopted by the Board. It is expressly understood and agreed that assessments levied by the Association may also be used for paying a prorated share of the costs of the maintenance and improvement of Vanessa Drive and any other street which provides access to the subdivision, but only as to that portion of the said Vanessa Drive or other such streets which are not maintained by the State of North Carolina. It is further expressly understood that assessments may be made by the Association to pay its obligations to the Master Association, including, by way of example and not of limitation, assessments to pay a pro rata portion for the upkeep and repair of any Shared Common amenities and/or facilities. The Master Association shall, in its sole discretion, levy assessments, both regular and special. Such assessments shall have the same force and legal effect, and shall be collectable in the same manner, as any assessment levied by the Association. It is further understood and agreed that, as is hereinafter stated, the Association may,

when a reasonable basis for such action exists, differentiate in the amount of Assessments to be charged to each lot.

Section 3. Annual Assessments. Annual Assessments shall be in an amount to be fixed from year to year by the Board which may establish different rates from year to year as it may deem necessary for the purposes as set forth above. The amount of the Annual Assessment against each Lot for any given year shall be fixed prior to January 1 of such year; provided, however, that the first Annual Assessment shall be set prior to the conveyance of the first Lot to an Owner and written notice to the Owners to be subjected thereto shall be delivered to the Owners 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 dates shall be established by the Board and the Board shall have the authority to allow the assessments to be paid in pro rata 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 specified Lot have been paid.

A. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Annual Assessment may be increased each year not more than five percent (5%) above the Annual Assessment for the previous year without a vote of the Members.

B. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Annual Assessment may be increased above five percent (5%) only by a vote of the Owners of two-thirds (2/3) of the Lots, voting in person or by proxy at a meeting duly called for such purpose.

C. The Board may increase the amount of the Annual Assessment to Four Hundred Fifty Dollars (\$450.00) per Lot notwithstanding the provisions of subsections A and B above, and thereafter the limitations set forth in said subsections shall apply to an annual increase.

Section 4. Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy, on any assessment year equally against the Lots, a Special Assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property or any drainage or utility easement in the Subdivision, whether owned by the Association or not, including the portion of Vanessa Drive as above referred to, including fixtures and personal property related thereto, provided that any such assessment shall be approved by vote of the Owners of two-thirds (2/3) of the Lots voting in person or by proxy at a meeting duly called for such purpose.

Section 5. Notice and Quorum For Any Action Required to be Approved by the Members Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action by the Members authorized under Section 3 and 4 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast the votes for sixty percent (60%) of all of the Lots shall constitute a quorum. If a quorum is not present at such meeting, the meeting may be adjourned for lack of a quorum, until a date specified in the motion to adjourn for lack of a quorum, on which

date a second meeting shall be held. The required quorum at such second meeting shall be one-half (1/2) of the required quorum at the first meeting. No such second meeting shall be held more than sixty (60) days following the first meeting.

Section 6. Working Capital Assessments. At the time title to a Lot is conveyed to an Owner by Declarant, the Owner shall pay the sum of up to \$450.00 to the Association as working capital to be used for operating and capital expenses of the Association. Amounts paid into the working capital fund are not to be considered as advance payment of the annual or any other assessment.

Section 7. Rate of Assessment. The Association may differentiate in the amount of Assessments charged when a reasonable basis for distinction exists, such as between vacant Lots of record and Lots of record with completed dwellings for which certificates of occupancy have been issued by the appropriate governmental authority or when any other substantial difference as a ground of distinction exists between Lots. However, Assessments must be fixed at a uniform rate for all Lots similarly situated and/or where similar services are being provided. Provided, however, in the event that maintenance, repair or replacement of any part of the Common Property is caused through the willful, or negligent act of an Owner, his family, guests or invitees the cost of such maintenance, replacement, or repairs, shall be added to and become a part of the Assessment to which such Owner's Lot is subject.

Section 8. Commencement of Assessments. Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from the Developer. If such date assessments commence is not on January 1, the assessment for the Lot for such first year shall be prorated. **The Developer shall not be required to pay Assessments.** The Developer and/or the Association may require the payment in advance of up to three months of homeowner's dues or assessments at the time the Owner accepts a deed from the Developer. This advance payment is in addition to any working capital assessment as is above described.

Section 9. Effect of Nonpayment of Assessments And Remedies Of The Association. Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date of the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Common Property or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted.

Section 10. Subordination Of The Lien To Mortgage. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

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Section 11. Action by Master Association. All Owners acknowledge and agree that the Master Association may, in its discretion, levy assessments, both regular and special, for such lawful purposes as may be deemed necessary by the Board of Directors of the said Master Association. Such assessment(s) shall have the same force and legal effect as any assessment of the Association."

Except as is amended hereby, the Declaration of Covenants, Conditions, and Restrictions WESTPORT AT SOUTH HARBOUR VILLAGE Subdivision recorded in Book 1403 at Page 742 of the Brunswick County Registry, and the First Amendment to Declaration of the Covenants, Conditions, and Restrictions WESTPORT AT SOUTH HARBOUR VILLAGE Subdivision Declaration recorded in the Office of the Brunswick County Register of Deeds in Book 1802 at Page 860, and thereafter re-recorded in Book 1827 at Page 742 of said Registry, are hereby ratified, confirmed, re-declared, and re-adopted.

IN WITNESS WHEREOF, POINT ASSOCIATES, L.L.C., the Developer herein, has caused this Second Amendment to the Declaration of Covenants Conditions and Restrictions WESTPORT AT SOUTH HARBOUR VILLAGE Subdivision to be executed in its name by its duly authorized Member-Managers, and WESTPORT HOA, INC., through its duly authorized officers, has likewise executed this document as the act and deed of the said WESTPORT HOA, INC., all as of the day and year first above written.



POINT ASSOCIATES, L.L.C.,
By: Wilmington Holding Corp.
Member-Manager

By: [Signature]
Vice President

Jerry Thomason
Assistant Secretary
(CORPORATE SEAL)

By: VIABLE CORP., Member-Manager

By: [Signature]
President

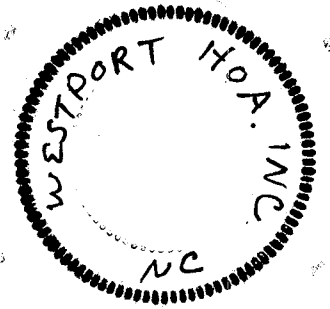
ATTEST:
[Signature]
Assistant Secretary
(CORPORATE SEAL)



WESTPORT HOA, INC.

By: [Signature]
Vice President

ATTEST:
Jerry Thomason
Assistant Secretary

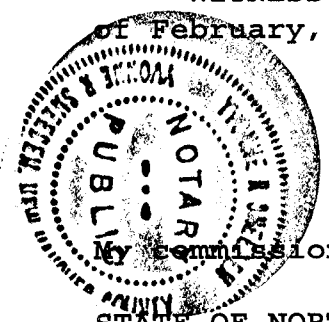


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STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, a Notary Public of the County and State aforesaid, certify that Jerry Thomason personally came before me this day and acknowledged that she is the Assistant Secretary of Wilmington Holding Corp., a North Carolina corporation, which corporation is a Member-Manager of POINT ASSOCIATES, L.L.C., a North Carolina Limited Liability Company, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by herself as its Assistant Secretary, on behalf of and as the act and deed of the said POINT ASSOCIATES, L.L.C.

WITNESS my hand and official stamp or seal, this 5th day of February, 2004.



Yvonne R. Sneed

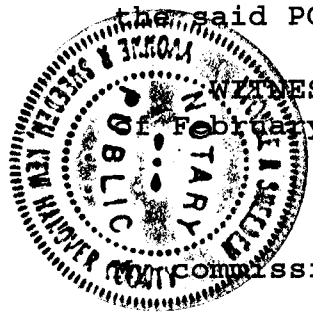
Notary Public
Yvonne R. Sneed

My commission expires: 11/12/06

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, a Notary Public of the County and State aforesaid, certify that Alton Y. Lennon personally came before me this day and acknowledged that he is the Assistant Secretary of Viable Corp., a North Carolina corporation, which corporation is a Member-Manager of POINT ASSOCIATES, L.L.C., a North Carolina Limited Liability Company, 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 himself as its Assistant Secretary, on behalf of and as the act and deed of the said POINT ASSOCIATES, L.L.C.

WITNESS my hand and official stamp or seal, this 5th day of February, 2004.



Yvonne R. Sneed

Notary Public Yvonne R. Sneed

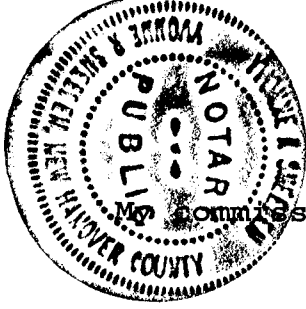
My commission expires: 11/12/06

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, a Notary Public of the County and State aforesaid, certify that JERRY THOMASON personally came before me this day and acknowledged that she is the Assistant Secretary of WESTPORT HOA, INC., a North Carolina non-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by herself as its Assistant Secretary, as duly authorized by the Board of Directors, on behalf of and as the act and deed of the said WESTPORT HOA, INC.

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WITNESS my hand and official stamp or seal, this 5th day of February, 2004.



Yvonne R. Sneed

Notary Public
Yvonne R. Sneed
My commission expires: 11/12/06

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STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

YVONNE R SNEEDEN

The Foregoing (or annexed) Certificate(s) of _____

Notary(ies) Public is (are) Certified to be Correct. _____
This Instrument was filed for Registration on this 10th Day of February, 2004
in the Book and page shown on the First Page hereof.

Robert J. Robinson Dr

ROBERT J. ROBINSON, Register of Deeds

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