

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

**SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE**

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Agreement") made and entered into as of this 28th day of March, 2012, by and between Crosswinds HOA, Inc., a North Carolina non-profit corporation. ("Crosswinds"), and Wedgefield at Crosswinds South HOA, Inc., a North Carolina non-profit corporation ("Wedgefield");

**WITNESSETH:**

WHEREAS, Crosswinds and Wedgefield are parties to a certain civil action pending in New Hanover County, North Carolina entitled "State of North Carolina v. B & D Development Corporation, Crosswinds and Wedgefield," File No. 04-CvS-2896.

WHEREAS, on or about June 7, 2007, Crosswinds, Wedgefield, the State of North Carolina and B & D Development Corporation entered into a Consent Judgment;

WHEREAS, certain disputes arose between Crosswinds and Wedgefield subsequent to the Consent Judgment which resulted in the filing by Wedgefield on June 12, 2010 of a Motion in the Cause and Rule to Show Cause;

WHEREAS, on or about May 11, 2011, Crosswinds filed suit against Wedgefield in New Hanover County Superior Court, File No. 11-CvS-1669.

WHEREAS, on or about February 24, 2012, Crosswinds filed a First Amended Motion to Partially Dissolve the Consent Judgment.

WHEREAS, both Motions were heard by the Court from March 19-27, 2012 but the Court did not rule on either Motion.

WHEREAS, the parties have now compromised and settled all controversies and disputes between them and desire to execute this Agreement to evidence such compromise and settlement;

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereto agree as follows:

1. All future costs and expenses for maintenance, repair and replacement of the thirty foot drainage easement that separates the Crosswinds and Wedgefield sub-divisions which is shown on various plats recorded in the New Hanover County Register of Deeds including, but not limited to, Map Book 36, Page 349, Map Book 27, Page 133, Map Book 27, Page 134, Map Book 32, Page 122, Map Book 32, Page 267, Map Book 33, Page 122, Map Book 34, Page 101-102, and Map Book 36, Page 43 (“Ditch”) shall be shared sixty-five percent (65%) by Crosswinds and thirty-five percent (35%) by Wedgefield. This includes all costs and expenses for the Ditch, pipes and appurtenances within the above described drainage easement. For purposes of this Agreement, the “Ditch” shall start at the point at which the pipe located within a thirty foot drainage easement running from the Wedgefield storm water retention pond as shown on Map Book 47, Page 399 intersects with the Ditch described above, near the southwestern corner of Lot 13, Crosswinds, Section 2, Map Book 32, Page 267, and shall end at the southeastern corner of Lot 218 in Section 4 Crosswinds as the same is shown on Map recorded in Map Book 36, Page 43 New Hanover County Register of Deeds. This specifically includes but is not limited to, all pipe(s) and appurtenances located in the Ditch described as “Windjammer pipe”, “Carriage House pipe”, Rushing pipe” and Downrigger pipe” on Exhibit A attached hereto and incorporated herein by reference

2. The Ditch, including the pipe(s) and appurtenances, shall be maintained to the standards of New Hanover County and the North Carolina Department of Environment and Natural Resources. If any disputes arise regarding whether the Ditch, pipes or appurtenances meet those standards, New Hanover County or the North Carolina Department of Environment and Natural Resources as applicable, shall make all such determinations.

3. A five person drainage committee shall be formed within thirty (30) days from the execution of this Agreement consisting of two members from Wedgefield appointed by its Board of Directors and three members from Crosswinds appointed by its Board of Directors. The members must be owners and residents of the sub-divisions. Appointment and replacement of drainage committee members shall be at the sole discretion of respective Board of Directors. The committee shall meet at least twice a year (January and July) Any committee person shall have the authority to notice any other meetings upon no less than ten (10) days written notice to the other Association or if in an emergency, twenty-four (24) hours oral notice. A quorum shall consist of at least three (3) members, with at least one member from each Association. Any drainage committee member shall have the authority to enter upon and walk the Ditch and inspect the pipes and any junction boxes at reasonable times. Any decisions of the drainage committee to spend more than Five Thousand Dollars (\$5,000.00) shall be by unanimous vote. Any decisions to spend sums under Five Thousand Dollars (\$5,000.00) shall be by majority vote unless two (2) members of the drainage committee votes against it. In the event any decision to spend over Five Thousand Dollars (\$5,000.00) is not unanimous or if any decision to spend under Five Thousand Dollars (\$5,000.00) is not approved as a result of two (2) members voting against it, the decision shall be referred to a licensed professional engineer agreed upon by Crosswinds and Wedgefield. The engineer shall have experience with North Carolina Coastal

Storm Water Management Systems. If the drainage committee is not able to agree upon an engineer, either Crosswinds or Wedgefield may apply to the New Hanover County Superior Court for the appointment of such an engineer. The services of the engineer shall be paid equally by Wedgefield and Crosswinds. The decision of the engineer shall be final and not appealable. Neither Al Barone nor Vince Calcagno shall serve on the drainage committee unless both Associations consent to one or both of them serving in that capacity. The drainage committee shall hire contractors to perform all work necessary on the Ditch and pipes to ensure that they are maintained to the standards of New Hanover County and DENR. Provided however, that S & C Construction, LLC shall continue to perform ditch maintenance three times per year at the rate of Six Hundred Dollars (\$600.00) for cleaning. If S & C is no longer the contractor at the rate of Six Hundred Dollars (\$600.00) per cleaning, said work shall be put out to bid to at least three (3) contractors and the committee shall chose the lowest responsible bid. Calcagno's Inc., Vince Calcagno, or any entity controlled by Calcagno Inc. shall not submit any bids to perform any work pursuant to this Agreement. This does not prevent Calcagno's Inc. from doing work for Wedgefield.

4. A separate bank account shall be established for Ditch and piping maintenance, repair and replacement. Initially, it shall be funded with a Nine Thousand Seven Hundred Fifty Dollars (\$9,750.00) contribution from Crosswinds and a Five Thousand Two Hundred Fifty Dollars (\$5,250.00) contribution from Wedgefield, which sums shall be deposited in said separate bank account pursuant to the following schedule:

- a) Within thirty (30) days from execution of this Agreement Crosswinds shall deposit Three Thousand Two Hundred Fifty Dollars (\$3,250.00)

and Wedgefield shall deposit One Thousand Seven Hundred Fifty (\$1,750.00);

- b) Same payments to be deposited on or before September 1, 2012 and December 31, 2012;

The account balance shall not be allowed to go below Ten Thousand Dollars (\$10,000.00) except in the event of an emergency. Each Association shall take all necessary action to insure that all funds necessary to maintain replace and repair the Ditch and piping are collected from their membership. Checks written on this account shall require two signatures, one from a Crosswinds representative and the other from a Wedgefield representative. All bank records shall be available for inspection at any time by either party.

5. The Ditch and piping are located in a public utility easement. Neither Association owns the underlying fee simple interest. The fee simple interest is vested in the individuals that own the Crosswinds lots as to the thirty foot public utility easement. There is a ten foot public utility and drainage easement on the south side of the Ditch as shown on the map recorded in Map Book 36, Page 349.

6. Wedgefield and Crosswinds shall draft a joint memo to residents of each sub-division emphasizing the importance of not dumping anything into the Ditch. This memo shall include the methods of enforcement and that any debris, etc. shall be removed from the Ditch within forty-eight (48) hours after the notification of the dumping has occurred. If notification of the land owner where the dumping has been found is not able to be contacted within twenty-four (24), hours the respective Association shall take the actions necessary to remove the debris within the forty-eight (48) hour time period and give notice to the other Association that the removal of the debris has been completed. If necessary, either Association

must take the action called for in this paragraph, the individual or entity doing this work under this paragraph has the same rights as described in paragraph three regarding access.

7. Wedgefield shall continue with good faith efforts to comply with the Consent Judgment as it relates to its storm water retention pond and accept a transfer of the Storm Water Permit. However, Crosswinds shall not interfere with this process.

8. Crosswinds has already removed at its expense the pipe blockage described as "Rushing Drive Westside 147' pipe blocked three fourths of the pipe" as described in Wedgefield Exhibit 19. Crosswinds shall provide Wedgefield with invoices that this has in fact occurred and Wedgefield shall pay the invoices of Southern Environmental and Drain Works up to the sum of One Thousand Dollars (\$1,000.00) for said removal within ten (10) days from Wedgefield's receipt of said invoices. Further, within thirty (30) days from the execution of this Agreement, Wedgefield shall, at its sole expense, pay to have the Windjammer, Carriage House and Rushing Drive pipes professionally camered and if needed, cleaned and jetted. If there is still a  $\frac{3}{4}$  blockage at Rushing Drive as described in Wedgefield Exhibit 18, Crosswinds shall pay all expenses to have it removed. Crosswinds, at its sole expense, shall have the Downrigger pipe camered by Drain Works, Inc. within thirty (30) days of the execution of this Agreement and shall provide a copy of the video to Wedgefield. Wedgefield shall remove or cause to be removed the debris as shown on Wedgefield Exhibit 19 within thirty (30) days of the execution of the Agreement.

9. In the event either Association files suit against the other Association for a breach of this Agreement the prevailing party in any such action shall be entitled to reasonable attorney fees in accordance of the provisions N.C.G.S. § 6-21.6.

10. Upon execution of this Agreement Crosswinds and Wedgefield shall jointly move the Court to dissolve the Consent Judgment as to Crosswinds. Additionally, within five days (5) from the execution of this Agreement, Crosswinds shall dismiss its action against Wedgefield in File No. 11-CvS-1669 with prejudice.

11. Crosswinds shall be solely financially responsible for its permitted storm water pond including, but not limited to, the piping that connects the two ponds running under Crosswinds Drive. Wedgefield shall be solely financially responsible for its storm water retention pond as shown on a Map recorded in Map Book 47, Page 399 including, but not limited to, the piping that runs from the storm water retention pond under Wedgefield Drive connecting to the Ditch, and the pipes that run from the storm water retention pond to South College Road.

12. That Crosswinds, on behalf of itself, its officers, directors, employees, agents, and assigns do hereby finally discharge and release Wedgefield, its officers, directors, employees, agents, and assigns from any and all claims, liabilities, actions, causes of actions, and any claims for relief or suits at law or equity, of whatever kind and nature, known or unknown, under any state or federal law, act, statute or regulation of and because of any matter or thing done, omitted, or suffered to be done, prior to and including the date hereof for or on account of or arising out of those matters and things set forth in the lawsuits described above.

13. That Wedgefield on behalf of itself, its officers, directors, employees, agents, and assigns do hereby finally discharge and release Crosswinds, its officers, directors, employees, agents, and assigns from any and all claims, liabilities, actions, causes of actions, and any claims for relief or suits at law or equity, of whatever kind and nature, known or unknown, under any state or federal law, act, statute or regulation of and because of any matter or thing

done, omitted, or suffered to be done, prior to and including the date hereof for or on account of or arising out of those matters and things set forth in the lawsuits described above.

14. The parties to this Agreement do not admit liability of any sort and have made no agreement or promise to do, or omit to do, any act or thing not herein set forth and the parties understand this Agreement is made as a compromise to avoid expense and to terminate all controversy or claims for injuries or damages of whatsoever nature, known or unknown, including past, present or future developments, in any way arising out of or connected with the above.

15. The parties admit that no representation of fact or opinion has been made by the parties herein, or anyone on their behalf, to induce this compromise or if such representations were made, they were not relied upon, and that this Agreement is entered into solely by way of a compromise of disputed claims.

16. The parties sign this Agreement after a full and complete consultation with their attorneys, who have fully and amply explained all rights, past present and future, arising from the above and any resulting injuries and damages, and that this Agreement is a complete and final release of all claims, however denominated, except as provided or called for in the Agreement.

17. All understandings and agreements of the parties are merged into this Agreement and instruments specifically referred to herein.

18. This Agreement may be amended, modified or superseded only by a written instrument executed by all the parties hereto. Oral amendments or modifications are prohibited.



19. This Agreement shall be construed and interpreted with the laws of the state of North Carolina.

20. Each party shall bear its own costs and attorney's fees.

21. This Agreement may be executed in multiple counterparts all of which shall constitute one and the same instrument.

22. The persons signing below warrant and represent that all necessary board approval or any other type of corporate action has been obtained prior to signing.

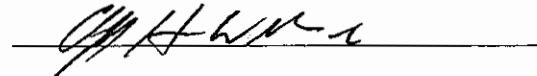
IN WITNESS WHEREOF the parties hereto have signed this Agreement the day and year first above written.

WE CONSENT:

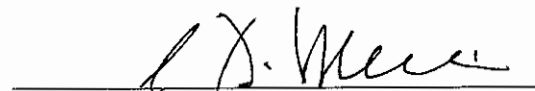
Attorney for WEDGEFIELD AT  
CROSSWINDS SOUTH HOA, INC.

  
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Brian A. Geschickter

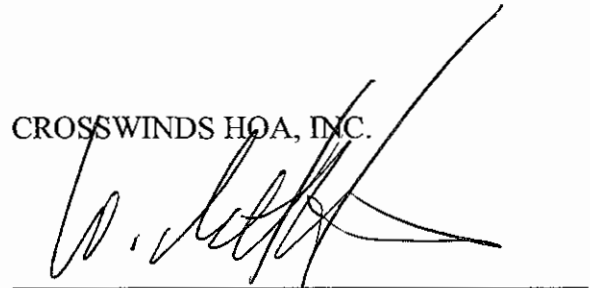
WEDGEFIELD AT CROSSWINDS  
SOUTH HOA, INC.

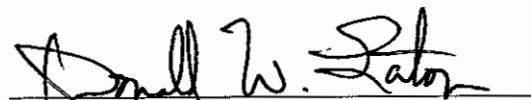
  
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Attorney for CROSSWINDS  
HOA, INC.

  
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Charles D. Meier

CROSSWINDS HOA, INC.

  
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Donald W. Laton  
Assistant Attorney General  
State of North Carolina  
Attorney for DENR

NORTH CAROLINA  
COUNTY OF NEW HANOVER

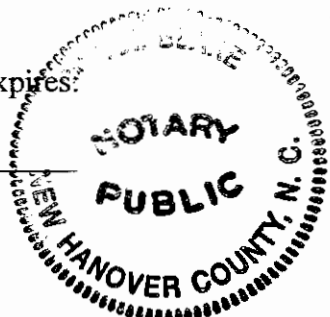
I, CAROL BLAKE, a Notary Public in and for the State and County aforesaid, do hereby certify that CLIFFORD HENRY WILLMAN, JR. personally appeared before me this day and acknowledged that he is PRESIDENT of Wedgefield at Crosswinds South HOA, Inc. and acknowledged, on behalf of Wedgefield at Crosswinds South HOA, Inc. the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal, this 22<sup>nd</sup> day of MARCH, 2012.

Carol Blake  
Notary Public

My Commission expires:

5/6/14



STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

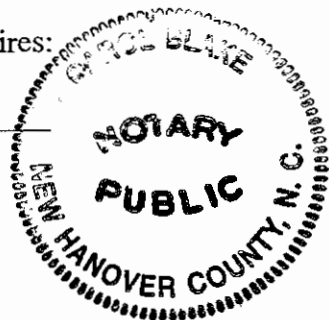
I, CAROL BLAKE, a Notary Public in and for the State and County aforesaid, do hereby certify that WADE HAMPTON HARRIS personally appeared before me this day and acknowledged that he is PRESIDENT of Crosswinds HOA, Inc. and acknowledged, on behalf of Crosswinds HOA, Inc. the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal, this 22<sup>nd</sup> day of MARCH, 2012.

Carol Blake  
Notary Public

My Commission expires:

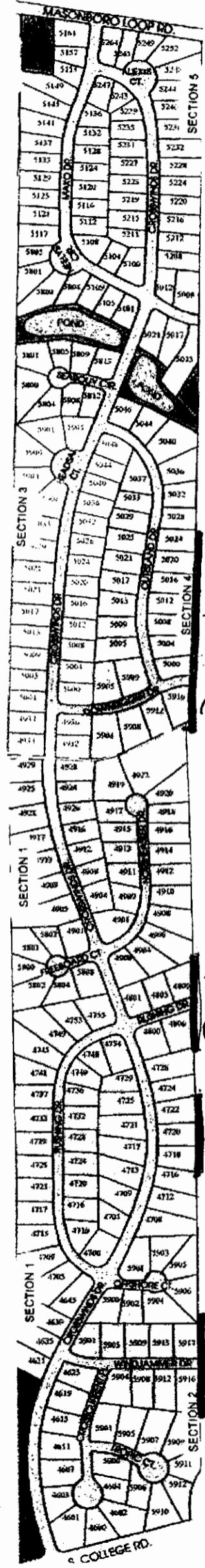
5/6/14



14

Exhibit A to Settlement Agreement  
dated March 28, 2012  
Crosswinds & Wedgefield

# Tanjilwood



Downrigger pipe

Rushing Pipe

Carriage House Pipe

Windjammer Pipe

— PIPE

*Handwritten initials/signature*