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Drawn by and mail to:  
 Douglas P. MacMillan, Attorney  
 Burris, MacMillan, Pearce & Burris, PLLC  
 6857 Fairview Road, Suite 100  
 Charlotte, NC 28210

**NORTH CAROLINA**

**DECLARATION OF COVENANTS,  
 CONDITIONS AND RESTRICTIONS FOR  
 WOODEND**

**GASTON COUNTY**

THIS DECLARATION, made on this 3rd day of April, 2007, by **WOODEND, LLC**, a North Carolina limited liability company, hereinafter referred to as the "Declarant".

WITNESSETH:

THAT WHEREAS, the Declarant is the owner of certain Real Estate lying within Gaston County, North Carolina, more particularly described as follows:

BEING all that real property shown and described on Subdivision Plat of WOODEND, recorded in Map Book 73, at Page 74, in the office of the Register of Deeds for GASTON County, North Carolina;

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate described above AND ALL Real Estate or Additional Properties annexed to the Planned Community created hereunder, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Planned Community. These easements, covenants, restrictions, and conditions shall run with the Real Estate and shall be binding on all parties having or acquiring any right, title or interest in the Real Estate or any part thereof, and shall inure to the benefit of each Lot Owner thereof.

1. **DEFINITIONS.** Any terms used herein which are defined in N.C.G.S. 47F-1-103 shall have the meanings ascribed to them in said statute where the sense requires. In addition, the following terms shall have the following definitions throughout this Declaration:

1.1. **"Act"** shall mean the North Carolina Planned Community Act as contained in Chapter 47F of the North Carolina General Statutes.

1.2. **"Additional Properties"** shall mean all or any portion of such additional Real Estate as may be annexed to this Declaration in accordance with its terms.

1.3. **"Amenities"** means the facilities, if any, constructed, erected or installed on the Common Elements.

1.4. **"Association"** shall mean to Woodend Homeowners Association, Inc., its successors and assigns.

1.5. **"Building"** means a residential structure, constructed or erected on any Lot within the Planned Community.

1.6. **"Common Elements"** shall mean all Real Estate owned by the Association and the easements granted thereto for the common use and enjoyment of the Lot Owners. The Common Elements to be owned by the Association shall be described in deeds to the Association and designated as such on each recorded map of the Real Estate.

1.7. **"Common Expenses"** means:

- (a) All sums lawfully assessed by the Association against its Members;
- (b) Expenses of administration, lighting, landscaping, maintenance, repair or replacement of the Common Elements and for any improvements located on the Common Elements and/or easements reserved in favor of the Association;
- (c) Expenses declared to be Common Expenses by the provisions of this Declaration or the ByLaws;
- (d) Expenses agreed by the Members to be Common Expenses of the Association;
- (e) Hazard, liability or such other insurance premiums as the Declaration or the ByLaws may require the Association to purchase;
- (f) Ad valorem taxes and public assessment charges lawfully levied against Common Elements;
- (g) Expenses of maintaining and resurfacing private roads and pedestrian walkways within the Planned Community and setting aside reserves for the same;
- (h) Expenses of maintaining entrance booths, entrance gates and entrance monuments within the Planned Community and setting aside reserves for the same;

(i) Accounting, legal and other professional services, including professional management, retained by the Association; and

(j) Unpaid assessments resulting from the purchase of a Lot at a foreclosure sale (such assessment shall be collectible from all members of the Association, including the purchaser at the foreclosure sale, his successors and assigns).

1.8. "**Common Expense Liability**" means the liability for Common Expenses allocated to each Lot as permitted by the Act, the Declaration or otherwise by law.

1.9. "**Declarant**" shall mean and refer to WOODEND, LLC a North Carolina limited liability company, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot plus the Declarant's Special Declarant rights from the Declarant for the purpose of development.

1.10. "**Declarant Control Period**" shall mean that period commencing with the recording of this Declaration in the office of the Register of Deeds for Gaston County, North Carolina and ending midnight, December 31, 2016, during which period the Declarant, or persons designated by the Declarant, may appoint and remove the Association's officers and members of the Executive Board.

1.11. "**Declaration**" means this Declaration of Covenants, Conditions and Restrictions

1.12. "**Director**" means any person elected or appointed to the Executive Board.

1.13. "**Executive Board**" means those persons elected or appointed and acting collectively as the Directors of the Association.

1.14. "**Limited Common Elements**" shall mean any portion of the Common Elements allocated by this Declaration or by any recorded maps of all or any portion of the Real Estate made subject to this Declaration or by operation of law for the exclusive use of one or more, but fewer than all, of the Lots and the respective Lot Owner(s) of such Lots(s).

1.15. "**Lot**" shall mean any physical portion of the Real Estate within the Planned Community designated for separate ownership or occupancy by a Lot Owner.

1.16. "**Lot in Use**" shall mean any Lot owned by any person other than Declarant.

1.17. "**Lot Owner**" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Planned Community, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. All Lot Owners shall be Members, as that term is defined herein, and the terms Lot Owner and Member may be used hereafter interchangeably where the sense requires.

1.18. "**Member**" shall mean and refer to every person or entity who holds membership in the Association. There shall be two classes of voting membership in the Association. All Members shall be

Lot Owners, as that term is defined herein, and the terms Member and Lot Owner may be used hereafter interchangeably where the sense requires.

A. "**Class A Members**" shall be all those Lot Owners as defined in Article III herein, with the exception of the Declarant. Declarant may, however, be a Class A member upon termination of Class B membership.

B. "**Class B Member**" shall be the Declarant as defined herein.

1.19. "**Person**" means any individual, corporation, partnership, association, trustee, or other legal entity.

1.20. "**Planned Community**" shall mean that Real Estate development to be named **WOODEND** to be developed on that certain Real Estate described herein and on such Additional Properties as may be hereafter annexed to this Declaration and brought within the jurisdiction of the Association in accordance with the terms and conditions hereof.

1.21. "**Special Declarant Rights**" shall have the same meaning as defined in the Act, and, without limiting the foregoing, shall include those rights reserved unto the Declarant under this Declaration, the Association's Articles of Incorporation and the Association's ByLaws.

## 2. **PROPERTY RIGHTS.**

2.1. **Title to Common Elements.** The Declarant shall convey fee simple title in the Common Elements to the Association, subject to this Declaration, current and subsequent years ad valorem taxes, and rights-of-way, restrictive covenants and easements of record. Conveyance of title to the Common Elements to the Association shall be done promptly after the recording of the plat reflecting that particular Common Elements and, in any event, prior to the sale by the Declarant of the first Lot included in that plat.

2.2. **Lot Owners' Easement of Enjoyment.** Every Lot Owner shall have a right and easement of use and enjoyment in and to the Common Elements and the recreational amenities constructed on within the Common Elements (the "Lot Owners' Easement"), including specifically an easement for access, ingress and egress from and to public streets, private streets, common parking, and walkways. The Lot Owners' Easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

A. **Conveyance or Encumbrance of Common Elements:** Subject to all applicable governmental ordinances, the Association's right to convey or encumber by mortgage or deed of trust title to all or any part of the Common Elements in compliance with N.C.G.S. 47F-3-112. In addition, any conveyance or encumbrance of all or any portion of a Limited Common Element must be agreed to in writing by all Lot Owners to which such Limited Common Element is allocated. Any conveyance or encumbrance shall be made subject to that portion of the Lot Owners' Easement providing for access, ingress and egress to public streets, private streets, parking, and walkways.

B. **Borrowing for Improvements:** The Association's right, in accordance with its Articles and ByLaws, to borrow money for the purpose of improving the Common Elements and facilities and to mortgage those properties to secure those borrowings in accordance with 2.2A, above, provided the mortgage is subordinate to the Lot Owners' Easement.

C. **Rules and Regulations.** The Association's right to impose and enforce rules and regulations which may restrict the use and enjoyment of the Common Elements and/or Amenities.

D. **Additional Easements.** The Association and the Declarant shall have the authority to grant and/or establish upon, over, under and across the Common Elements further easements (including, but not limited to those provided in this Declaration) as are required for the convenient use and enjoyment of the Planned Community.

E. **Admission and Other Fees.** Subject to all applicable governmental ordinances, the right of the Association to charge reasonable admission and other fees for the use of any Amenities.

F. **Suspension of Privileges or Services.** The right of the Association as provided in this Declaration or in the Act to suspend privileges or services of any Lot Owner who violates the terms and conditions of this Declaration, the Association's ByLaws or Rules or Regulations adopted by the Association.

2.3. **Delegation of Use.** Any Lot Owner may delegate, in accordance with the ByLaws, his right of enjoyment to the Common Elements and facilities to members of his/her/their family, to tenants who reside at his Lot and to his/her/their guests.

### 3. **MEMBERSHIP AND VOTING RIGHTS.**

3.1. Lot Ownership of a Lot shall be the sole qualification for membership in the Association. The Association's Board may make reasonable rules relating to the proof of Lot Ownership of a Lot. Membership shall be appurtenant to and may not be separated from Lot Ownership of any Lot.

3.2. The Association shall have two classes of voting membership:

(a) Class A Members shall be all Lot Owners with the exception of the Declarant. Declarant may, however, be a Class A Member upon the termination of Class B Membership. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any one Lot, all such Persons shall be Members. The vote of that Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Fractional voting is prohibited.

(b) The Class B Member shall be the Declarant. Class B Members shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership upon the earlier of:

(i) the date the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership; provided that the Class B Membership shall be reinstated with all rights, privileges, responsibilities and voting power if, after conversion of the Class B Membership to Class A Membership, additional lands are annexed to the Planned Community by the Declarant as provided in the Declaration; or

(ii) December 31, 2017; or

(iii) the effective date of the Declarant's 's written consent to termination.

(c) The Declarant's rights as a Class B Member are Special Declarant Rights which may be transferred (as may all Special Declarant Rights) in the manner prescribed by N.C.G.S. § 47F-3-104.

#### 4. ANNEXATION OF ADDITIONAL PROPERTIES.

4.1. **Annexation by Members:** Except as provided in 4.2, Additional Properties may be added and annexed to the Planned Community only if 67% of each class of all the votes entitled to vote be cast in such class by Members are cast in favor of annexation.

4.2. **Annexation by Declarant:** Prior to December 31, 2016, the Declarant may, from time to time, annex Additional Properties to the Planned Community without the consent of the Members, if the Declarant should develop an additional tract or additional tracts of Real Estate contiguous to or within close proximity of the Planned Community, including, but not limited to, all or any portion of those parcels described on Exhibit A attached hereto. The foregoing power of annexation without the consent of Members is a Special Declarant Right. The annexation will be accomplished by recording with the office of the Register of Deeds for the County in which the Planned Community is located, a Supplementary Declaration, approved by any local or municipal authority having jurisdiction thereof, if required, duly executed by Declarant, describing the Additional Properties annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary. Subsequent to recordation of the Supplementary Declaration, the Declarant shall deliver to the Association one or more deeds conveying any Real Estate that will be designated as Common Elements within the Additional Properties as such Additional Properties are developed. Title to these Common Elements shall be conveyed subject to the same exceptions noted in Section 2. 1. Upon annexation, the Additional Properties shall be deemed part of the Planned Community and shall be subject to this Declaration.

4.3. **Additional Special Declarant Rights.** Subject to all applicable governmental ordinances, as long as Class B membership exists, or until the expiration of the Declarant Control Period, whichever occurs later, the Declarant reserves the following development rights(which shall be deemed Special Declarant Rights, as defined herein and in the Act): (i) to add Real Estate to the Planned

Community in accordance with Section 4.2 of this Declaration; (ii) to add Common Elements; (iii) to designate portions of the Common Elements as Limited Common Elements; (iv) to reallocate and reconfigure Lots within the Planned Community; (v) prior to a conveyance of all or any portion of the Real Estate made subject to this Declaration to a Lot Owner, to withdraw all or any portion of such Real Estate from the Planned Community; (vi) to complete improvements indicated on plats and plans filed with the Declaration; (vii) to exercise any development right; (viii) to maintain sales offices, management offices, signs advertising the Planned Community; (ix) to use easements through the Common Elements for the purpose of making improvements within the Planned Community or within real estate which may be added to the Planned Community; (x) to make the Planned Community part of a larger Planned Community or group of Planned Communities; to make the Planned Community subject to a master association; and (xi) to appoint or remove any officer or Executive Board member of the Association or any master association during the Declarant Control Period.

## 5. COVENANT FOR MAINTENANCE ASSESSMENTS.

### 5.1. Lien of Assessments:

5.1.1. The Declarant, for each Lot, covenants, and each Lot Owner of any Lot by acceptance of a deed therefore (whether or not it shall be so expressed in such deed) is deemed to covenant and agrees to pay the Association Annual Assessments, Special Assessments, and Initial Assessment, all as described below, (together the "Assessments"). The Association shall also have the authority, through the Association's Board, to establish, fix and levy an individual Assessment on any Lot to secure the liability of that Lot Owner to the Association arising from Lot Owner's breach of any of the provisions of this Declaration.

5.1.2. The Assessments shall be set on a calendar year basis (the "Annual Assessment Period") by the Executive Board and may be collected on a monthly or yearly basis as determined by the Executive Board. Annual Assessments shall be charged to each Lot Owner of a Lot in Use. Special Assessments shall be charged to each Lot without regard as to whether or not it is a Lot in Use. Assessments, including fees, charges, late charges, fines, interest and other charges imposed by this Declaration or permitted under N.C.G.S. §§ 47F-3-102, 47F-3-107, 47-F-107.1, and 47F-3-115 shall, upon the filing of a claim of lien in the office(s) of the Clerk(s) of Superior Court for the county or counties within which the Planned Community is located in the manner prescribed by N.C.G.S. § 47F-3-116, be a lien on the applicable Lot continuing until paid in full, as well as a personal obligation of the Person who was the Lot Owner of the Lot at the time the Assessment became due. While any unpaid amounts shall remain a lien on the applicable Lot, the personal obligation shall not pass to that Lot Owner's successors in title unless expressly assumed by the successor(s).

5.2. Purpose of Assessments: The Assessments shall be used exclusively for the purposes of this Declaration as described in the Recitals, the payment of Common Expenses, the health, safety and welfare of the Lot Owners, and the improvement and maintenance of the Common Elements. The Association shall maintain a reserve fund for periodic maintenance, repair, and replacement of improvements to the Common Elements.

5.3. **Annual Assessments:**

5.3.1. On or before December 1st of each year preceding an Annual Assessment Period, the Association's Executive Board shall adopt the Budget (as defined below) for the upcoming Fiscal Year. The annual budget for the Association shall include all anticipated revenues (including revenues from Annual Assessments to be charged in the next Annual Assessment Period (the "Anticipated Annual Assessments") and anticipated costs for the Association for the upcoming Fiscal Year (together the "Budget"). Within thirty (30) days after adoption of any proposed Budget for the Planned Community, the Executive Board shall provide to all of the Lot Owners a summary of the Budget and a notice of the meeting to consider ratification of the budget, including a statement that the Budget may be ratified without a quorum. The Executive Board shall set a date for a meeting of the Lot Owners to consider ratification of the Budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. A quorum need not be present at the meeting. The Budget shall be ratified unless at that meeting seventy-five (75%) percent of all Lot Owners reject the Budget. In the event the proposed Budget is rejected at that meeting, the Budget for the previous Annual Assessment Period shall be continued until a subsequent Budget proposed by the Executive Board is ratified by the Lot Owners in the manner set forth above and set forth in N.C.G.S. § 47F-3-103 (c). The Anticipated Annual Assessments for the approved Budget shall be the basis for calculating the Annual Assessment to be charged each Lot Owner for the upcoming Annual Assessment Period. Annual Assessments shall be payable in installments and on dates fixed by the Executive Board.

5.3.2. Commencing with the sale of the first lot by Declarant to a third party, unless the Budget adopted by the Association shall provide otherwise, the Annual Assessments shall not be less than \$600.00 per year for each Lot.

5.3.3. The Declarant shall fund all costs of the Association through September 30, 2007 Commencing October 1, 2007 and as long as Declarant has a majority of the total votes, Declarant may loan the Association monies to the extent that Annual Assessments paid by the Lot Owners are inadequate. Any such loan(s) shall be to the Association and on terms generally available to Declarant from its lending institution.

5.3.4. The Declarant shall be entitled to levy and collect on behalf of the Association an initial capital contribution of \$200.00 with respect to each Lot in Use payable at such time as Declarant sells each Lot to a third party (to be collected at Closing).

5.4. **Special Assessments:** In addition to the Annual Assessments, the Association may levy in any Annual Assessment Period a special assessment applicable to that Annual Assessment Period only (the "Special Assessment") for the purpose of defraying in whole or in part the cost of any expenditures (including capital improvements and Real Estate acquisition costs) not otherwise included in the Budget. A Special Assessment shall require the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

5.5. **Fines and Suspension of Privileges or Services.** In the event any Lot Owner should be in default for a period of thirty (30) days or longer with respect to the payment of any Assessment(s) due the Association under this Declaration, the Association may, after giving such Lot Owner notice and an opportunity to be heard, suspend privileges (including, but not limited to, such Lot Owner's

rights to vote as a Member of the Association or to utilize any recreational amenities located within the Common Elements) or services (except rights of access to such Lot Owner's Lot) provided by the Association to such Lot Owner. In addition, in the event any Lot Owner should violate any of the terms and conditions of the Declaration or of the Association's ByLaws or any Rules and Regulations adopted by the Association, the Association may, after giving such Lot Owner notice and an opportunity to be heard, impose a reasonable fine upon such Lot Owner or suspend privileges or services (except rights of access to such Lot Owner's Lot). Prior to imposing a fine upon any Lot Owner or suspending any privileges or services provided to such Lot Owner by the Association, the Executive Board shall give the Lot Owner notice of the charged violation, notice of a hearing and an opportunity to be heard and to present evidence at such hearing. Such hearing shall be scheduled before the Executive Board or an adjudicatory panel appointed by the Executive Board to hear such matters. Such adjudicatory panel shall be composed of Members who are not officers of the Association or members of the Executive Board. After rendering a decision, the adjudicatory panel or Executive Board, as the case may be, shall give the affected Lot Owner notice of its decision. The Lot Owner may appeal the decision of an adjudicatory panel appointed by the Executive Board by delivering written notice of appeal to the Executive Board within fifteen (15) days after the date of the decision. The Executive Board may affirm, vacate, or modify the prior decision of such adjudicatory panel. If it is decided that a fine should be imposed, a fine not to exceed One Hundred Dollars (\$100.00) may be imposed for the violation and, without further hearing, for each day more than five days after notice of the final decision is given to the Lot Owner that the violation continues to occur. Such fine(s) shall be Assessment(s) secured by liens under this Declaration and under N.C.G.S. §47F-3-116. If it is decided that a suspension of privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

5.6. **Uniform-Rate of Assessment.** Both Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots in Use, as the case may be. Provided, however, that the Association shall also have the authority, through the Executive Board, to establish, fix and levy a Special Assessment on any Lot to secure the liability of that Lot Owner to the Association arising from that Lot Owner's breach of any of the provisions of this Declaration.

5.7. **Date of Commencement of Annual Assessment/Due Dates.** The Annual Assessments shall commence as to all then existing Lots in Use on the first day of the month following the conveyance of the Common Elements shown on the map(s) on which such Lots in Use are shown to the Association. Thereafter, the Annual Assessments shall commence as to a Lot on the first day of the month following the date it becomes a Lot in Use. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the Annual Assessment shall be sent to every Lot Owner subject thereto at least fifteen (15) days in advance of each Annual Assessment Period. The due date shall be established by the Executive Board. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. These certificates shall be conclusive evidence of payment of any Assessment as to third parties acting in reliance on the statement.

5.8. **Non-Payment of Assessment; Remedies of the Association.** Any Assessments levied against a Lot remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Lot when a claim of lien is filed of record in the office of the Clerk of Superior Court for the

County or Counties where the Lot is located. Fees, charges, late charges and other charges imposed and allowed pursuant to N.C.G.S. § 47F-3-102, 47F-3-107, 47-F-107.1, and 47F-3-115 shall, upon the filing of a claim of lien in the office(s) of the Clerk(s) of Superior Court for the county or counties within which the Planned Community is located in the manner prescribed by N.C.G.S. 47F-3-116, be a lien on the applicable Lot continuing until paid in full and shall be enforceable as Assessments. Except in cases where the Act requires that the Association enforce a lien for Assessments by judicial foreclosure in accordance with Article 29 A of Chapter 45 of the North Carolina General Statutes, the Association may foreclose a claim of lien for Assessments in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes. Each Lot Owner, by the acceptance of a deed to a Lot, expressly vests in the Association, its agents or assigns, the right and power to bring all actions against the Lot Owner personally liable for the collection of a debt and to enforce the lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in the manner permitted under the Act. Each Lot Owner also expressly grants to the Association a power of sale in connection with foreclosure of a lien for Assessments. The lien provided for in this Article shall be in favor of the Association, acting on behalf of the Lot Owners, which shall have the power to bid in at foreclosure and to acquire and hold, lease, mortgage and convey the foreclosed Lot. No Lot Owner may waive or otherwise escape liability for Assessments by non-use of the Common Elements or abandonment of his Lot.

5.9. **Subordination of the Lien.** The lien of the Assessments shall be subordinated to the lien of the first mortgage on a Lot. Except in those instances described below, the sale or transfer of a Lot shall not release or otherwise affect the lien of delinquent Assessments. Provided the Association is given prior written notice of such, the sale or transfer of a Lot pursuant to the foreclosure of a first mortgage or deed of trust or pursuant to a deed in lieu given in satisfaction of a first mortgage or deed of trust shall extinguish the lien of the delinquent Assessments for that Lot. In no event, however, shall a sale or transfer relieve the Lot from liability for any Assessments subsequently becoming due or from the lien thereof

5.10. **Exempt Real Estate.** All Lots dedicated to and accepted by a local public authority and the Common Elements shall be exempt from the Assessments.

## 6. INSURANCE.

6.1. **Authority to Purchase Insurance.** Insurance policies upon the Real Estate and improvements located within the Planned Community (except title insurance policies insuring Lot Owners and/or their Lenders) shall be purchased by the Association in the name of the Executive Board of the Association, as Trustees for the Lot Owners, for the benefit of the Lot Owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages or deeds of trust on the Lots or any of them, and if the companies writing such policies will agree, the policies shall provide that the insurer waives its rights of subrogation as to any claims against Lot Owners, the Association and their respective servants, agents or guests.

6.2. **Insurance Coverage to be maintained; Use and Distribution of Insurance Proceeds.** The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Lots and Common Elements:

6.2.1. Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant, the Association shall maintain:

- (a) Property insurance on the Common Elements, including, without limitation any improvements erected thereon as recreational amenities, if any, insuring all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of such insurance after application of any deductibles shall not be less than eighty percent (80%) of the replacement costs of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and
- (b) Liability insurance in reasonable amounts covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.

6.2.2. The following provisions apply to insurance coverage to be maintained by the Association pursuant to Sections 6.2.1, above:

(a) If any insurance described in Sections 6.2.1, above, is not available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners.

(b) Insurance policies carried pursuant to Sections 6.2.1 shall provide that:

(1) Each Lot Owner is an insured person under the policy to the extent of such Lot Owner's insurable interest;

(2) The insurer waives its right to subrogation under the policy against any Lot Owner or member of the Lot Owner's household;

(3) No act or omission by any Lot Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other insurance in the name of a Lot owner covering the same risk covered by the policy, the Association's policy provides primary insurance coverage.

(c) Any loss covered by the property policies provided for in Sections 6.2.1 shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any trustee designated by the Association for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Lot Owners and lienholders as their interests may appear. Property insurance proceeds shall be disbursed first for the repair or restoration of the

damaged property, and Lot Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Planned Community is terminated.

(d) Any portion of the Planned Community for which insurance is required under Section 6.2.1, above, which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) the Planned Community is terminated, (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (iii) the Lot Owners decide by an eighty (80%) percent vote not to rebuild, repair or restore the damaged property, including one hundred (100%) percent approval of the Lot Owners assigned to any Limited Common Elements not to be rebuilt, repaired or restored. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If any portion of the Common Elements is not repaired or replaced, (i) the insurance proceeds attributable to Limited Common Elements which are not rebuilt shall be distributed to the Lot Owners of the Lots to which those Limited Common Elements were allocated, or to lienholders, as their interests may appear, and (ii) the remainder of the proceeds shall be distributed to all of the Lot Owners or lien holders, as their interests may appear, in proportion to the Common Expense Liabilities of all the Lots. Notwithstanding the foregoing, in the event the Planned Community is terminated, the distribution of insurance proceeds shall be governed by N.C.G.S. § 47F-2-118.

6.2.3. Fidelity Coverage protecting against dishonest acts by Association officers, directors, trustees, and employees and all others who are responsible for handling funds of the Association in the amount of one year's operating budget, plus projected reserve balance during the budget year. If professional management is obtained by the Association and it has this coverage and it handles the funds, then this requirement will be satisfied.

6.2.4. In the event a mortgagee endorsement has been issued as to a Lot, the share of the Lot Owner shall be held for the mortgagee and the Lot Owner as their interest may appear, but no mortgagee shall have the right to participate in the determination of reconstruction or repair.

6.2.5. Each Lot Owner at his expense, may obtain such additional insurance coverage on his Lot, personal property and personal liability and any additional insurance shall contain waiver of subrogation clause.

6.2.6. Immediately after the casualty causing damage to property, the Association shall obtain reliable and detailed estimates of the cost to place the damaged real property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Executive Board of the Association deems appropriate.

6.2.7. Each Lot Owner delegates to the Executive Board of the Association his right to adjust with insurance companies all losses under policies purchased by the Association.

6.3. **Repair/Reconstruction.** Any reconstruction or repair of any improvements damaged by fire or other casualty shall be substantially in accordance with the original plans and specifications.

6.4. **Premiums.** Premiums for contracts of insurance purchased by the Association shall be paid by the Association and shall be a Common Expense.

6.5. **Prohibited Acts.** No Lot Owner shall do or keep anything within the Planned Community which shall cause an increase in the premiums for or the cancellation of any insurance maintained by the Association.

7. **EASEMENTS.**

7.1. **Blanket Utility Easement.** A blanket easement upon, across, over, and under all of the Common Elements, and, to the extent reasonably necessary the portions of the Lots on which no portion of any Building is or is to be constructed, is reserved for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to water, sewer, gas, telephones, electricity, and a master antenna system. Notwithstanding such, no sewers, electrical lines, water lines, or other utility equipment or facilities may be installed or relocated in the Common Elements except as approved by the Declarant or, after the termination of Class B membership, the Association. Should any utility furnishing a service covered by this general easement request a specific easement by separate recordable documents, Declarant or, after the termination of Class B membership, the Association will have the right and authority to grant such easement. The easement provided for in this Article shall in no way affect other recorded easements within the Planned Community.

7.2. **Association Easements.** An easement is granted to the Association, its officers, agents, employees, and to any management company retained by the Association to enter in or to cross over the Common Elements. An easement is also granted to the Association over such portion(s) of additional Real Estate owned by the Declarant on which improvements, including utilities, are located, which serve the Planned Community and over such portion(s) of such Real Estate which provide access to such improvements, subject to Declarant's right to designate the exact location of such easements. Every Lot shall be subject to an easement for entry by the Association (and the Persons described above) for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any improvement or portion of the Common Elements. Lots 1 and 34 shall also be subject to easements in favor of the Association to locate and maintain entry monuments, landscaping and lighting in the areas reserved thereon on the subdivision map of the Real Estate made subject to this Declaration.

7.3. **Temporary Construction Access and Disturbance Easement.** An easement over, through and to the Common Elements is reserved and established in favor of Declarant and all Lot Owners for purposes of ingress, egress, regress, conduct of construction activity, storage of construction materials and the necessary disturbance of land for construction on any Lot. This easement shall be used only as and when necessary to facilitate the construction of improvements at any time on a Lot by Declarant or Lot Owner as well as the extension of driveways, sidewalks, underground drainage and utility conduit and hookups to any dwelling structure situated on a Lot. In each instance, the Person exercising these easement rights shall use its best efforts to minimize any soil or land disturbance activities and shall restore the land to a condition which is graded smooth and in harmony with surrounding areas. Should that Person fail to restore the disturbed land as required, the Association may restore the land to the required condition and that Person shall indemnify the Association for the reasonable expense incurred in performing that restoration. This easement shall be restricted to that

Common Elements which shall be reasonably servient and proximate to the Lot(s) upon which the construction is taking place.

7.4. **Drainage Easement.** For a period of eighteen (18) months following the last conveyance of a Lot to a Lot Owner by the Declarant, that Lot shall be subject to an easement for entry and encroachment by the Declarant for the purpose of correcting any grading or drainage problems with respect to that Lot or adjoining Lots. After such an entry, the Declarant, at its expense, shall, to the extent reasonably practicable, restore the affected Lot(s) to their original condition.

7.5. **Governmental Easements.**

7.5.1. Declarant reserves an easement for the benefit of the appropriate governmental entity over all Common Elements and over an area five (5) feet behind the curb line of any street or roadway in the Real Estate existing now or in the future for the setting, removal, and reading of water meters, the maintenance and replacement of water, sewage, and drainage facilities and the collection of garbage.

7.5.2. An easement is also granted to all police, fire protection, garbage, mail delivery, ambulance, and all similar persons to enter upon the Subdivision's streets and the Common Elements in the performance of their duties.

7.6. **Access, Parking and /or Utility Easements.** All Lots and the Common Elements shall be subject to all such access, drainage and/or utility easements as are shown on any recorded plats of Real Estate located within the Planned Community, and any such access easements shall be considered part of the Common Elements, whether or not owned in fee simple by the Association, and the costs of maintenance, repair and upkeep of the areas within such access easements shall be Common Expenses.

8. **ARCHITECTURAL COMMITTEE.**

8.1. **Architectural Control.** No dwelling, outbuilding, fence, sign, wall or other structure shall be commenced, constructed, erected or maintained upon such Lot, nor shall any exterior addition to or change or alteration thereof be made, nor shall a building permit for such improvement or change be made, nor shall any major landscaping or relandscaping be commenced or made (such construction, alteration and landscaping are hereinafter referred to as the "Improvements") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such plans and specifications for proposed Improvements within forty-five (45) days after the plans and specifications have been received by Declarant, such plans and specifications shall be deemed to have been approved by Declarant. Declarant shall have the right to charge a reasonable fee, not to exceed \$500.00, for receiving and processing each application. Declarant shall have the right (but not the obligation) to promulgate and from time to time amend written architectural standards and construction specifications which, together with Use Restrictions set forth in Section 9, below, shall establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design and construction technique(hereinafter the "Architectural Guidelines"). Declarant shall not approve any Improvements which it determines, in its reasonable discretion, violates

the Architectural Guidelines, is not in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Planned Community.

8.2. **Architectural Committee.** Declarant may, at any time, delegate the review and approval authority contained in Section 8.1 of this Declaration to the Executive Board of the Association, which, in turn, may delegate such authority, to an Architectural Committee composed of three (3) or more persons appointed by the Executive Board. Such delegation shall be made by the Declarant by recording in the office of the Register of Deeds for Gaston County an Assignment of Declarant's Rights. If Declarant fails to delegate such authority to the Executive Board by the date upon which Declarant no longer owns any Lots within the Properties, such rights shall automatically and without further action vest in the Executive Board. Any use of the term "Declarant" in this Section 8 shall be deemed to apply to Declarant and, when appropriate, to the Executive Board of the Association or the Architectural Committee. References in this document to the terms "Architectural Committee" or "Declarant" shall mean, where the sense requires, the entity then having control over the review and approval authority contained in Section 8.1, above. Nothing herein shall be construed to permit interference with the development of the Lots by Declarant in accordance with its general plan of development.

8.3. **Liability.** Neither Declarant nor the Association, nor any officer, director, manager, member or employee of either, nor any member of the Architectural Committee shall be liable for damages to any person by reason of mistaken judgment, negligence, or nonfeasance in connection with the approval or disapproval or failure to approve or disapprove any plans, specifications and/or Improvements.

## 9. ARCHITECTURAL CONTROL AND USE RESTRICTIONS.

9.1 **Building Sites.** Each Lot, as approved by the appropriate governmental entity, shall constitute a building site (a "Building Site") and shall be used for single-family residential purposes only. The lay of the Lots as shown on the recorded plat shall be substantially adhered to; provided, however, that with the prior written approval of the Declarant (as long as Class B Membership exists), or, thereafter, the Association's Executive Board or the Architectural Committee, and the appropriate governmental authority, the size and shape of any Lot may be altered. More than one Lot may be used as one Building Site provided the location of any structure permitted thereon is approved in writing by the Architectural Committee or the Declarant, its successors or assigns, and said Lot is recombined in accordance with any applicable zoning or other laws in force at the time of the change.

9.2. **Setbacks.** No structure shall be located on any Building Site nearer than the minimum setbacks shown on recorded plats or required by applicable zoning or other laws. For the purposes of this covenant, eaves, steps, carports and open porches shall not be considered as a part of a Building, provided, however, that this shall not be construed to permit any portion of a Building on a Building Site to encroach upon another Lot. Provided it otherwise complies with the applicable zoning ordinances and the setbacks, if any, shown on the applicable recorded plat, the Declarant and/or the Architectural Committee may approve by written waiver a violation of these requirements.

9.3. **Prohibited Structures.** Except as provided in Section 9.4 below, no structures of a temporary character, manufactured home, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any portion of the Planned Community at any time as a residence, either temporarily or permanently.

9.4. **Declarant Facilities.** Notwithstanding any provision in this Article to the contrary, during the period of development and sale of the Lots and houses constructed thereon the Declarant, and any builder revocably permitted by Declarant, is permitted, subject to the laws of the applicable governmental authority, to maintain such facilities and conduct such sales activities as Declarant deems reasonably required, convenient, or incidental to the development and sale of the Lots and houses. These facilities/activities shall include but not be limited to sales tours, sales parties and promotions at the Amenities, a temporary business/sales trailer, storage trailer, and/or area, construction trailer and/or yards, model units, and signs. Prior to December 31, 2016, this provision shall not be amended or revoked without the Declarant's written consent.

9.5. **No Change in Grade of Lots.** No Lot owner may change the existing grade of any Lot without the express written consent of the Declarant during the Declarant Control Period or thereafter the Executive Board.

9.6. **Obstructions to View at Intersections.** The lower branches of trees or other vegetation in sight line approaches to any street or street intersection shall not be permitted to obstruct the view of said approach.

9.7. **Walls, Fences, Hedges and Delivery Receptacles.**

(a) Lot Owners must submit plans and specifications for all walls, fences hedges, mass plantings and similar obstructions to the Declarant or the Architectural Committee for approval before constructing any of the same. Unless otherwise approved by the Declarant or the Architectural Committee, all walls must be of brick construction with wrought iron gates, and all primary fences must be of cedar picket construction with six (6') foot sections, with 6" by 6" posts with pickets extending above the post, and shall be capped with decorative caps. All primary fences shall be limited to rear yards, and all secondary fences, such as pool or patio enclosures shall be either of cedar picket or wrought iron construction and shall not exceed forty-eight inches (48") in height. The Declarant and the Architectural Committee reserve the right to make or amend additional regulations concerning the above. Underground pet containment fences shall be limited to rear yards.

(b) Receptacles for the receipt of mail, newspapers or similar delivered materials shall be of a uniform size and design as approved by the Architectural Committee and shall be located at the curb of each Lot; provided, however, to the extent that this restriction shall conflict with the regulations, now or hereafter adopted, of any governmental agency, such regulations shall control. Lot Owners shall be responsible for all expenses related to the installation, maintenance and replacement of such receptacles.

(c) No chain link fences may be erected on any lot.

9.8. **Animals and Pets.** No animals, livestock or poultry of any kind shall be raised, bred, pasture, or maintained on any lot, except household pets which may be kept thereon in reasonable numbers as pets for the sole pasture and use of the occupants, but not for any commercial use or purposes. Birds shall be confined in cages.

9.9. **Sign Boards.** No sign boards of any description shall be displayed upon or above any lot with the exception of signs erected by the Declarant, political signs and "for sale" or "for rent" signs erected by Lot Owners, which "for sale" or "for rent" signs shall be subject to such additional restrictions which may be adopted from time to time by the Executive Board or the Architectural Committee.

9.10. **Television Receiving Devices.** No television antennae, discs or other receivers of such nature larger than three feet square, shall be allowed to be placed or maintained on any Lot, and any such permitted device shall be reasonably screened from view.

9.11. **Nuisances and Unsightly Materials.** No noxious, offensive or illegal activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the Planned Community. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever, nor for the storage of any property or thing which will cause such lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace and quiet of the occupants of surrounding property. During any period in which Improvements are being constructed on any Lot, the Lot Owner shall keep the Lot clean and free of trash and debris, shall be responsible for maintaining erosion and silt control, and shall supervise construction personnel so as to minimize any disruption of the quiet enjoyment of other Lot Owners in the Planned Community. No trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure. However, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish or other debris for pickup by governmental and other similar garbage and trash removal service units. All Lot Owners shall keep their respective Lots free from any unsightly items, weeds, or underbrush. In the event any Lot Owner should violate the terms of this paragraph, the Declarant or the Association shall post a notice on the Lot and/or mailing a notice to the Lot Owner at his property address requesting the Lot Owner to comply with the requirements of this paragraph, and if the Lot Owner fails to cure such violation(s) within five (5) days after such notice or posting, the Declarant or the Association may enter and cure such violation(s) at the owner's expense, and any expenses advanced by the Declarant or the Association shall be a lien on the affected Lot Owner's Lot enforceable in the manner liens for Assessments payable to the Association are. Owners by acquiring property subject to these restrictions agree to pay such costs promptly upon demand by the Declarant, its agents, assigns, or representative. No such entry as provided herein shall be deemed a trespass. Without limiting the foregoing the Association may also levy fines for such violation(s) in accordance with Section 5.5 of this Declaration.

9.12. **Screening.** All equipment, garbage cans, service yards, wood piles, or storage piles shall be kept screened by adequate Improvements so as to screen them from view from the street and adjoining Lots. All garbage, trash, or rubbish shall be regularly removed from the Lot and shall not be allowed to unreasonably accumulate.

9.13. **Leasing.** No Lot or any portion of the Improvements thereon shall be leased for transient or hotel purposes, except that a Lot Owner may lease not less than the entire residential structure on its Lot; provided that each lease must be in writing, must be for a period of not less than one (1) year, and must provide that it is subject to this Declaration and the ByLaws and that any failure by a tenant to comply with such shall be a default under the lease. The Lot Owner shall promptly provide the Association with copies of any and all leases entered into by the Lot Owner.

9.14. **Business/Obnoxious Activity.** No business activity of any kind or any obnoxious or offensive activity shall be carried on within the Planned Community or Improvements thereon, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood. Nor shall any portion of the Planned Community be used in any way or for any purpose which may endanger the health or unreasonably disturb a Lot Owner or his tenants or invitees.

9.15. **Lawn Ornaments.** No decorative lawn ornaments, raised planting beds, permanent landscaping hardscape, patios, or 2222retaining walls shall be placed on any Lot without the prior written approval of the Architectural Committee.

9.16. **Governmental Regulations.** Each Lot Owner shall comply with all laws, ordinances, governmental building codes, health regulations, zoning restrictions and the like applicable to its Lot and/or Common Elements. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

9.17. **Additional Restrictions.** The Declarant (as long as it hold Class B Membership) and thereafter, the Association, the Association's Board, or the Architectural Committee shall have the power to formulate, amend, publish and enforce other reasonable rules and regulations concerning the architectural control and use of the Real Estate within the Planned Community.

9.18. **Limited Liability.** In no case shall the Declarant or the Association be responsible for failing to provide any emergency or regular fire, police or other public service to the Planned Community, or to the Lot Owners or Lot occupants. In no case shall any local or municipal authority or the State of North Carolina be responsible for maintaining any private street. Such responsibility shall rest with the Association and/or Lot Owners.

9.19. **Waiver.** Notwithstanding anything above to the contrary, the Declarant (as long as Class B Membership exists), the Association's Board, or the Architectural Committee shall have the right, in the exercise of their reasonable discretion, to waive one or more violations of the requirements of this Article. No waiver shall be effective unless in writing and nevertheless shall not operate as a waiver of any other requirement respecting the Lot in question or any other Lots subject to this Declaration. No waiver shall be effective if it shall cause the Lot or structures thereon to be in nonconformance with any applicable governmental ordinances.

## 10. GENERAL PROVISIONS.

10.1. **Enforcement.** Subject to the provisions of Section 10.4, below, the Declarant (as long as Class B Membership exists), the Association or any Lot Owner shall have the right to enforce, by a

proceeding at law or in equity, the terms of the Declaration. Failure by the Association or by any Lot Owner to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.

10.2. **Severability** Invalidation of any one or more 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.

10.3. **Amendment.**

10.3.1. The Declaration shall run with the land for a term of twenty (20) years from the date of recording of the Declaration or the last Supplementary Declaration or amendment thereto, and shall inure to the benefit of the Declarant (as long as Class B Membership exists), the Association or any Lot Owner or their respective legal representatives, heirs, successors, and assigns. This Declaration shall thereafter automatically be extended for successive periods of ten (10) years. Except as specifically otherwise provided in this document, the Declaration may be amended by an instrument signed by not less than the Lot Owners of sixty-seven percent (67.0%) of the Lots.

10.3.2. If an amendment is executed, each such amendment shall be delivered to the Association's Board which shall, within thirty (30) days:

- (a) Reasonably assure itself that the amendment has been executed by the Lot Owners of the required number of Lots (for this purpose, the Board may rely on its roster of Members, and shall not be required to cause the title to any Lot to be examined); and
- (b) Attach the following certification:

CERTIFICATION

*By authority of its Executive Board, Woodend Homeowners Association, Inc. certifies that the foregoing instrument has been duly executed by the Lot Owners of sixty-seven percent (67%) of the Lots in the Planned Community and is therefore a valid amendment to the Declaration recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ in the office of the Register of Deeds for Gaston County, North Carolina.*

*Woodend Homeowners Association, Inc.*

BY: \_\_\_\_\_  
*President*

Within the thirty (30) day period, the Association's Board shall cause the amendment to be recorded with the appropriate Register of Deeds' office. All amendments shall be effective from the date of recordation in the appropriate Register of Deeds' office; provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association.

10.4. **Resolution of Disputes Without Litigation.**

(a) The Association and its officers, directors and committee members, Members and any person not otherwise subject to the Declaration who agrees to submit to this Article (collectively "Bound Parties") shall not file suit in any court with respect to a Claim described in subsection (b) unless and

until it has first submitted such Claim to the alternative dispute resolution procedures set forth in this Articles in a good faith effort to resolve such Claim.

(b) As used in this Section, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to:

(i) the interpretation, application or enforcement of the Declaration, ByLaws and Articles;

(ii) the rights, obligations and duties of any Bound Party under the Declaration, ByLaws and Articles; or

(iii) the design or construction of improvements within the Properties, other than matters of aesthetic judgment under Section 8 of the Declaration, which shall not be subject to review;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 2 below:

(i) any suit or proceeding by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of the Declaration (relating to creation and maintenance of community standards);

(iii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Declaration, ByLaws and Articles;

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 2(a) below, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

#### 10.4. 1. **Dispute Resolution Procedures**

(a) **Notice.** The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 2(a) or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Gaston County area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each party shall bear its own costs of the mediation, including attorney's fees, and each Party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In this event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorney's fees and court costs.

Section 3. Initiation of Litigation by Association. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Voting Members entitled to cast 75% of the total Class A votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Class B Membership;
- (b) initiated to enforce the provisions of the Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it; or

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

10.5. Voting. Voting by Members of the Association shall be in accordance with the applicable provisions set forth in this Declaration and the ByLaws.

10.6. Member Addresses. Each Member agrees to keep the Association informed of his address at any time and any notice sent or delivered to that address shall be sufficient. Each new Member agrees to provide the Association with evidence of his Lot Ownership for preparation of a membership roster and the roster as so completed shall be sufficient evidence as to the Lot Ownership of each Lot.

10.7. Gender and Grammar. All words and phrases in this Declaration shall be construed to include the singular or plural number, and the masculine, feminine, or neuter gender, as the context requires.

10.8. Lot Owner Responsibility. Notwithstanding anything in this Declaration to the contrary, a Lot Owner shall be responsible for any and all violations of these Declarations by his employees, agents, tenants, guests and invitee. When a party to this Declaration consists of more than one individual or entity, such party's liability hereunder shall be joint and several.

10.9. Construction. This Declaration shall be construed in accordance with the laws of North Carolina without giving effect to its conflict of laws principles. In case of any conflict between the Declaration and the Articles or the ByLaws, the Declaration shall control.

10.10. **Exhibits.** All Exhibits and Schedules, if any, attached to this Declaration are hereby incorporated by reference and made a part of this Declaration. The term "Declaration" as used herein shall be deemed to include all such Exhibits and Schedules.

10.11. **Remedies.** In the event of any default in and/or breach of any of the terms, conditions and provisions of this Declaration (either actual or threatened) the party or parties who are thereby aggrieved shall have the right to specific performance and/or injunction in addition to any and all other rights and remedies at law or in equity. The rights and remedies provided by this Declaration are distinct and cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. No delay or omission of a party to exercise any right or power arising from any default on the part of the other shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein. The rights and remedies provided herein are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

10.12 **Termination.** Any termination of the Planned Community shall be effected in accordance with N.C.G.S. § 47F-2-118 unless such termination shall have been caused by a taking of all of the Lots by eminent domain, in which case such termination will be effected in accordance with N.C.G.S. § 47F-1-107.

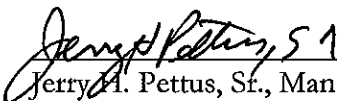
10.13 **Attorneys Fees.** Except as and subject to the limitations provided in N.C.G.S. § 47F-3-116, in any action brought to enforce provisions of this Declaration, the Association's Articles of Incorporation or ByLaws, or rules or regulations duly adopted by the Association, the prevailing party in such action shall be entitled to collect reasonable attorneys fees awarded by the court having jurisdiction over such action.

10.14 **Rules of Construction.** In the event of a conflict between the provisions of the Declaration and the Association's ByLaws, the Declaration shall prevail except to the extent it is inconsistent with the Act. To the extent any provisions of the Declaration, the Association's Articles of Incorporation or ByLaws violate the Act, such provisions shall be deemed amended and shall be construed to the extent necessary to comply with the Act.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed by its corporate duly authorized officer by authority of its Board of Directors, this day first above written.

DECLARANT:

**WOODEND, LLC**

BY:  \_\_\_\_\_  
Jerry A. Pettus, Sr., Manager

STATE OF NORTH <sup>SC</sup>CAROLINA

COUNTY OF York

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:



07

JERRY H. PETTUS, SR.

*[Signature]*  
Notary Public Beth A. Parnelle  
(Type or Print Name)

My commission expires: \_\_\_\_\_

**My commission expires September 15, 2016**

First Charter Bank, as holder of Promissory Note secured by Construction Deed of Trust Securing Future Advances recorded in Book 4189, at Page 1489 through 1471 of the Gaston County Public Registry, and Patricia M Vogel, as Trustee under said Deed of Trust, join in the execution the foregoing Declaration of Covenants, Conditions and Restrictions for the purpose of making said Deed of Trust subject to the terms and conditions of the foregoing Declaration of Covenants, Conditions and Restrictions.

FIRST CHARTER BANK

BY: *[Signature]*  
Samuel Bree President  
*[Signature]* (SEAL)  
Patricia M Vogel, TRUSTEE

STATE OF NORTH CAROLINA  
COUNTY OF Mecklenburg

I, Toni P. Stephens, a Notary Public certify that Jeff Mylton personally came before me this day and acknowledged that he/she is S.V. President of FIRST CHARTER BANK, a corporation, and that he/she, as S.V. President, being authorized to do so, executed the foregoing instrument on behalf of said corporation.

WITNESS my hand and notarial seal, this the 26<sup>th</sup> day of MARCH, 2007.

*[Signature]*  
Notary Public  
My commission expires: 6-4-08

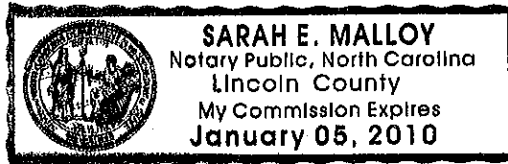
**TONI P. STEPHENS**  
NOTARY PUBLIC  
MECKLENBURG COUNTY, NC  
MY COMMISSION EXPIRES 6-4-08

STATE OF NORTH CAROLINA  
COUNTY OF Mecklenburg

I, Sarah E. Malloy, a Notary Public certify that  
Patricia M. Vogel, **Trustee** personally came before me this day and acknowledged the execution of  
the foregoing instrument on behalf of said corporation.

WITNESS my hand and notarial seal, this the 27<sup>th</sup> day of March, 2007

Sarah E Malloy  
Notary Public  
My commission expires: \_\_\_\_\_



**EXHIBIT "A"**

Lying and being in South Point Township, Gaston County, North Carolina and more particularly described as follows:

All of that certain 34.989 acre tract as shown on the plat recorded in Plat Book 71 at Page 88 in the Gaston County Public Registry.

Time 12:58:48  
Book 4435  
Page 1024  
Filed 10-31-08

Drawn by and Mail to:  
Douglas P. MacMillan, Attorney  
6857 Fairview Road  
Charlotte, NC 28210

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WOODEND**

**THIS FIRST AMENDMENT** is made this 31<sup>st</sup> day of OCT, 2008 by **WOODEND, LLC**, a North Carolina limited liability company, hereinafter referred to as the "Declarant," and **CHARLES E. KINCAID, JR.** and wife, **LISA D. KINCAID**, hereinafter collectively referred to as "Kincaid."

**WITNESSETH:**

**WHEREAS**, the Declarant executed the Declaration of Covenants, Conditions and Restrictions for Woodend (the "Declaration") and filed the same for record in Book 4309, at Pages 1464 through 1501 in the office of the Register of Deeds for Gaston County, North Carolina; and

**WHEREAS**, the Declarant and Kincaid own more than 67% of the property subject to the Declaration; and

**WHEREAS**, the Declarant and Kincaid now wish to amend the Declaration;

**NOW, THEREFORE**, in consideration of the covenants, conditions and restrictions set forth in the Declaration and set forth herein, the Declarant and Kincaid hereby amend the Declaration as follows:

1. The Following Section 9.15.1 is added to Article IX of the Declaration immediately following Section 9.15 of Article IX:

5.5. No Vinyl Siding or Log Homes. The use of vinyl siding or log cabin materials as an exterior surface of homes in the Planned Community is prohibited.

IN WITNESS WHEREOF the Declarant and Kincaid have amended the Declaration by this First Amendment executed the day and year first above written.

DECLARANT:

WOODEND, LLC

BY:

Jerry H. Pettus Sr., Manager

Charles E. Kincaid, Jr. (SEAL)

Lisa D. Kincaid (SEAL)

STATE OF ~~NORTH~~ <sup>South</sup> CAROLINA

COUNTY OF York

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Date: 10-31-08

JERRY H. PETTUS, SR.

Beth A. Parnelle  
Notary Public Beth A. Parnelle  
(Type or Print Name)

My commission expires: \_\_\_\_\_  
My commission expires September 15, 2016

(Official Seal)

STATE OF ~~NORTH~~ <sup>South</sup> CAROLINA

COUNTY OF York

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Date: 10-31-08

CHARLES E. KINCAID, JR.  
LISA D. KINCAID

Beth A. Parnelle  
Notary Public Beth A. Parnelle  
(Type or Print Name)

My commission expires: \_\_\_\_\_

(Official Seal)

My commission expires September 15, 2016

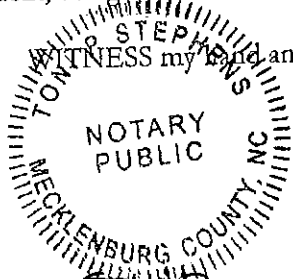
Fifth Third Bank, successor by merger to First Charter Bank, as holder of Promissory Note secured by Construction Deed of Trust Securing Future Advances recorded in Book 4189, at Page 1489 through 1471 of the Gaston County Public Registry, and Theresa Dorn, as Substitute Trustee under said Deed of Trust, join in the execution the foregoing First Amendment to Declaration of Covenants, Conditions and Restrictions for the purpose of making said Deed of Trust subject to the terms and conditions of the foregoing Declaration of Covenants, Conditions and Restrictions.

FIFTH THIRD BANK

BY: [Signature]  
Senior Vice President  
Theresa A. Dorn (SEAL)  
Theresa Dorn, Substitute Trustee

STATE OF NORTH CAROLINA  
COUNTY OF Mecklenburg

I, Toni P. Stephens, a Notary Public certify that Jeff Milton personally came before me this day and acknowledged that he/she is S.V. President of FIFTH THIRD BANK, a corporation, and that he/she, as S.V.P. President, being authorized to do so, executed the foregoing instrument on behalf of said corporation.



WITNESS my hand and notarial seal, this the 31<sup>st</sup> day of October, 2008.

Toni P. Stephens  
Notary Public  
My commission expires: 6-4-2013

STATE OF NORTH CAROLINA  
COUNTY OF York

I, Beth A. Parnelle, a Notary Public certify that Theresa Dorn, Substitute Trustee personally came before me this day and acknowledged the execution of the foregoing instrument on behalf of said corporation.

WITNESS my hand and notarial seal, this the 31<sup>st</sup> day of Oct, 2008

Beth A. Parnelle  
Notary Public  
My commission expires: \_\_\_\_\_

My commission expires September 15, 2016

**BYLAWS  
OF  
WOODEND HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I  
GENERAL**

These ByLaws are adopted ancillary to the formation of WOODEND HOMEOWNERS ASSOCIATION, INC. (the "**Association**"), a North Carolina non-profit corporation formed to administer Woodend, a Planned Community formed pursuant to the North Carolina Planned Community Act as adopted in Chapter 47F of the North Carolina General Statutes (the "**Act**") and described in the Declaration of Covenants, Conditions and Restrictions for Woodend (the "**Declaration**") which is being executed contemporaneously herewith and filed for record in the office of the Register of Deeds for Gaston County. The definitions set forth in Section 1 of the Declaration shall have the same meanings herein, and such definitions are hereby incorporated herein by reference.

**ARTICLE II  
OFFICES**

2.1. **Principal Office.** The principal office of the Association shall be located at 1 Sunrise Point Lane, Lake Wylie, SC 29710.

2.2. **Registered Office.** The registered office of the Association required by law to be maintained in the State of North Carolina may be, but need not be, identical with the principal office.

2.3. **Other Offices.** The Association may have offices at such other places, either within or without the State of North Carolina, as the Executive Board may designate or as the affairs of the Association may require from time to time.

**ARTICLE III  
MEMBERSHIP**

3.1. **Membership.** Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to the Declaration, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to the Declaration. Ownership of such lot of shall be the sole qualification for membership. As evidence of each Owner's membership, the Association may require each Owner to furnish a photocopy of the page(s) of his deed(s) which contains the name of the Member and the Lot(s) owned by such Member.

3.2. **Classes of Membership.** The Association shall have two classes of voting membership:

(a) Class A Members shall be all Lot Owners with the exception of the Declarant . Declarant may, however, be a Class A Member upon the termination of Class B Membership. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any one Lot, all such Persons shall be Members. The vote of that Lot shall be exercised as

they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Fractional voting is prohibited.

(b) The Class B Member shall be the Declarant. Class B Members shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership upon the earlier of:

(i) the date the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership; provided that the Class B Membership shall be reinstated with all rights, privileges, responsibilities and voting power if, after conversion of the Class B Membership to Class A Membership, additional lands are annexed to the Planned Community by the Declarant as provided in the Declaration; or

(ii) December 31, 2017; or

(iii) the effective date of the Declarant's 's written consent to termination.

3.3. **Fines and Suspension of Privileges or Services.** The Association, through its Executive Board, may levy fines against and suspend privileges of or services provide by the Association to a Member in accordance with the Declaration and the Act.

#### **ARTICLE IV MEETINGS OF MEMBERS**

4.1. **Place of Meetings.** All meetings of Members shall be held at the principal office of the Association, or at such other place, within Gaston County, North Carolina, as shall be designated on the notice of the meeting or agreed upon by a majority of the votes of the Members entitled to vote thereat.

4.2. **Annual Meetings.** A meeting of the Association shall be held at least once each year. The annual meeting of Members for the election of Directors and the transaction other business shall be held at such time and at such place as determined by the Executive Board.

4.3. **Substitute Annual Meeting.** If the annual meeting shall not be held on the day designated by these ByLaws, a substitute annual meeting may be called in accordance with the provisions of Section 4.4 of this Article IV. A meeting so called shall be designated and treated for all purposes as the annual meeting.

4.4. **Special Meeting.** Special meetings of the Association may be called by the President, a majority of the Executive Board or by Lot Owners having ten (10%) percent of the votes in the Association.

4.5. **Notice of Meetings.** Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the Association's Secretary or any other officer of the Association shall cause to be hand-

delivered or sent prepaid by United States mail to the mailing address of each Lot or to any other mailing address designated in writing by the Lot Owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or the ByLaws, any budget changes, and any proposal to remove a Director or officer.

4.6. **Voting Lists.** At least ten days before each meeting of Members the Secretary of the Association shall prepare an alphabetical list of the Members entitled to vote at such meeting or any adjournment thereof, with the address of and number of votes held by each, which list shall be kept on file at the registered office of the Association for a period of ten days prior to such meeting, and shall be subject to inspection by any Member at any time during the usual business hours. This list shall be produced and kept open at the time and place of the meeting and shall be subject to inspection by any Member during the whole time of the meeting.

4.7. **Quorum.** A quorum is present throughout any meeting of the Association if persons entitled to cast ten (10%) percent of the votes which may be cast for election of the Executive Board are present in person or by proxy at the beginning of the meeting.

The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding anything herein or in the Declaration to the contrary, the quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. The foregoing provision shall continue to reduce the quorum by fifty (50%) percent from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

4.8. **Proxies.** Votes may be voted either in person or by one or more agents authorized by a written proxy executed by the Member or by his duly authorized attorney in fact. If a Lot is owned by more than one person, each owner of the Lot may vote or register protest to the casting of votes by the other owners of the Lot through a duly executed proxy. A Member may not revoke a proxy given pursuant to this section except by actual notice to the person presiding over a meeting of the Association. A proxy is void if it is not dated. A proxy terminates eleven (11) months after its date, unless it specifies a shorter term.

4.9. **Voting.** The vote of a majority of the votes on any matter present at a meeting of Members at which a quorum is present, regardless of class, shall be the act of the Members on that matter, unless the vote of a greater number is required by law or by the Articles of Incorporation, the Declaration or ByLaws of this Association. If only one of the multiple owners of a Lot is present at a meeting of the Association, the owner who is present is entitled to cast all votes allocated to that Lot. If more than one of the multiple owners are present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the Declaration or these ByLaws expressly provide otherwise. Majority agreement is conclusively presumed if any one of

the multiple owners casts the votes allocated to that Lot without protest being made promptly to the person presiding over the meeting by any other owners of the Lot.

4.10. **Informal Action.** Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the persons who would be entitled to vote upon such action at a meeting, and filed with the Secretary of the Association to be kept as part of the Association's records.

4.11. **Presiding Officer.** The President of the Association, or in the absence of the President, the Vice President shall preside at all meetings of the Members and the Secretary of the Association shall act as the Secretary thereof. In the absence of the Secretary, the President shall designate some other person to act as the Secretary of the meeting. In the absence of both the President and the Vice-President, the Members present at the meeting shall elect a Presiding Officer for such meeting.

4.12. **Order of Business.** The order of business at the annual meeting and at any special meeting of the Members shall be as follows:

- (a) The calling of the meeting to order;
- (b) The calling of the roll;
- (c) The announcement by the Presiding Officer of the purpose of the meeting and of the nature of the business which may be presented by it;
- (d) The reading and approval of the minutes of any former meeting of the Members, the Minutes of which have not been previously read and approved;
- (e) The presentation of and action, if required, upon reports of officers and committees;
- (f) Unfinished business;
- (g) New business, including the election of Directors for the forthcoming year if the meeting be an annual meeting; and
- (h) Adjournment.

## ARTICLE V EXECUTIVE BOARD

5.1. **Number, Term and Qualification.** The number of Directors constituting the Executive Board shall be not less than two (2) nor more than six (6) as may be fixed by resolution duly adopted by the Members or by the Executive Board prior to the annual meeting of which such Directors are to be elected; and, in the absence of such a resolution, the number of Directors shall be the number elected at the preceding annual meeting. Any Directorships not filled by the Members shall be treated as vacancies to be filled by and in the discretion of the Executive Board.

Each Director shall hold office for a 3 year term, or until his death, resignation, removal, disqualification, or his successor shall have been elected and qualified. Directors need not be residents of the State of North Carolina or Members of the Association.

5.2. **Nomination.** Nomination for election to the Executive Board shall be made by the Executive Board. Nominating may also be made from the floor at the annual meeting. The Executive Board shall make as many nominations for election to the Executive Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations shall be made from among Members or executive Board Members only.

5.3. **Election of Directors.** Except as provided in Section 5 of this Article V, the Directors shall be elected at the annual meeting of Members; and those persons who receive the highest number of votes shall be deemed to have been elected. If any Member so demands, the election of Directors shall be by ballot. Cumulative voting is not permitted.

5.4. **Removal.** Any Director may be removed at any time with or without cause by a vote of the Members holding a majority of the outstanding votes entitled to vote at an election of Directors. If any Directors are so removed, new Directors may be elected at the same meeting.

5.5. **Vacancies.** Any vacancy occurring in the Executive Board may be filled by the affirmative vote of a majority of the remaining Directors even though less than a quorum, or by the sole remaining Director. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any Directorship to be filled by reason of an increase in the authorized number of Directors shall be filled only by election at an annual meeting or at a special meeting of Members called for that purpose.

5.6. **Chairman of Board.** There may be a Chairman of the Executive Board elected by the Directors from their number at any meeting of the Board. The Chairman shall preside at all meetings of the Executive Board and perform such other duties as may be directed by the Board.

5.7. **Compensation.** The Executive Board may not compensate Directors for their services as such, but may provide for the payment of any or all expenses incurred by Directors in attending regular and special meetings of the Board or in performing his duties.

## ARTICLE VI MEETING OF DIRECTORS

6.1. **Regular Meetings.** A regular meeting of the Executive Board shall be held immediately after, and at the same place as, the annual meeting of Members. In addition, the Executive Board may provide, by resolution, the time and place, either within or without the State of North Carolina, for the holding of additional regular meetings.

6.2. **Special Meetings.** Special meetings of the Executive Board may be called by or at the request of the President or any two Directors. Such a meeting may be held either within or without the State of North Carolina, as fixed by the person or persons calling the meeting.

6.3. **Notice of Meetings.** Regular meetings of the Executive Board may be held without notice. The person or persons calling a special meeting of the Executive Board shall, at least three (3) days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called.

6.4. **Waiver of Notice.** Any Director may waive notice of any meeting. The attendance by a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

6.5. **Quorum.** A quorum is deemed present throughout any meeting of the Executive Board if persons entitled to cast fifty (50%) percent of the votes on the Executive Board are present at the beginning of the meeting.

The Directors present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Directors to leave less than a quorum.

In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present. Notwithstanding anything herein or in the Declaration to the contrary, the quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. The foregoing provision shall continue to reduce the quorum by fifty (50%) percent from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

6.6. **Manner of Acting.** Except as otherwise provided in these by-laws, the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Executive Board.

6.7. **Presumption of Assent.** A Director who is present at a meeting of the Executive Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his contrary vote is recorded or his dissent is otherwise entered in the minutes or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

6.8. **Informal Action by Directors.** Action taken by a majority of the Directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken,

6.9. **Committees of the Executive Board.** The Executive Board, by resolution adopted by a majority of the number of Directors fixed by these by-laws, shall designate three or more Directors to constitute an Architectural Committee as provided in the Declaration and may appoint other committees as it deems appropriate. The designation of any committee and the delegation thereto of

authority shall not operate to relieve the Executive Board, or any member thereof, of any responsibility or liability imposed upon it or him by law.

6.10. **Attendance by Lot Owners.** At regular intervals to be determined by the Executive Board, the Executive Board shall provide Lot Owners the opportunity to attend a portion of meetings of the Executive Board to speak to the Executive Board about Lot Owner issues or concerns. The Executive Board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on Lot Owners who speak.

## ARTICLE VII POWERS/DUTIES OF EXECUTIVE BOARD

7.1. **Powers.** The Executive Board shall have power to:

(a) adopt and-publish rules and regulations governing the use of the Common Elements, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

(b) levy fines against and suspend privileges of or services provide by the Association to a Member in accordance with the Declaration and the Act;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association by the provisions of these ByLaws, the Articles of Incorporation, or the Declaration and not reserved to the membership by other provisions of these ByLaws, the Articles of Incorporation, or the Declaration;

(d) declare the office of a member of the Executive Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Executive Board; and

(e) employ a manager, an independent contractor, or such other employees as they deem necessary and to prescribe their duties. Without limiting the foregoing, the Executive Board may implement rules and regulations governing use of and access to the recreational amenities located within the Common Elements owned by the Association, and may deny access to such amenities if any Member or Member's tenants, guests, family members shall conduct themselves on the premises in a manner which violative of reasonable rules and regulations adopted or sanctioned by the Executive Board designed to protect the health, safety and enjoyment of the Members while utilizing such facilities. Until such time as all Class B memberships shall cease, the Association shall not enter into any lease or contract (including management contracts) unless there is a right of termination of any such lease or contract, without cause, which is exercisable without penalty upon not more than ninety (90) days' notice to the other party.

7.2. **Duties.** It shall be the duty of the Executive Board to:

- (a) cause to be kept, maintained and made available for examination by any Lot Owner or such Lot Owner's authorized agents, a complete record of all its acts and corporate affairs, including, without limitation, all such financial and other records as may be required by N.C.G.S. § 47F-3-118(a), and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A Members who are entitled to vote;
- (b) supervise all officers, agents, and employees of this Association, and to see that their duties are properly performed;
- (c) as more fully provided in the Declaration to:
- (1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;
  - (2) send written notice of each assessment to every Owner subject thereto at least fifteen (15) days in advance of each annual assessment period; and
  - (3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same in accordance with the Declaration and the Act.
- (d) issue, or to cause an appropriate officer to issue, upon demand by any person entitled to receive the same as set forth in the Declaration or in N.C.G.S. § 47F-3-118 (b), a statement setting forth whether there are, and if so the amount of, unpaid assessments or other charges against any Lot. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (e) procure and maintain adequate liability and hazard insurance on property owned by the Association and as otherwise provided for in the Declaration;
- (f) pay ad valorem taxes and public assessments levied against the Common Elements;
- (g) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- (h) cause the Common Elements and the improvements to the Common Elements to be maintained; and
- (i) direct and supervise the affairs of the Association and require the Association to fulfill all of its obligations and duties set forth in the Declaration.

7.3 **Delegation of Powers/Duties.** The Executive Board may delegate any of its powers and/or duties as may be permitted under the Declaration, the Association's Articles of Incorporation or other provisions of these ByLaws.

## **ARTICLE VIII OFFICERS**

8.1. **Officers.** The officers of the Association shall consist of a President, a Secretary, a Treasurer and such Vice-Presidents, Assistant Secretaries, Assistant Treasurers, and other officers as the Executive Board may from time to time elect. Any two or more offices may be held by the same person, but no officer may act in more than one capacity where action of two or more officers is required.

8.2. **Election, Term and Qualification.** The officers shall be elected by the Executive Board and each officer shall hold office until his death, resignation, retirement, removal, disqualification or his successor shall have been elected and qualified. Only members of the Executive Board shall serve in the capacity of President and Vice-president. Other officers need not be Directors or Members of the Association.

8.3. **Compensation of Officers.** The Executive Board shall fix the compensation of officers; however, in no event shall Members of the Association be compensated for serving as an officer except to the extent necessary to reimburse said officer for expenses incurred in performing his duties on behalf of the Association.

8.4. **Removal.** Any officer or agent elected or appointed by the Executive Board may be removed by the Board whenever in its judgment the best interests of the Association will be served thereby; but such removal shall be without prejudice to the contract rights, if any, of the persons so removed.

8.5. **Bonds.** The Executive Board may by resolution require an officer, agent, or employee of the Association to give bond to the Association, with sufficient sureties, conditioned on the faithful performance of the duties of his respective office or position, and to comply with such other conditions as may from time to time be required by the Executive Board

8.6. **President.** The President shall be the principal executive officer of the Association and, subject to the control of the Executive Board, shall in general supervise and control all of the business and affairs of the Association. He shall, when present, preside at all meetings of the Members. He shall sign, with the Secretary, an Assistant Secretary, or any other proper officer, any deeds, deeds of trust, mortgages, bonds, contracts, or other instruments which the Executive Board has authorized to be executed, except in cases where the starting and execution thereof shall be expressly delegated by the Executive Board or by these By-Laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general he shall perform all duties incident to the office of President and such other duties as may be prescribed by the Executive Board from time to time.

8.7. **Vice-Presidents.** In the absence of the president or in the event of his death, inability or refusal to act, the Vice-Presidents in the order or their length of service as Vice-Presidents, unless otherwise determined by the Executive Board, shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. Any Vice-President shall perform such other duties as from time to time may be assigned to him by the President or Executive Board.

8.8. **Secretary.** The Secretary shall: (a) keep the minutes of the meetings of Members, of the Executive Board and of all Committees in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the Association records and of the seal of the Association and see that the seal of the Association is affixed to all documents file execution of which on behalf of the Association under its seal is duly authorized; (d) keep a register of the post office address of each Member which shall be furnished to the Secretary by such Member; (e) keep or cause to be kept a record of the Association's Members, giving the names and addresses of all Members and the number of votes held by said addresses of all Members and the number of votes held by each, and prepare or cause to be prepared voting lists prior to each meeting of Members as required by law; and (1) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Executive Board.

8.9. **Assistant Secretaries.** In the absence of the Secretary or in the event of his death, inability or refusal to act, the Assistant Secretaries in the order of their length of service as Assistant Secretary, unless otherwise determined by the Executive Board, shall perform the duties of the Secretary, and when so acting shall have all the powers of and be subject to all the restrictions upon the Secretary. They shall perform such other duties as may be assigned to them by the Secretary, by the President, or by the Executive Board.

8.10. **Treasurer.** The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such depositories as shall be selected; (b) prepare, or cause to be prepared, a true statement of the Association's assets and liabilities as of the close of each fiscal year, all in reasonable detail, which statement shall be made and filed at the Association's registered office or principal place of business in the State of North Carolina within four months after the end of such fiscal year and there kept for a period of at least ten years; (c) cause, at the direction of the Executive Board, an independent annual audit be made of the books and records of the Association, (d) issue, at the direction of the Executive Board, certificates as to whether assessments on a specified Lot have been paid; and (e) in general perform all of the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him by the President or by the Executive Board, or by these By-Laws.

8.11. **Amendments to the Declaration.** All duly adopted amendments to the Declaration may be prepared, executed, certified and recorded by, or at the direction of, the President or Vice President, and when any such amendment is to be attested as part of its execution, it may be attested by the Secretary or an Assistant Secretary.

**ARTICLE IX  
MEMBERSHIP REGISTER**

9.1. For the purpose of determining members of the Association entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or in order to make a determination of Members for any other proper purpose, the Executive Board may provide that the membership register shall be closed for a stated period but not to exceed, in any case, fifty (50) days. If the membership register shall be closed for the purposes of determining members entitled to notice of or to vote at a meeting of Members, such books shall be closed for at least ten (10) days immediately preceding such meeting.

9.2. In lieu of closing the membership register, the Executive Board may fix in advance a date as the record date for any such determination of Members, such record date in any case to be not more than fifty (50) days and, in case of a meeting of Members, not less than ten (10) days immediately preceding the date on which the particular action, requiring such determination of Members is to be taken.

9.3. If the membership register is not closed and no record date is fixed for the determination of Members entitled to notice of or to vote at a meeting of Members, the date on which notice of the meeting is mailed shall be the record date for such determination of Members.

9.4. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this section, such determination shall apply to any adjournment thereof except where the determination has been made through the closing of the membership register and the stated period of closing has expired.

**ARTICLE X  
GENERAL PROVISIONS**

10.1. **Books & Records.** The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member, his agent or attorney, for any proper purpose. The Declaration, the Articles of Incorporation and the By-Laws of the Association and the Financial statements for the Association for the immediately preceding fiscal year shall be available for inspection by any Member and any first mortgage holders, their insurers or guarantors, at the principal office of the Association, where copies may be purchased at reasonable cost.

10.2. **Seal.** The seal of the Association shall consist of two concentric circles between which is the name of the Association and in the center of which is inscribed SEAL; and such seal, as impressed on the margin hereof, is hereby adopted as the Association's seal.

10.3. **Waiver of Notice.** Whenever any notice is required to be given to any Member or Director by law, by the Articles of Incorporation, Declaration or by these ByLaws, a waiver thereof in writing signed by the person or persons entitled to such notice whether before or after the time stated therein, shall be equivalent to the giving of such notice.

10.4. **Fiscal Year.** The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December or every year, except that the first fiscal year shall begin on the date of incorporation.

10.5. **Amendments.** These By-Laws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy.

10.6 **Rules of Construction.** In the event of a conflict between the provisions of the Declaration and the Association's ByLaws, the Declaration shall prevail except to the extent it is inconsistent with the Act. To the extent any provisions of the Declaration, the Association's Articles of Incorporation or ByLaws violate the Act, such provisions shall be deemed amended and shall be construed to the extent necessary to comply with the Act.

10.7 **Publication of Names and Addresses of Officers and Board Members.** The Association shall publish the names and addresses of all officers of the Association and members of the Executive Board within ten (10) days of their election.

10.8 **Roberts Rules of Order.** Meetings of the Association Members and meetings of the Executive Board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.

Adopted this 23<sup>rd</sup> day of March, 2007 by the undersigned Directors.

**WOODEND HOMEOWNERS ASSOCIATION,  
INC.**

  
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Jerry H. Pettus, Sr., Director

  
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Jerry H. Pettus, Jr., Director