

BOOK 1677 PAGE 324 (12)

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WILLIAM LEE KING, Henderson COUNTY, NC

→ RIVERWIND SECRETARY
30 Riverwind Drive
Hendersonville, NC 28739

**AMENDED AND RESTATED
BY-LAWS
OF
RIVERWIND HOMEOWNERS
ASSOCIATION, INC.
A NONPROFIT CORPORATION
IN HENDERSON COUNTY, NORTH CAROLINA
RESTRICTED TO PERSONS AGES 55 YEARS AND OVER**

**Replaces any and all By-Laws adopted before 2016 by
Riverwind Homeowners Association, Inc.**

General

Section 1.1 Name. These are the By-Laws of Riverwind Homeowners Association Inc., a North Carolina Nonprofit Corporation restricted to persons ages 55 and over, herein referred to as the “Association”.

Section 1.2 Location. The principal office of the Association is 30 Riverwind Drive, Hendersonville, North Carolina 28739.

Section 1.3 Purpose. The Association shall have the responsibility of administering the Riverwind Planned Community, including those matters contained in Chapter 55A of the North Carolina Nonprofit Corporation Act, N.C. Gen Stat 55a-1-01 et seq., and North Carolina Planned Community Act, §47F-1-101 et seq., (hereinafter designated as the NCPCA) and as specifically required to be performed by a vote of the Association.

Section 1.4 Seal. The Seal of the Association shall contain the name of the Association, and such other words and figures as desired by the Board of Directors and as provided by the laws of the State of North Carolina.

Section 1.5 Records. All records of the Association shall be maintained on a fiscal year basis.

Article II Definitions

In accordance with §47F-1-103 of the North Carolina Planned Community Act, and unless specifically provided otherwise or the context otherwise requires, the following terms as used in the Covenants and these By-Laws shall have the following meanings:

1. **Allocated Interests** means the common expenses liabilities and votes in the Association allocated to each Lot.

2. **Annual Budget** means the fiscal year operating budget proposed by the Board of Directors and approved by a majority vote of those present and those voting by proxy or absentee ballot or by USPS mailed ballot at the Annual Meeting, a Quorum not being necessary as per the NCPCA §47F-3-103 c.

3. **Assessments** means any and all sums levied by the Association against any Lot Owner as common expenses or other charges to include, but not limited to, common expense liabilities, special assessments, specific assessments, fines, late charges, interest and attorney’s fees as set forth in the Covenants and these By-Laws; provided, however, that any such Special Assessments requires the approval of a Majority Vote of the qualified membership of The Association. Annual Assessments are separate and distinct from the Annual Budget.

4. **Association** means Riverwind Homeowners Association (RHOA), Inc., organized under the laws of North Carolina (a non-profit corporation).

5. **Board of Directors** means the governing body elected by the Qualified Voters of the Association.

6. **By-Laws** means the By-Laws adopted by the Association.

7. **Common Elements** means all parts of the Planned Community located outside the boundaries of the Lots including any real estate in the Planned Community owned or leased by the Association.

8. **Common Expenses Liability** means

a. all building expenses incident to the administration, improvement, operation, maintenance, repair or replacement of any realty or improvement owned or leased by the Association, including but not limited to real estate and roads.

b. all expenses determined by the Association to be common and which are lawfully assessed against the Lot Owner, including payment by the Association of any costs and expenses for the improvement, administration, operation, maintenance, repair and replacement of any property owned or leased by the Association, including but not limited to real estate and roads.

c. all sums lawfully assessed against the Lot Owner by the Association.

9. **Covenants** means the Restrictive Covenants adopted by the Association as amended and restated from time to time.

10. **Developer** means the company that builds and sells houses on a piece of land.

11. **Director(s)** means a member or members of the Board.

12. **DMH** means double-wide manufactured home.

13. **Dwelling** means a single-family residence in which a person or persons reside.

14. **Impact Fees** means the fee charged to a Builder according to Riverwind Architectural Standards.

15. **Lot** means any numbered plot of land shown on any plat of Riverwind Subdivision caused to be placed on record by the Association unless that Plat or any Covenants affecting that Lot indicated otherwise. For purposes of the Covenants and these By-Laws, Lots shall be categorized as follows:

a. **Improved Lot** means a lot on which has been constructed or permanently placed a DMH, modular home or stick built home. A Lot is declared improved from the date of issuance of a Certificate of Occupancy.

b. **Unimproved Lot** means a Lot owned by the Developer/Builder, or Member of the Association, on which there has been no construction of a DMH, modular home or stick built home or construction in process of such dwelling has not reached the point of issuance of a Certificate of Occupancy.

16. **Minutes** means the Secretary's or acting Secretary's written record of all meetings and proceedings, including pertinent reports and attachments of the Board and the Association.

17. **Non-Vote or Un-submitted Ballot** means a ballot not returned shall be counted as a **NO** vote.

18. **North Carolina Planned Community Act** will be "NCPCA" in these By-Laws.

19. **Officer** means those individuals who are elected by the Board to serve as President, Vice President, Secretary and Treasurer of the Association.

20. **Owner** means the legal Owner(s) of a Lot, excluding any lender or creditor whose interest is for security and specifically excluding any Developer of a Lot or Home-site.

21. **Plat** means any survey showing any portion of the Planned Community as recorded in Henderson County Records, excluding any survey that indicates on its face that it is not to be considered a "Plat" hereunder.

22. **Qualified Member** means the Owner(s) of a Lot and a member of the Association in good standing with full voting rights. Owner(s) are in good standing if they are not in default in the payment of assessments or otherwise in violation of the Covenants, the By-Laws or the Rules and Regulations. The Developer/Builder, LLC, or their successors, is excluded from membership in the Association.

23. **Rules and Regulations** means all Rules and Regulations adopted by the Board for the use and enjoyment of all property in the Planned Community owned or leased by the Association.

24. **Voting Criteria** is as follows in order for an issue to pass:

a. **Majority Vote** means more than fifty percent (50%) of the total votes cast by qualified voters.

1. **Annual Budget**: NCPCA, § 47F-3-103-c

2. **Board of Directors election**: NCPCA, § 47F-3-109-a.

3. **New Fund Project**

4. Removal of a Board Member: NCPCA, § 47F-3-103-b.
5. Special Assessments: Riverwind Covenants, 21D

b. **Super Majority Vote** means sixty-seven (67%) percent of total Qualified Members of the Community.

1. Amendment of By-Laws
2. Amendment of Covenants: NCPCA, § 47F-2-117-a.
3. Purchase or lease of property.

c. **Ultimate Majority Vote** means eighty (80%) percent of total Qualified Members of the Community.

1. Adoption of Independent Management: NCPCA, § 47F-3-106-4.
2. Termination of Amenities: NCPCA, § 47F-3-113-g.
3. Termination of The Planned Community: NCPCA, § 47F-2-118

d. **Quorum** means 40% (forty percent) of the Qualified Membership must be present at the meeting in person, by proxy, by absentee ballot or ballot by mail, for business to be legally transacted. If a quorum is not present or represented at any meeting, the President shall have the power to adjourn the meeting without notice other than an act at the meeting. The Quorum requirement at the next meeting shall be one-half of the Quorum requirements applicable to the meeting adjourned for lack of a Quorum. The Members at any meeting at which a quorum is present may continue to do business until its adjournment, NCPCA, §47F-3-109.

ARTICLE III

Section 3.1 Class of Membership. There shall be one class of membership. Each Lot Owner shall be a member. Any Developer/Builder is not a member.

ARTICLE IV

Section 4.1 Place of Meetings. Meetings of the membership shall be held in the Planned Community or at such place as is designated by the Board of Directors.

Section 4.2 Governing Rules at Meetings. The rules in the Roberts Rules of Order will be a guideline only, and they are not to be in conflict with these By-Laws or any special rules that the Board of Directors may adopt.

Section 4.3 Conduct of Business. Commonly accepted parliamentary procedure shall govern the conduct of the meeting when not in conflict with the Covenants and these By-Laws.

Section 4.4 Regular Resident Meeting. Meetings of the Board and Community residents will be scheduled periodically (Monthly or Quarterly) to report on the business of the Association. The frequency, date and location of the meeting will be announced to the Community at least thirty (30) days prior to the meeting.

Section 4.5 Notice of Regular Resident Meeting. The Regular Resident Meeting Notice shall be announced in the Newsletter, along with a proposed agenda (NCPCA Section 47F-3-108-a).

Section 4.6 Annual Meeting. The Annual Meeting of the membership shall be held in the month of September in the Riverwind Clubhouse, or such other place, at a date and time designated in writing by the Board of Directors. The Annual Meeting will be held for the purpose of electing new Directors for the Board of Directors, approving/disapproving the proposed Annual Budget and other business that the Board has included on the Agenda. Proxies and absentee ballots at the Annual Meeting will be accepted and counted.

Section 4.7 Notice of Annual Meeting. It shall be the duty of the Association Secretary to notify Qualified Members, in writing, by electronic mail or by the monthly Newsletter of Annual Meeting of the Association. Said notice shall be given not less than ten (10) days, nor more than sixty (60) days) before the scheduled meeting. The Notice of Meeting must state the time and place of the meeting and include a copy of the proposed Annual Budget. A packet containing the Notice of Meeting, the proposed Budget for the upcoming fiscal year, the Bios/pictures of candidates for the Board and a certified (RHOA embossed seal) ballot will be sent to every qualified property holder in good standing via USPS mail by the first day of September. This packet will also contain a self-addressed envelope to the RHOA Secretary for completed ballot, which when received, will be stored in a locked container until the Annual Meeting.

Section 4.8 Special Meeting. A meeting for any purpose(s) may be called at any time by the President, the majority of Board of Directors, or pursuant to a written request of at least ten (10) percent of the Qualified Members, NCPCA, § 47F-3-108. The business to be acted upon at all Special Meetings shall be confined to those items stated in the Notice of Special Meeting.

Section 4.9 Notice of Special Meeting. It shall be the duty of the Association Secretary to notify Qualified Members in writing, by electronic mail or by the monthly Newsletter of each Special Meeting of the Association. Said notice shall be given not less than ten (10), nor more than sixty (60) days before the scheduled meeting. The Notice of Special Meeting must state the time and place of the meeting and the specific purpose, or purposes for which the meeting is called.

Section 4.10 Adjournment. Any meeting may be adjourned by a majority vote of the Qualified Members present. Only business which was on the agenda of the adjourned session of the meeting may be transacted at a continued session. All Qualified Members shall be notified in writing that the meeting was adjourned and will be continued. Said notice must be given within ninety-six (96) hours of the adjournment.

Section 4.11 Voting Rights. The Qualified Member(s) shall be allocated one vote per lot owned. If any Qualified Member wishes a voting packet to be sent to an address other than the address of the Lot, the Qualified Member is responsible for notifying the Secretary in writing of the alternate address.

Section 4.12 Voting by Absentee Ballot. An absentee ballot shall be issued by the Association Secretary at the request of a Qualified Member who will be unable to attend the meeting in person.

Section 4.13 Voting by Proxy. A proxy shall only be issued at the request of an Qualified Member for a stated meeting or for no longer than a one (1) year period. To be valid, a proxy must be dated and filed with the Association's Secretary prior to the opening of the meeting for which it is to be used. No Proxy shall be revocable except by written notice delivered to the Secretary before the meeting, or if at the Regular meeting, to the Association Secretary, as per NCPCA 47F-3-110.

Section 4.14 Voting by Written Ballot. In accordance with Chapter 55A-7-08 of the North Carolina Non-profit Corporation Act, any action which may be taken at any Annual, Regular or Special meeting of Qualified Members may be taken without a meeting if the Association delivers, by hand or by U.S. Mail, a written ballot with Association Seal to every person entitled to vote on the matter. The written ballot for any action to be taken without a meeting shall specify the purpose or purposes for the action.

Section 4.15 Non-Votes. An abstention counts as a **NO** vote.

Section 4.16 Vote Tallying. Votes will be tallied at the Annual or Special Meeting by four (4) Tellers who do not serve on the Board or are not spouses/relatives of the Board members. There will be two (2) Observers, one (1) of which is a Board member, not running for a Director position, and the other is a resident in good standing in the community.

Section 4.17 Recording the Votes. The recording of the votes appurtenant to any issues (other than the election of Officers of the Board of Directors) will be the responsibility of the Association

Secretary .

ARTICLE V
Board of Directors

Section 5.1 General Powers. The business and affairs of the Association shall be managed by the Board of Directors.

Section 5.2 Size. The Board shall be composed of seven (7) Directors.

Section 5.3 Term of Office of Directors. The term of office for all Directors shall be two (2) years which begins immediately after the election has been completed and the results have been announced. Any qualified Director may be re-elected.

Section 5.4 Qualifications. Any permanent North Carolina resident and Qualified Member of the Association, in good standing, thirty-five (35) years of age or older is eligible to serve on the Board of Directors. Only one person per lot may serve as a Director at any given time.

Section 5.5 Director Nominations. The Board of Directors will assign one of the Directors to be the Chairperson of the Nomination Committee. The Chairperson shall seek at least two (2) Qualified Members of the Association, in good standing, to serve on the Nomination Committee. The makeup of the Nomination Committee will be announced at least 90 days before the Annual meeting. The committee will seek to identify Qualified Owners to run for election to the Board and report the slate of nominees in the August Newsletter and at the August Monthly meeting.

Section 5.6 Election of Directors. Directors shall be elected at the Annual Meeting. The candidates receiving the most votes shall be elected to the Board.

Section 5.7 Vacancies. The Board may unilaterally fill vacancies in its membership for the unexpired portion of any term. The vacancy shall be advertised for one month and all candidates vetted by the Board prior to selection and approval of the Board.

Section 5.8 Removal. Notwithstanding any provisions of the Covenants or By-Laws to the contrary, the Qualified Members, by a majority vote of all persons present and entitled to vote at any meeting of the Qualified Members at which a quorum is present, may remove any member of the Board with or without cause, NCPCA 47F-3-103-b.

Section 5.9 Compensation. No member of the Board of Directors shall receive any compensation from the Association for serving as a Director. Directors, by assuming office, waive their rights to institute suit against, or make claim upon, the Association for compensation. However, each Director, upon approval of the Board of Directors, shall be reimbursed for documented out-of-pocket expenses incurred on behalf of the Association.

Section 5.10 Liability of Directors. To the extent permitted by law, each Director shall be indemnified through insurance paid by the Association with respect to any liability and expenses of litigation arising out of his/her lawful activities within the scope of his/her duties as a Director.

Section 5.11 Loan to Directors and Officers. No loans shall be made by the Association to any Director.

Section 5.12 Meeting of Directors. A regular working session of Directors will be held at a time, date and place suitable for a meeting. The meetings will enable Directors to deal with issues and circumstances of the Association. A Directors meeting can be called by the President or by any two (2) Directors after not less than one (1) or more than ten (10) days notice to each Director.

1. **Location of Directors Meeting Place.** All meetings shall be held in the Riverwind Community unless the majority of Directors agree to hold meeting or meetings at some other location.

2. **Quorum.** The majority of Directors then holding office shall constitute a Quorum for the transaction of business and every act or decision done by the majority of the Directors present at a duly held meeting at which a Quorum is present shall be regarded as an act or decision of the Board.

3. **Action Without Meetings.** The Directors shall have the right to take any action necessary

for the administration, of the affairs of the Association, in the absence of a formal meeting by written or electronic media approval of a Quorum of Directors. Any action so approved shall be included in the minutes of the next Directors meeting.

Section 5.13 Powers and Duties. The Board shall have all the powers and duties necessary for the administration of the affairs of the Association, except such powers and duties as per Law or these By-Laws may not be delegated to the Board. The powers and duties to be exercised by the Board shall include but not be limited to the following:

1. Operation, improvement, care, upkeep, maintenance and management of any property owned or leased by the Association.

2. Employment and dismissal of personnel necessary for the efficient operation and maintenance of the Association.

3. Adoption of Rules and Regulations covering the details of the operation and use of any Association property owned or leased by the Association.

4. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, subject to an affirmative vote of 80% of the total Qualified Members of the Association, with the exception of property acquired through Deed in Lieu of Foreclosure and donated property, provided that common elements may be conveyed or subject to a security interest only pursuant to Section 47F-3-112 of the NCPA. The Board of Directors must take action, such as listing the property for sale or putting to a vote of the Association just how the property is to be used, within 120 (one hundred and twenty) days of acquiring the deed to a property.

5. The Association shall maintain, to the extent reasonably available:

a. Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall not be less than eighty (80%) percent of the replacement cost 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.

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.

c. Keeping detailed, accurate records in chronological order of receipts and expenditures affecting the Association and indicating the purpose for which the expenditure is made. All books and records shall be kept according to acceptable accounting practices and an outside audit will be done annually.

d. Terminating the Owner's right to use the recreational and common area facilities during a period in which the Owner is in default of the payment of Assessments for more than thirty (30) days.

e. Suspending the Owner's right to use the recreational and common area facilities during a period in which an Owner shall be in violation of the Covenants, the By-Laws, or Rules and Regulations after written notice and an opportunity of a hearing with the Board, NCPA 47F-3-107.1.

f. Determine and affix the periodic assessments to be and decide what, if any, interest rates to be applied for assessments which remain unpaid for thirty (30) days after they become due, NCPA 47F-3-103.

g. Collecting Assessments, Impact Fees and applicable fines.

h. Cause a lien against any Lot, for which assessments are not paid within thirty (30) days after the due date, cause to be foreclosed or cause an action to be brought against the owner personally obligated to pay same, NCPA Section 47F-3-116.

i. Maintaining a permanent record of all meetings of the Board of Directors, Annual Meeting, Residents Meetings and Special Meetings.

j. Promulgating, establishing, and enforcing with Developer/Builder, the Architectural Standards Package developed as a condition for the placement, construction, and occupancy of any new dwelling in the Community, and the collection of fees therefore from the Developer/Builder.

Section 5.14 Independent Management. With an eighty (80%) percent approval of the total Qualified Membership of the Association, the Board may employ or enter into a management contract with any qualified (insured, bonded) individual or firm it deems appropriate in the best interest of the Association concerning the routine management of the Association and the Association's property. The Board may delegate to such person or firm (referred to in these By-Laws as "Manager") such duties and responsibilities in the management of Riverwind Subdivision and the Association's property as the Board deems appropriate. The Board shall have affixed reasonable compensation for the Manager. The Manager shall be answerable to the Board and subject to its direction.

Article VI

Officers and Duties

Section 6.1 Officers. The Officers of the Association shall consist of a President, Vice President, Treasurer and Secretary. Officers of the Board can only be selected from Directors elected by the Qualified Members and not from any of the Directors appointed by the Board.

Section 6.2 President. The President shall be the principal Officer of the Association and shall see that all orders and resolutions of the Board of Directors and the Association are carried out. The President shall prepare the meeting agendas and preside at all meetings of the Association and the Board. The President is an ex officio member of all committees except the nominating committee. The President is authorized to sign checks for the Association in the absence of the Treasurer or when two signatures are required.

Section 6.3 Vice-President. The Vice President shall assist the President, assume the duties of the President in the absence of the President and serve on assigned committee(s).

Section 6.4 Treasurer. The Treasurer shall work with the Bookkeeper to insure that the financial records and reports are properly kept and maintained. The Treasurer is authorized to sign checks for the Association. The Treasurer and the Bookkeeper have the responsibility to oversee the development of the Annual Budget created by the Board of Directors as well as the allocations for the reserve funds. The Treasurer may or may not act as Chairperson but must act as liaison to the Board of Directors for the Long Range Planning Committee.

Section 6.5 Secretary. The Secretary shall record and maintain records of the proceeding of all meetings of the Association and of the Board. Minutes of the Association meeting will be distributed to the Association within two (2) weeks after the meeting. The Secretary is responsible for the Phone/Email Directory. The Secretary may or may not act as Chairperson but must act as the Liaison to the Board for the Newsletter Committee.

Section 6.6 Other Directors. The Other Directors shall serve on assigned committees, perform various services and have the responsibility as are customarily attributed to their assigned duties; provided however, that no such normal functions shall be contrary to the direction of the Board of Directors.

Article VII **Committees**

Section 7.1 Committee Formation. The Board of Directors by resolution adopted by the majority of the Directors may create an ad hoc or standing committee or committees as it sees fit from time to time, providing therein for vacancies and removal of committee members and functions of the various committees.

Section 7.2 Charter. The Board shall provide all committees with a charter of responsibility and focus of effort to enable the committee to function, take actions and provide service to the community.

Section 7.3 Chairperson/Liaison. A Director, selected by the Board, shall serve on assigned Committee(s) and may or may not act as Chairperson, but must act as Liaison to the Board of Directors for purposes of reporting and providing input for budget forecasting.

Section 7.4 Funding. Any funding requirements for committee action or recommendations will be presented to the Board of Directors for approval.

Article VIII **General Provisions**

Section 8.1 Conflicts. If there are conflicts or inconsistencies between the provisions of North Carolina law and the Covenants and the By-Laws (in that order) the provisions of the North Carolina law shall prevail.

Section 8.2 Amendments. These By-Laws shall be amended by two thirds (2/3) vote of the Association members by special ballot to all property holders via USPS following standard election procedures.

Section 8.3 Adoption of Amendments. Amendment(s) to these By-Laws shall become effective when a corporate resolution is adopted, placed in writing, executed and acknowledged by the duly elected President (or Vice President) and attested to by the Secretary of the Association. Owners of the Lots or persons who have an interest in the Association shall be bound to abide by the amendments to these By-Laws.

The foregoing is certified to be the Amended By-Laws of the Riverwind Homeowners Association Incorporated, duly adopted on _____ by the Riverwind Homeowners Association.

Riverwind Homeowners Association Inc.

President David N. Lubbe

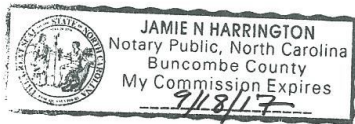


Attest
Secretary Judy K. Miller

Date 08-29-2016

State of North Carolina
County of Henderson

The foregoing instrument was acknowledged before me this 29 day of August, 2016 by David Losleben and Judy K. Miller and produced NC Drivers License as identification.



Jamie N. Harrington
Jamie N. Harrington

ByLaws Amendment

Section 5.13 Powers and Duties. The Board shall have all the powers and duties necessary for the administration of the affairs of the Association, except such powers and duties as per Law or these By-Laws may not be delegated to the Board. The powers and duties to be exercised by the Board shall include but not be limited to the following:

Number 5. The Association shall maintain, to the extent reasonably available:

Item k.

The Board is limited to a spending cap of \$7500 in "non Budgetary" expenditures. This cap does not include expenditures for emergency, safety, roadwork, streetlights, common ground landscaping and drainage, and clubhouse complex maintenance.

This amendment is certified to be added to the By-Laws of the Riverwind Homeowners Association Incorporated. It was adopted on December 4, 2017 by the Riverwind Homeowners Association.

Riverwind Homeowners Association Inc.
President David Losleben

RHOA SEAL

Attest
Secretary Judy Miller
Date December 4, 2017