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WILKES COUNTY  
RICHARD L. WOODRUFF  
REGISTER OF DEEDS

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**RULES & REGULATIONS  
OF HERON POINT HOMEOWNERS  
ASSOCIATION**

THIS DECLARATION OF RULES AND REGULATIONS OF HERON POINT SUBDIVISION AND HERON POINT Homeowners Association, Inc. hereinafter referred to as "Declaration" is made this 13th day of September, 2007, by HERON POINT, LLC, a Delaware limited liability company, hereinafter referred to as "Declarant", and any and all persons, firms, or corporations hereinafter acquiring any of the within described property or any of the property hereinafter made subject to this Declaration.

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain Property in Wilkes County, North Carolina known as HERON POINT SUBDIVISION, of which is more particularly described by plat(s) showing 5 Lots; which is recorded in the following Plat Book -- and Page(s); -- in the Office of the Register of Deeds for Wilkes County to which reference is hereby made for more complete description; and

WHEREAS, Declarant has agreed to establish a general plan of development as herein set out to restrict the use and occupancy of the Property made subject to this Declaration for the benefit of the present and the future owners thereof, and

WHEREAS, Declarant desires to provide for the preservation of the values of HERON POINT SUBDIVISION as expanded hereby and hereinafter made subject to this Declaration and for the preservation and maintenance of the Common Property established by the Declaration and by the supplements hereto.

NOW, THEREFORE, in accordance with the recitals which by this reference are made a substantive part hereof, Declarant declares that all of the property described on said recorded plats and all of the property hereinafter made subject to this Declaration by recorded supplements hereto referencing subsequently recorded plats, shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of HERON POINT SUBDIVISION as is now exists and is hereinafter expanded and that such easements, restrictions, covenants and conditions shall burden and run with said real Property and their heirs, successors and assigns having any right, title, or interest in the Properties now or hereafter subjected to this Declaration or any part thereof, and shall inure to the benefit of each owner thereof and burden each owner's real Property that is subjected to this Declaration.

ARTICLE I  
DEFINITIONS

"Association" shall mean and refer to HERON POINT Homeowners Association, LLC., a non for profit North Carolina corporation, its successors and assigns.

"Owner" shall mean and refer to any contract buyer and/or record owner, whether one of more persons or entities, of a fee simple title to any lot which is a part of any of the Property made subject to this Declaration, but excluding those having such interest merely as security for the performance of an obligation, provided however, the Declarant shall not be deemed an Owner.

"Property" shall mean and refer to that certain property shown on plat(s) recorded in Plat Book -- and pages: -- in the Office of the Register of Deeds for Wilkes County, North Carolina and any additional property which Declarant may make a part of this Subdivision, as provided for in the Declaration of Restrictive Covenants of HERON POINT SUBDIVISION, recorded separately, The terms "Property," "Subdivision," and "Heron Point" are interchangeable.

"Lot" shall mean and refer to any improved or unimproved building lot shown upon any recorded subdivision plat of this Subdivision.

"Common Property" shall mean all property owned by the Association for the common use and enjoyment of all or a designated class of members. Common Property includes without limitation all existing and future roads and right-of-ways and all greenways, park areas, median strips, cul-de-sac centers, planting areas, and recreational areas, and facilities, open space, walking trails, easements, community boat slips, and community piers that are developed on the Common Property (it being understood that this enumeration is by way of description of the type of facilities that may be developed and in no way shall bind or obligate the Declarant to provide any of the described facilities) and all entry way, directional, and informational signs (and the areas set aside for their location) and any other property as may be purchased or provided for the common use and benefit of the Declarant, the Owners, and any member in the Association, including without limitation such Common Property as may be shown on the recorded plat(s) of the Property. Except by the Declarant, the Common Property shall not be used for public commercial purposes, but may be used for enjoyment of the Association's members for fund-raising activities to support the purposes of the Association.

"Committee" shall mean the Architectural Review Committee established by the Declarant for the purpose of administering control over architectural, landscaping, and related matters, as provided in Article IV of this Declaration.

ARTICLE II  
RIGHTS AND DUTIES OF THE  
ASSOCIATION AND PROPERTY  
OWNERS ASSESSMENTS

Section .1. Owner's Easements of Enjoyment

The Declarant and, to the extent provided by this Declaration, every Owner shall have a right and easement of ingress, egress, and regress over the Common Property and over the roads within the Property, to be used in common with others, for the purpose of providing access to lot(s) owned or dwelling unit(s) owned by the owner for himself, his family, agents, licensees and invitees, and for his and their non-exclusive use and enjoyment of the Common Property, subject however to the limitations on such use and enjoyment of the Common Property as provided for in this Declaration. Every Owner, and the members of such Owner's family who reside with such Owner or are overnight guest of such Owner, shall have the right to use the recreational areas within the Common Property, subject however to such Owner paying when

due the dues and assessments of the Association and abiding by all rules and regulations of the Association, including without limitation those governing the use of the recreational areas and the Common Property. Non-Owners shall only be entitled to use the recreational areas or such terms and conditions as the Association may select.

### Section 2. Annual Assessments

(a) The Association shall have the duty to repair, replace, and maintain all recreational areas and improvements located thereon, and all streets, roads, road rights-of-way, and other Common Property. The Association shall have the right, from time to time, to establish a reasonable assessment, which assessment shall be paid by each Owner in such periodic installments as the Association may determine, to be used to pay: (1) the operating and administrative expenses of the Association; (2) the costs of maintenance, upkeep, replacement and repair of all recreational areas, and improvements located thereon, and all streets, roads, road rights-of-ways, and other Common Property; and (3) other expenses necessary or useful to maintain and operate the Association and the recreational facilities (including, without limitation, the procurement, maintenance and payment of costs of insurance related to the Common Property and of surety and other bonds related to the management of the Common Property and Association). It is understood that (by way of example and without limitation ) the assessment funds shall be used for such matters concerning Common Property as the following: maintenance, repair and replacement of improvements within the recreational areas, the seeding and re-seeding road rights-of-way and Common Areas, erosion control, repairing of road shoulders, surfacing, patching and resurfacing of parking lot and road pavement, planting and maintenance of shrubs, trees and seasonal flowers.

(b) The annual assessments may also be used by the Association for the purpose of adding to the recreational facilities.

(c) The annual assessment payable by each Owner shall be \$295.00 per lot per calendar year. The annual assessment shall be due and payable on January 31<sup>st</sup> of each year, provided the board of directors may elect to permit payment in such installments and at such times as it shall determine. This assessment shall be deferred as to any lot purchased by a builder with the intent to build a house for resale to the public at large. This assessment will be payable as to any lot purchased by a builder who purchases a lot for the purpose of building a custom home under contract with the ultimate residents. This assessment will be prorated on a calendar year basis from the date title to each lot for which assessment is payable, is transferred to the Owner.

(d) The annual assessment may be increased or decreased by the board of directors of the Association without a vote of the membership to an amount not more than twenty percent (20%) in excess of the annual assessment for the previous year. A majority vote of each class of voting members of the Association must approve an increase & decrease in the yearly assessment if the increase or decrease exceeds the assessment for the previous year by more than twenty percent (20%).

(e) Annually the board of directors of the Association shall have determined and shall have given written notice to each Owner of the annual assessment affixed against each owner for the immediately succeeding calendar year.

### Section 3. Special Assessments

In addition to the assessments specified herein above, the Association may levy special assessments for the purpose of supplementing the annual assessment if the same are inadequate to pay the reasonable maintenance expenses and operating costs of the Association as described in Section 2 hereof, provided that such special assessments shall have the assent of a majority of each class of the voting members of the Association at a duly called meeting.

### Section 4. Removal of Obstruction and Unsightly Growth, Debris, and Materials

(a) The Association may remove any obstruction of any nature located within road

right-of-ways or other Common Property (including but not limited to trees, shrubs and mailboxes) which, in the opinion of the Association, either might produce a hazard or might interfere with the ability or willingness of the State of North Carolina (Or agency or department thereof) to take over the responsibility for maintenance of the roads.

(b) The Association shall have the right, in its sole discretion, to charge back the actual cost of removing of obstruction against the Owner who directly, or through agents, contractors or invitees, caused or permitted the obstruction to be placed in the road right-of-way or other Common Property, and such Owner shall indemnify and save the Association harmless from all liability, claims, damages and expense imposed upon the Association at law or in equity, caused by or resulting from the placement of the obstruction in the road right-of-ways or to other Common Property. In the event the Owner responsible for such charge or liability as aforesaid fails and refuses after demand by the Association to pay said charge or liability, then the Association shall have a lien against his lot thereon and may enforce collection of the charge or liability, together with reasonable attorney fees, by any and all remedies afforded by law or in equity, including without limitation, the filing of a notice of lien and perfecting the same as by law provided, and that such charge or liability shall become a charge or lien against the said lot or dwelling unit.

(c) If the Association, in its sole discretion, determines that any lot has become unsightly due to grass or weeds not mown, or due to debris of any nature having accumulated on the lot, then the Association shall have the right from time to time to enter the lot for the purpose of mowing the grass or removing the debris. At least ten (10) days prior to entering a lot for said purpose, the Association shall advise Owner by letter, sent to last known address, of the action to be taken. If the Owner does not remedy the problem within the said ten (10) day period. The Association shall take reasonable steps to avoid damage to any trees planted on such lot, to the extent that the Association has been put on written notice in advance by the Owner of the approximate location on a chart or map or such lot showing the location of planted trees to be avoided.

(d) The Association shall have the right in its sole discretion, to charge back the actual cost of mowing the grass or removing the debris against the Owner. In the event the Owner responsible for such charge or liability fails and refuses after demand by the Association to pay said charge or liability, then the Association shall have a lien against his lot and may enforce collection of the charge or liability, together with reasonable attorney fees, and all remedies afforded by law or in equity, including without limitation, filing of a notice of lien and perfecting of same as by law provided to the end that such charge or liability shall become a charge against said lot or dwelling unit.

#### Section 5. Duty to Make Repairs

(a) Until accepted for maintenance by governmental authority, the obligation for repairs, maintenance and improvements of roads as shown the aforesaid plat(s) or any other common property shall be the responsibility of the Association with the Owner of each lot except as provided herein, being responsible for payment of the assessments levied by the Association, which assessments shall be the personal obligation of the Owner of each lot.

(b) The decision to expend Association funds to repair and maintain roads or other Common Property shall be made by a majority of the board of directors of the Association. By such vote, the board may delegate such authority to any committee of the board. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use or abandonment of his lot.

(c) Notwithstanding the foregoing, each Owner of a lot shall be solely responsible for any repairs to a road right-of-way or other Common Property caused by the negligent act or acts of said Owner, his or her invitees, agents, licensees, or guests. For these purposes, it shall be a negligent act for any building material to be unloaded on any road or road right-of-way.

#### Section 6. Late Charges and Interest on Unpaid Assessments

Any assessment not paid within thirty (30) days after due date shall be subject to late charges and bear interest at a rate per annum as determined by the board of directors of the Association. The interest rate shall not exceed the highest rate of interest allowed by law. The initial late charge

imposed for late payment of any assessment is \$25.00. The initial interest rate for a late payment is 18% per year (1.5% per month) which shall commence to accrue on any assessment or other account balance that is not paid within thirty (30) days of the date due. The initial date upon which liens may be filed for failure to make payment of assessments and other charges is thirty (30) days after the due date. The board of directors may change the initial late charge, interest rate, due dates and lien assessment date by majority vote of the directors.

Section 7. Lien for Unpaid Assessments

(a) In the event the Owner of any lot fails and refuses, after demand by the Association, to pay any annual or special assessment, then the Association shall have a lien against said lot and may enforce collection of said assessment in law or in equity, including without limitation, the filing of a notice of lien and perfecting the same as by law provided. Such unpaid assessment together with costs and expenses of collection, including without limitation, reasonable attorney fees, shall be a charge and lien against the said lot.

When a claim of lien is filed or recorded in the Office of Clerk of Superior Court of Wilkes County, the Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2 A of Chapter 45 of the North Carolina General Statutes. Fees, charges, late charges, fines and other charges are enforceable as assessments under this section.

(b) To secure the payment of annual and special assessments levied by the Association, together with the cost of collection including attorney fees, all such charges shall be a continuing lien upon the lot against which the assessments are made. Such charges shall also be the personal obligation of the persona(s) who were the owner or owners of such lot at the time the assessment came due. Their personal obligation shall remain a lien upon the lot upon transfer of title but shall not become personal obligation of purchasers thereof unless expressly assumed by them.

(c) Neither the assessments nor the costs of collection shall be a lien upon any Common Property nor shall the lien upon any lot for such charges be senior to any first lien mortgage or first lien deed of trust regardless of the fact the lien arose prior to the date and time of recording of any such first lien mortgage or deed of trust.

Section 8. Fines for Violations

After notice and an opportunity to be heard, the Homeowners Association may impose reasonable fines or suspend privileges or services provided by the Association (except right of access to lots) for reasonable periods for violations of the Declaration of Restrictive Covenants, Declaration of Covenants, Conditions and Restrictions, Bylaws, Home Construction Guidelines, and Rules and Regulations of the Association.

ARTICLE III MEMBERSHIP, VOTING RIGHTS, OFFICERS  
AND MEETINGS

Section 1. Membership

Every owner of a lot which is subject to this Declaration shall be a member of the Association. Membership as appurtenant to any may not be assigned. If and when Declarant develops additional phases in the Subdivision the Owners of those lots shall be members of the Association. The Declarant shall also be a member so long as it owns property within this expandable Subdivision.

Section 2. Class Membership Voting The Association

shall have two (2) classes of membership:

Class A

Class A member shall be all lot Owners with the exception of Declarant, and shall be entitled to one vote for each lot owned. When more one (1) person owns an interest in a lot all such person shall be members but the vote for such lot shall be exercised as they, among themselves, shall determine in writing, which writing shall be filed with the Secretary of the meeting prior to voting, but in no event shall more than one vote be cast with respect to any lot.

#### Class B

(a) Class B members shall be entitled to vote ten (10) votes for each lot owned. Class B membership shall consist of the Declarant, or its successors or assigns, until the happening of either of the following event whichever occurs earlier.

1. The earlier of four months after ninety percent (90%) of all the lots in the Subdivision are sold and conveyed by the Declarant to unrelated third parties; or

2. At such time as Declarant voluntarily relinquishes majority control of the Association by a duly recorded instrument.

(b) Upon the happening of the earlier of either the two above described events, Class B membership shall cease and terminate and shall be converted to Class A membership.

#### Sections. Board of Directors

There shall be three (3) members of the board of directors of the Association who shall serve until such time as their successors are duly elected and agree to serve. The directors shall have annual meetings and other such meetings as may be called at the request of the president of the Association or by any three (3) directors. So long as the Declarant, or its successors and assigns, is the Class B member, it shall select the board.

#### Section 4. Suspension of Voting

Rights the Association shall have the right

to:

(a) Suspend the voting rights (if any) of an Owner for any period during which assessment on his lot remains unpaid and enforce collection of the same; and

(b) Suspend the voting rights (if any) of each Owner who is a contract buyer for any period of time during which payments to the Declarant pursuant to terms of said contract are delinquent, during which period of time the Declarant shall succeed to the voting rights of said contract buyer.

### ARTICLE IV

#### ARCHITECTURAL CONTROL

(a) In order to control design and location of the houses and other improvements to be constructed, erected, placed, or installed (hereinafter "improvements") upon the lots in the Subdivision, the Declarant hereby creates an Architectural Review Committee (hereinafter "Committee") for the purpose of reviewing, approving, suggesting changes to, and rejecting plans and specifications for such improvements (regardless of when such improvements are made), and the landscaping of each lot. This Committee is also created for the purpose of reviewing, approving, suggesting changes to, and rejecting, swimming pools, out buildings, boat houses, ramps, piers, driveways, enclosures for satellite dishes, and, if Declarant so desires, for mailbox design. This Committee will be responsible for the control of size, color, materials, and content of rental and sales signs in this Subdivision, and for the approval or disapproval of boats, boat trailers, travel trailers, motor homes, tractor trailer trucks, or any

other such vehicles that are kept or maintained or located upon any lot unless located within enclosed garages. The Committee will also be responsible for the control of temporary construction shelters or vehicles in this Subdivision. The Committee will require a fee of \$250.00 to review house plans for each Owner wishing to build. The review process may be subcontracted at the discretion of the Committee.

(b) The Committee shall consist of three persons designated or appointed from time to time by the Declarant, its successors or assigns, one of whom shall be appointed from among lot owners. After 90% of the lots in Subdivision are sold and 90% of undeveloped acreage is sold by the Declarant, its successors or assigns, said Committee shall be elected by a majority vote of the Board of Directors; provided, however, Declarant, its successors or assigns, shall be entitled to at least one Committee member until all of its lots in the Subdivision have been sold.

(c) Except within the building site (unless within 20' of the main dwelling), no trees of any kind in excess of 6 inches in diameter at ground level may be removed from any lot without prior approval of the Committee. No building, fence, wall outbuilding, or any other accessory feature to the dwelling or any other structure upon any lot shall be commenced, erected, placed, maintained, or altered on any lot of combination of contiguous lots until the Complete Construction Plans (hereinafter ("Plans")) are approved in writing by the Committee or its designated agents.

(d) Before any clearing, grading or construction of any nature begins on any lot, written approval in advance must be obtained from the committee. The Plans include the complete construction plans, the plot plan (showing proposed location and elevation of such building, fences, walks, drives, parking area, etc.) proposed building plans and specifications, exterior color, finish, and materials. The areas over which the approval shall be required shall include but shall not be limited to the size and plan of the principal residential structure, and all accessory buildings, structures and improvements on the lot, the location of the well, septic and repair area, the size and plan of the garage or carport, location and manner of construction of each driveway, swimming pool, utility building, patio, tennis court, and other improvements for athletic, recreational, or gymnastic purposes, and all other exterior improvements, the composition and color of raw and finished materials used on the exterior of all structures, and the location and type of any landscaping, shrubbery, and other plantings.

(e) The Committee or its designated agents shall have ten (10) days after physical receipt of the plans to accept or reject the same in whole or in part. If no response by the Committee has been made in writing within said 10 days, the plans shall be deemed to be approved as submitted. After the plans are approved and after the Committee gives written permission for construction to begin, the actual construction shall be commenced and completed in accordance with the approved Plans, together with the requirements of the Declaration. The Committee shall have the right to waive setback violations when the remedial costs of correcting such violation, in the Committee's opinion, would impose undue hardship upon the violator.

(f) The actual construction shall be the responsibility of the Owner of the lot and his builder. Any permission granted for construction under this covenant and any designation of approved licensed contractors shall not constitute or be construed as an approval, warranty or guaranty, expressed or implied, by the Declarant or the Committee or its designated agent of the structural stability, design or quality of any building or other improvement or of the contractor who constructs such building or other improvements.

(g) Before any clearing, grading or construction begins, a \$1,000.00 refundable road repair bond must be posted with the Homeowners Association. If the road shoulders and road have not been damaged during construction, the bond will be refunded. The property Owner is responsible for placing and maintaining a stone driveway to facilitate the delivery and distribution of building materials at a centralized staging area on the subject lot. This driveway is to be used before and during construction. After completion of construction, a Homeowners Association representative will inspect the roads and road shoulders near and in front of the subject property. The Owner (or builder) will be responsible for any necessary repairs.

## ARTICLE V

### GENERAL USE RESTRICTIONS

Declarant does hereby covenant and agree with all persons, firms or corporations hereafter acquiring title to any portion of the Property, that the Property shown on the recorded plat(s) herein referred to, and all Property presently owned as part of HERON POINT SUBDIVISION which plat(s) are to be recorded, and all Property which may be acquired in the future to be made a part of HERON POINT SUBDIVISION, is made subject to the Declaration of Restrictive Covenants of HERON POINT SUBDIVISION as may be amended or modified (hereinafter referred to as "Restrictions") These Restrictions shall be recorded separately and shall refer to this Declaration and incorporate it by reference.

## ARTICLE VI

### CAPTIONS, ENFORCEMENT AND INVALIDATION

#### Section 1.

Whenever the context and construction so require, all words used in the singular number herein shall be deemed to have been used in the plural, and vice versa, and the masculine gender shall include the feminine and neuter and the neuter shall include the masculine and feminine.

#### Section 2.

The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provisions hereof.

#### Section 3.

Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. In the event it is necessary to enforce this Declaration by appropriate legal or equitable proceedings, the party or parties violating or attempting to violate the same shall be liable for the cost of such proceedings including reasonable attorney fees.

#### Section 4.

Invalidation of any one or more of these covenants by judgment of court shall not adversely affect the balance of this Declaration, which shall remain in full force and effect.

#### Section 5.

The Declarant reserves the right to amend this Declaration from time to time without notifying of any of the Owners for the following purposes:

- (a) To clarify the meaning of or to correct clerical errors in the Declarations.
- (b) To correct grammar, spelling, capitalization and other matters of syntax.

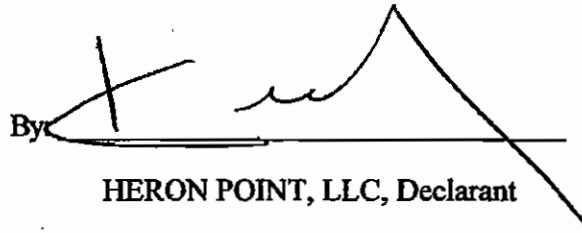
All other amendments to this Declaration shall require an affirmative vote of at least sixty-seven (67%) of the lot Owners and the vote of the Declarant, its successors, and assigns.

ARTICLE VII

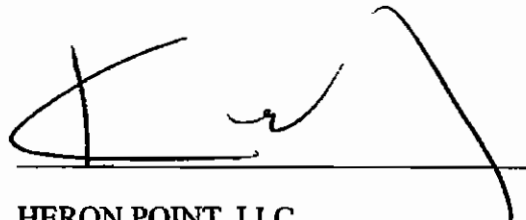
THESE RESTRICTIONS RUN WITH THE LAND

This Declaration of Covenants, Conditions and Restrictions of HERON POINT SUBDIVISION and HERON POINT Homeowners Association, Inc., are to run with the land and shall benefit and be binding on all parties and persons (and their respective heirs, representatives, successors and assigns) claiming title to any of the Property herein described for a period of thirty (30) years from the date this Declaration is recorded, after which time said Covenants shall be automatically extended for successive periods often (10) years, unless an instrument signed by a sixty-seven (67%) majority of the then Owners of the lots, and the Declarant and has been recorded agreeing to change said Declaration in whole or in part.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Covenants, Conditions and Restriction of HERON POINT SUBDIVISION and the HERON POINT Homeowners Association, Inc. to be duly executed this 20<sup>th</sup> day of July, 2007.

By:   
HERON POINT, LLC, Declarant

IN WITNESS WHEREOF, HERON POINT, LLC and its managing member, Ken A. Warns IV, have executed this Agreement this the 13<sup>th</sup> day of September 2007.

  
HERON POINT, LLC  
Ken A. Warns, Managing Member

North Carolina  
Willes  
Gatawba County

I, Katrina C. Warren, a notary Public of the County and State aforesaid, certify that Ken A. Warns, Managing Member, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal this 13<sup>st</sup> day of September 2007.

Notary Public Katrina C. Warren

My commission expires: 11-24-07

