

Bylaws
of
RED BIRCH HOMEOWNERS' ASSOCIATION, INC.
a Nonprofit Corporation
Under the Laws of the State of North Carolina

ARTICLE I
Identity

These are the Bylaws of RED BIRCH HOMEOWNERS' ASSOCIATION, INC., a North Carolina nonprofit corporation (the "Association"), the Articles of Incorporation (the "Articles") of which have been filed in the office of the North Carolina Secretary of State.

For purposes of these Bylaws, terms specifically defined in the Declaration of RED BIRCH (the "Declaration") shall have the same meaning herein.

ARTICLE II
Qualification and Responsibilities of Members

2.1. Members. Each lot owner shall be a member of the association and shall remain a member until he ceases to be a lot owner.

2.2 More Than One Owner. When there is more than one lot owner of a lot, all such persons shall be members of the association.

2.3. Registration. It shall be the duty of each lot owner to register his name and the number of his lot with the Secretary of the association. If a lot owner does not so register, the association shall be under no obligation to recognize his membership.

2.4. Prohibition of Assignment. The interest of a member in the association assets cannot be transferred or encumbered except as an appurtenance of his lot.

ARTICLE III

Members' Meetings and Voting

3.1. Place. Meetings of the members shall be held at the registered office of the association, or such other place within Pitt County, North Carolina as may be designated from time to time by the Board.

3.2. Annual Meeting. The members shall meet at least once each year as specified in the notice of such meeting given pursuant to Section 3.4. Except as provided in the Restrictive Covenants, at each annual meeting, the members shall elect members of the Board ("Directors") and may transact any other business properly coming before them.

3.3 Special Meetings. Special meetings of the members may be called at any time by the President or by the Board and shall be called and held within fifty (50) days after written request therefore, signed by members of the association entitled to cast at least ten (10%) percent of the total votes in the association, is delivered to any officer or director of the association. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

3.4. Notices. Notice to all meetings of the members stating the time and place and accompanied by a complete agenda thereof, shall be given by the President or Secretary to each member. Such notice shall be in writing and shall be hand delivered or sent by United States mail to the members at the addresses of their respective lots and to other addresses as any member may have designated to the President or Secretary, at least (10) days, but no more than fifty (50) days, in advance of any scheduled meeting.

3.5. Quorum; Adjournment if no Quorum. A quorum shall consist of members present, in person or by proxy, entitled to cast at least ten (10%) percent of the total votes in the association. 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. 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. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

3.6. Votes; Association Shall Not Vote. The total votes in the association are determined by the number of lots. The owner of each single family site is entitled to one vote per lot. The vote allocated to a lot may be cast by the lot owner of that lot. When there is more than one lot owner of a lot, the vote for that lot shall be cast as they shall determine. The vote allocated to a lot shall not be split but shall be voted as a single whole. The association shall not be entitled to cast the vote allocated to any lot owned by it.

3.7. Manner of Casting Votes. Votes may be cast in person or by proxy. A proxy must be in writing, be signed by a majority in interest of the lot owners of the lot, the votes of which are subject to the proxy, be given only to another member or to a security holder in that lot, and be filed with the Secretary before the meeting. A lot owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated. A proxy terminates 11 months after its date, unless it specifies a shorter term.

3.8. Required Votes. All questions shall be decided by a majority of the votes cast on the question unless the provisions of applicable law, the Declaration, or these Bylaws require a greater vote.

3.9. Action by Members Without Meeting. Any action that may be taken at a meeting of the members may be taken without a meeting if such action is authorized in a writing setting forth the action taken and is signed by all members, or if such action is taken in any other manner permitted by law.

3.10. Prohibition of Cumulative Voting. There shall be no cumulative voting.

ARTICLE IV Directors

4.1. First Board. The first Board shall consist of one person, whose name is set forth in the Articles, and successors to any thereof elected by the members.

4.2. Number and Qualifications of Directors. Except as provided in the Restrictive Covenants, the Board shall consist of not less than one (1) nor more than seven (7) natural persons as determined by the Declarant during the Declarant Control Period, and thereafter the Board shall consist of not less than three (3) nor more than seven (7) natural persons as determined at any annual meeting by the members.

4.3. Election of Directors. Except as provided in the Restrictive Covenants, at the annual meetings of the members, the members shall elect the Directors by a majority of the votes cast in the election.

4.4. Term of Office. Except as provided in the Restrictive Covenants, the first election by the members of the Association for Directors shall not be held until the expiration of the Declarant Control Period, if any. At the first annual meeting thereafter, the members shall elect not less than three or more than seven Directors for a term of one (1) year. By vote of the Board terms may be extended to two years and staggered to allow for continuity.

4.5. Removal. Except as provided in the Restrictive Covenants, any Director may

be removed, with or without cause, by a vote of the members entitled to cast at least sixty (60%) percent of the total votes in the association, at a special meeting called for such purpose, and a successor may then be elected by the members to serve for the balance of the removed Director's term. A director is automatically removed if he fails for three consecutive months to attend meetings of the Board, or is delinquent in the payment of assessments.

4.6. Vacancies. Any vacancy in the Board arising by death or resignation of a Director shall be filled by the act of the remaining Directors, whether or not constituting a quorum, and a Director so elected shall serve for the unexpired term of his predecessor in office.

4.7. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone, or telegraph, at least seventy-two (72) hours prior to the meeting.

4.8. Special Meetings. Special meetings of the Board may be called by the President and shall be called by the President or the Secretary and held within ten (10) days after written request therefor, signed by two (2) Directors, is delivered to any other Director or the President or the Secretary. Not less than seventy-two (72) hours' notice of such special meeting shall be given personally or by mail, telephone, or telegraph to each Director; provided that in case the President or any Director determines that an emergency exists, a special meeting may be called by giving such notice as is possible under the circumstance. All notices of a special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

4.9. Quorum; Adjournment if No Quorum. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present. The signing by a Director of the minutes of a meeting shall constitute the presence of such Director at that meeting for the purpose of determining a quorum.

4.10. Manner of Acting. Each Director shall be entitled to one vote. The vote of a majority of the Directors present at a meeting shall constitute the act of the Board unless the act of a greater number is required by the provisions of applicable law, the Declaration, or the bylaws.

4.11. Board Action Without Meeting. Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized in a writing setting forth the action taken, signed by all Directors.

4.12. Compensation of Directors Restricted. Directors shall receive no compensation for their services, but may be paid for out-of-pocket expenses incurred in

the performance of their duties as Directors.

4.13. Powers and Duties of Board. All of the powers and duties of the association shall be exercised by the Board, including those existing under common law, applicable statutes, the Declaration, the Articles, and these Bylaws, as any thereof may, from time to time, be amended. Such powers and duties shall be exercised in accordance with the provisions of applicable law, the Declaration, the Articles, and these Bylaws, and shall include, but not be limited to, the following:

(a) To prepare and provide to members annually a report containing at least the following:

(i) A statement of any capital expenditures in excess of two (2%) percent of the current budget or Five Thousand (\$5,000.00) Dollars, whichever is greater, anticipated by the association during the current year or succeeding two (2) fiscal years.

(ii) A statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board.

(iii) A statement of the financial condition of the association for the last fiscal year.

(iv) A statement of the status of any pending suits or judgments in which the association is a party.

(v) A statement of the insurance coverage provided by the association.

(vi) A statement of any unpaid assessments payable to the association, identifying the lot and the amount of the unpaid assessments.

(b) To adopt and amend budgets and to determine and collect assessments to pay the common expenses.

(c) To regulate the use of, and to maintain, repair, replace, modify and improve the common elements.

(d) To adopt and amend rules and regulations and to establish reasonable penalties for infraction thereof.

(e) To enforce the provisions of the Declaration, the Articles, these Bylaws, the Act, and rules and regulations by all legal means, including injunction and recovery of monetary penalties.

(f) To hire and terminate managing agents and to delegate to such agents such

powers as the Board shall determine, except such as are specifically required by the Declaration, the Articles, these Bylaws, or the Act, to be done by the Board or the members. Notwithstanding the foregoing, the property, including each lot, shall at all times be managed by a single managing agent. The single managing agent shall not have authority to lease any part of a lot without the approval of the lot owner.

(g) To hire and terminate agents and independent contractors.

(h) To institute, defend, intervene in, or settle any litigation or administrative proceedings in its own name, on behalf of itself or two (2) or more lot owners, on matters affecting the common area, or to enforce the Declaration.

(i) To establish and dissolve and liquidate, from time to time, reserve accounts for any purpose.

(j) To borrow money for the maintenance, repair, replacement, modification or improvement of common elements and to pledge and pay assessments, and any and all other revenue and income, for such purposes.

(k) To buy lots, in foreclosure of an assessment lien, or at any other time or for any other reason, and to sell, lease, mortgage, and otherwise deal in lots from time to time owned by the association.

(l) To impose and receive payments, fees and charges for the use, rental or operation of the common area other than portions of the common area which provide access to the lots.

(m) To grant leases, licenses, concessions and easements through and over the common elements.

(n) To provide for indemnification of the association's officers and Directors and maintain officer's and Directors' liability insurance.

(o) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, these Bylaws, or the rules and regulations.

ARTICLE V Officers

5.1. Designation of Officers. The officers of this association shall be a President, a Vice President, a Secretary and a Treasurer. Each officer shall be a lot owner or the individual nominee of a lot owner which is other than an individual. A person may hold one or more of such offices at one time, except that the President shall not at the same time hold another office in the association. The Board may elect an assistant treasurer,

an assistant secretary and such other officers as, in its judgment, may be necessary.

5.2. Election of Officers. Officers of the association shall be elected by the Board. Election shall be held annually at the first meeting of the Board held after the annual meeting of the members, except that the Board shall elect officers as soon as practicable after filing of the Declaration.

5.3. Term. Each officer shall serve until his successor has duly elected and has qualified.

5.4. Removal. Any officer may be removed, with or without cause, and without notice, by the Board.

5.5. Vacancy. Any vacancy in any office shall be filled by the Board, and an officer elected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

5.6. Powers and Duties of Officers.

(a) President. The President shall be the chief executive officer of the association; shall have all of the powers and duties incident to the office of a President of a corporation including, but not limited to, the duty to preside at all meetings of the Board and of the members, and the general supervision of officers in the management of the business and affairs of the association; and shall see that all actions and resolutions of the Board are carried into effect.

(b) Vice President. The Vice-President shall perform such duties of the President as shall be assigned to him by the President and, in the absence of the President, shall perform the duties and functions of the President.

(c) Secretary. The Secretary shall keep the minutes of all meetings and actions of the Board and of the members; shall give all required notices to the Directors and members; shall keep the records of the association, except those kept by the Treasurer; shall perform all other duties incident to the office of a Secretary of a corporation; and shall perform such other duties required by the Board or the President.

(d) Treasurer. The treasurer shall have custody of all intangible property of the association including funds, securities, and evidences of indebtedness; shall keep the books of the association in accordance with good accounting practices and principles and, upon request, shall submit them, together with all vouchers, receipts, records, and other papers to the Board for examination and approval; shall deposit all monies and other valuable effects in depositories designated by the Board; shall disburse funds of the association as directed by the Board; and shall perform all other duties incident to the office of a Treasurer of a corporation.

5.7. Execution of Agreements, etc. All agreements, deeds, mortgages, or other

instruments shall be executed by any two (2) officers or by such other person or persons as may be designated by the Board.

5.8. Compensation of Officers Restricted. No officer shall be compensated for his service in such capacity but may be reimbursed for out-of-pocket expenses incurred in performing his duties.

ARTICLE VI Indemnification of Directors and Officers

The association shall indemnify such persons for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as permitted by the Board of Directors.

ARTICLE VII Fiscal Management

7.1. Depository. The Board shall designate a depository for the funds of the association and may change such depository. Withdrawal of funds from such depository shall be only by checks signed by any two (2) officers of the association, or any other persons authorized by the Board.

7.2. Fidelity Bonds. Fidelity bonds shall be maintained by the association in an amount determined by the Board, covering each Director and officer of the association, any employee or agent of the association, and any other person handling, or responsible for handling, funds of the association.

7.3. Annual Audit. An audit or review of the accounts of the association shall be made annually by a certified public accountant, and a copy of the report shall be furnished to each member not later than April 1 of the year following the year for which the report is made.

7.4. Fiscal Year. The fiscal year of the association shall be the calendar year provided that the Board, from time to time, by resolution, may change the fiscal year to some other designated period.

ARTICLE VIII Assessments

8.1. Obligation of Members to Pay Assessments; Amount of Levy. Until the association levies a common expense assessment, declarant shall pay all accrued expense of the association. Thereafter, each lot owner shall be personally and severally liable for the common expenses that are levied against his lot while a lot owner. Each lot shall be assessed in accordance with that lot's percentage of common expenses as allocated by the Declaration, as amended.

8.2. Allocation of Common Surplus. Any common surplus, including in reserve accounts, may be allocated to each lot in accordance with its percentage of common expenses and, if allocated, shall be owned by the lot owner of that lot and, if allocated, may be paid to the lot owner or credited against that lot's share of common expenses subsequently assessed.

8.3. Preparation of Budget and Levying of Assessment. For each fiscal year, beginning with the fiscal year beginning 2005, the Board shall prepare and adopt a budget, including therein estimates of the amount necessary to pay the common expenses, together with amounts considered necessary by the Board for reserves. After preparation and adoption of each such budget, the Board shall provide each member with a copy and shall give each member notice of the assessment made against that member's lot based upon such budget and may also state the interest to be charged on delinquent payments thereof. The assessment shall be deemed levied upon the giving of such notice. Provided, however, that the first budget after creation of the association shall be prepared and adopted by the Board only for the balance of the then fiscal year of the association, commencing on the date of conveyance of the first lot to a party other than the Declarant, and shall be prepared and adopted as soon as practicable after said date, and notice of the amount of the assessment against each lot for such balance of the fiscal year shall be given by the Board to each member as soon as practicable after adoption. Such assessment shall be deemed levied upon notice thereof given by the Board.

8.4. Assessment a Lien. Every assessment shall constitute a lien upon each lot assessed from the date the assessment is levied, superior to all other liens except only (i) real estate taxes and other governmental assessments or charges against the lot (ii) liens and encumbrances recorded before the recordation of the claim of line in the office of the Clerk of Superior Court of Pitt County.

8.5. Payment of Assessments. Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the times and in the amounts specified by the Board in the notice of assessment. Except for special assessments, one-twelfth 1/12th of the assessment shall be paid on or before the first day of each month of the fiscal year of the association. Payments shall be made to the association or as the Board may, from time to time, otherwise direct.

8.6. (Intentionally deleted)

8.7. Funds and Reserves. All sums collected by the association from assessments shall be accounted for as follows:

(a) Reserve Fund for Repairs and Replacement. To this fund shall be credited all sums collected for the purpose of effecting repairs and replacements of structural elements and mechanical equipment, and other common elements, of the condominium.

(b) General Operating Reserve Fund. To this fund shall be credited all sums collected to provide a reserve for purposes of providing a measure of financial stability during period of special stress, and may be used to meet deficiencies from time to time as a result of delinquent payments of assessments and other contingencies.

(c) Maintenance Fund. To this fund shall be credited collections of assessments for all common expenses for the current year as well as common profits and surplus from the previous year and not to be credited to either of the above reference funds.

(d) Working Capital Fund. All funds, if any, received by the association for the initial working capital fund of the association, to defray unforeseen expenses and/or the cost of additional equipment or services deemed necessary or desirable by the Board, shall be maintained in and segregated in this fund for the use and benefit of the association.

The reserve fund for repairs and replacements shall be established by the Board with the fiscal year beginning January 1 of the year two years after the year in which the first assessment was levied and shall be funded thereafter by regular installments rather than by extraordinary special assessments. The reserve funds described above shall be maintained only in such amounts as deemed necessary or desirable by the Board, subject, however, to the preceding sentence. To the extent maintained, funds therein shall be held in such accounts and with such depositories as the Board, in its discretion, selects.

8.8. Special Assessments. In addition to the assessments levied pursuant to Section 8.3, the Board, in its discretion, may levy special assessments at such other and additional times as, in its judgment, are required for:

(a) Maintenance, repair, restoration and reconstruction of the common area.

(b) Alterations, improvements, and additions to the common area; provided, however, that any such special assessment involving an expenditure in excess of Five Thousand (\$5,000.00) Dollars shall be first approved by the members entitled to cast at least fifty-one (51%) percent of the total votes in the association at a regular or special meeting of the association.

(c) Payment of costs and expenses incurred in curing defaults pursuant to Section 10.1 and 10.3 hereof.

Special assessments made pursuant to this Section shall be common expense, shall be deemed levied upon notice thereof being given to the members subject to such special assessment, and shall be payable as determined by the Board and as set out in such notice.

8.9. Failure to Prepare Budget and Levy Annual Assessment; Deficiencies in

Procedure. The failure of the Board or delay of the Board in preparing any budget and levy or in levying assessments, shall not constitute a waiver or release of the members' obligation to pay assessments whenever the same shall be determined and levied by the Board. Until a new assessment is levied by the Board pursuant to Section 8.3, each member shall continue to pay the assessment then previously levied pursuant to Section 8.3 in the same amount and at the same periodic times as levied, or as the Board may otherwise advise in writing. Also, any deficiencies or inadequacies in the procedure followed by the Board in levying an assessment shall not in any way affect its validity or the obligation of members to pay such assessment.

8.10. Assessment Roll; Certificate. All assessments shall be set forth upon a roll of the lots, which shall be available in the office of the association for inspection at all reasonable times by members and security holders and their duly authorized representatives. Such roll shall include, for each lot, the name and address of the member or members, all assessments levied, the date of such assessment and the amount of all assessments unpaid. The association, upon written request, shall furnish to a lot owner or his authorized agent, a certificate setting forth the amount of unpaid assessments currently levied against his lot. The certificate shall be furnished within seven (7) business days after receipt of the request and shall be binding upon the association and all lot owners. For such certificate, a reasonable fee may be charged by the Board.

8.11. Default and Enforcement. If any assessment, or installment thereof, remains delinquent for ten (10) days, then that assessment, and all other assessments then a lien against the lot, may be declared by the Board to be immediately due and payable in full, with interest, without further notice, and may be foreclosed by the association in the manner of a deed of trust or materialmen's lien. All fees, late charges, cost of collection, attorney's fees, fines or interest levied or collected by the association in connection with any unpaid assessments shall have the same priority as the assessment to which they relate.

If any action is taken by the association to foreclose a lien on a lot because of unpaid assessments, the lot owner shall be required to pay a reasonable rent for the use of the lot during the period of redemption from such foreclosure, and the association shall be entitled to the appointment of a receiver to collect the same.

In addition to the foregoing, and without waiving its lien, the association may sue to obtain a money judgment for the amount of any delinquent assessment, or installment thereof, together with interest, and the members so sued and liable for such assessment shall pay costs of collection, including reasonable attorney's fees, with interest thereon at the same rate as charged on the assessments being collected from the dates incurred until paid.

8.12. Interest on Delinquent Assessments. Assessments, or installments thereof, paid before they become delinquent, shall not bear interest; but all delinquent sums

shall bear interest at the rate set forth in the notice levying the assessment, not exceeding the rate of interest allowed by the law, from the date delinquent until paid. If no interest rate is set forth in such notice, such interest rate shall be the maximum allowed by law. All payments upon account shall be applied first to interest and then to the assessment, or installment thereof, longest delinquent. All such interest shall have the same priority as the assessment on which such interest accrues.

8.13. Common Expense. Common expense shall mean and include all sums declared common expenses by the Act, or by any specific provision of these Bylaws or the Declaration, and shall include, without limitation, the following: real estate taxes, and other governmental assessments or charges against the property until the lots are separately assessed; premiums for any and all insurance maintained by the association, including any deductible or coinsurance amount not covered by insurance; utility charges not charged directly to lot owners legal and accounting fees; costs and expenses incurred in connection with any litigation or administrative proceeding pursuant to Section 4.13(h) hereof; deficits remaining from any prior assessment period; the cost including fees and interest, incurred in connection with any borrowing done by the association; the cost of all fidelity bonds costs imposed upon the association or any part of the common elements or the property by, or incurred by, the association as a result of the performance, enforcement or amendment of any agreement or easement to which the association is a party or to which the common elements or property, or any part of either thereof, is or may be subject; amounts determined necessary for reserve funds; and indemnity payments made by the association pursuant to Article VI hereof.

ARTICLE IX Compliance, Enforcement, Fines and Penalties

9.1. Default and Remedies. A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Declaration, these Bylaws, the Articles, or the rules and regulations, as the same may be amended from time to time, by any lot owner or occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and penalties as determined by the Board, sums due for damages, an injunction, or any combination thereof, and which relief may be sought by the association, an aggrieved lot owner, or by any person or class of persons adversely affected. Also, if any member fails to perform any obligation under the Declaration, these Bylaws, the Articles or such rules and regulations, then the association may, but is not obligated to, perform the same for the member's account, and for such purposes may enter upon his lot, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may levy a special assessment against the lot owned by such defaulting member. The association also shall be entitled to suspend the right of a defaulting lot owner to vote as a member of the association lot the default is cured.

9.2. Notice of Default and Failure to Cure. In the event of any such default or

failure, the Board shall serve upon or mail to the defaulting member, and to each first mortgagee of that member's lot when required under Section 12.2. of the Declaration, a written notice specifying the nature of the default, the cure thereof, and the time within which the cure shall be effected. Within the time limit specified in the notice, the defaulting member may cure the default specified, or serve upon or mail a written notice to the Board requesting a hearing before the Board. If a hearing is so requested, the Board shall thereafter serve upon or mail to the defaulting member, and to each such first mortgagee which was entitled to notice of the default as above provided, a notice specifying the time and place of such meeting for such hearing. At the hearing, the Board shall take such evidence and hear such testimony as it deems necessary or desirable. The Board shall not exercise any remedies to obtain relief from the default until hearing is over and the Board has made its determination and served upon or mailed the same to the defaulting member and each such first mortgagee. The hearing may be continued from time to time as determined by the Board. Upon taking such evidence and hearing such testimony, the Board, at the hearing or at such later time, shall determine, in writing, and at its sole option, to waive the default in whole or in part, to extend the time within which the default may be cured, or to proceed immediately to levy a fine or penalty, or to exercise any one or more of the remedies available to the Board due to such default. The Board shall serve upon or mail to the defaulting member, and to each such first mortgagee which was entitled to notice of the default as above provided, a copy of its determination. If the defaulting member (i) does not cure the default or request a hearing within the time limit specified in the original notice of default given pursuant to this Section, or (ii) so requests a hearing, but fails to cure the default (to the extent not waived by the Board) within the extended time, if any, granted by the Board after hearing, then the Board shall serve upon or mail to the defaulting member, and to each such first mortgagee which was entitled to notice of the default as above provided, a written notice of such member's failure to effect cure, and the Board may then proceed to take such action as it deems necessary to obtain relief.

9.3. Recovery of Attorney's Fees and Costs. In any proceeding arising because of an alleged default by a member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorney's fees as may be allowed by the Court, with interest thereon at the lower of (i) twelve (12%) percent and (ii) the highest rate allowed by law at the time the costs are incurred, from the dates such costs are incurred until paid.

9.4. Nonwaiver of Covenants. The failure of the association or of any member thereof to enforce any term, provision right, covenant, or condition that may be granted by the Declaration, these Bylaws, the Articles, the rules and regulations or the Act, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the rights of the association or a member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

9.5. Assessment Liens. Assessment liens shall be enforced pursuant to Article VIII

hereof and not pursuant to this Article IX.

ARTICLE X
Amendment

An amendment to these Bylaws shall be made and approved in the manner as an amendment to the Declaration.

ARTICLE XI
General Provisions

11.1 Rules and Regulations.

(a) By the Board. The Board, including the first Board, may promulgate from time to time such rules and regulations as it deems reasonable and necessary governing the administration, management, operation, and the use of the common area so as to promote the common use and enjoyment thereof by lot owners and occupants and for the protection and preservation thereof. In no event shall any rules and regulations be inconsistent or materially more restrictive than the provisions contained in the Declaration and these Bylaws with respect to leases or tenants.

(b) By the Association. Any such rule and regulation adopted by the Board may be amended, modified, or revoked, and new and additional rules and regulations may be adopted, by members at an annual or special meeting of the members. Any such act of the members shall control over any contrary rule and regulation then or thereafter adopted by the Board.

(c) Uniform Application. All rules and regulations shall be equally and uniformly applicable to all lot owners, occupants and lots.

(d) Copies Furnished. Copies of all such rules and regulations and amendments thereto shall be furnished to all members, and a copy shall be posted or otherwise made available to members at the office of the association. However, failure to furnish, or post, or make available, such rules and regulations shall not affect in any way their validity or enforceability.

11.2. Parliamentary Authority. Robert's Rules of Order, Newly Revised, shall govern the conduct of association proceedings when not in conflict with the Declaration, these Bylaws, the Articles, the Act, or any statutes of the State of North Carolina applicable thereto. The chairman of the meeting shall have the authority to appoint a parliamentarian.

11.3. Conflict. In the case of any conflict between the provisions of these Bylaws and the Declaration, the Declaration shall control. If any term, provision, limitation, paragraph, or clause of these Bylaws, or the application thereof to any person or

circumstance, is judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the remainder of these Bylaws, or the application thereof to any other person or circumstance.

11.4. Tax Exempt Status. No part of the net earnings of the organization shall inure to the benefit of its members, directors, officers, or other persons except that the organization shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the exempt purposes of the organization. In the event of dissolution, the residual assets of the organization will be turned over to one or more organizations with similar purposes or to one or more organizations which are exempt as organizations described in Section 501 (c)(3) of the Internal Revenue Code of 1986.

The foregoing were adopted as the Bylaws of RED BIRCH HOMEOWNERS' ASSOCIATION, INC. at the first meeting of the Board of Directors on the _____ day of _____, 2008.

RED BIRCH HOMEOWNERS' ASSOCIATION, INC.

President

NORTH CAROLINA
PITT COUNTY

I, _____, a Notary Public, do hereby certify that _____, President of RED BIRCH HOMEOWNERS' ASSOCIATION, INC., personally appeared before me this day and acknowledged that, by authority duly given and as the act of the association, the foregoing instrument was signed in its name by him as its President.

WITNESS my hand and Notarial Seal, this the _____ day of _____, 2008.

Notary Public

My Commission expires: _____