

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
WINDSONG VILLAGE SUBDIVISION
011005

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 27th day of April, 2000 by NDI, Inc., a North Carolina Corporation, with its principal office in Catawba County, North Carolina ("DECLARANT").

STATEMENT OF PURPOSE BOOK 2203 PAGE 999

DECLARANT is the owner of the real property comprising the real estate development known as the "WINDSONG VILLAGE" Subdivision in Catawba County, North Carolina, hereinafter called "the Property; or "Windsong", and more particularly described and shown on that plat recorded in the Office of the Register of Deeds for Catawba County, North Carolina, in Plat Book 50, at Page 94, to which plat reference is hereby made for a more particular metes and bounds description.

DECLARATION

DECLARANT hereby declares that the Property, and any additional property subjected to this Declaration by Supplemental Declaration, shall be held, sold, used and conveyed subject to the following covenants, conditions, restrictions and easements, each and all of which shall run with the land comprising the Property, and each and all of which shall be binding upon, and inure to the benefit of, all parties having any rights, title or interest in the Property of any part thereof, and their respective heirs, personal representatives, successors and assigns.

ARTICLE 1
DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

- 1.1 **Articles of Incorporation or Articles:** The Articles of Incorporation of Windsong Property Owners, Inc., as attached hereto as Exhibit A, to be filed with the Secretary of State of North Carolina.
- 1.2 **Association:** Windsong Property Owners, Inc.
- 1.3 **Base Assessment:** Assessments levied on all Members pursuant to Article 9 to fund Common Expenses for the general benefit of all property in Windsong as more particularly described in Section 9.1.
- 1.4 **Board:** The Board of Directors of the Association.
- 1.5 **Builder:** Any person who purchases one or more lots for the purpose of constructing improvements for later sale to consumers, or purchases one or more parcels of land within the Property for further subdivision, development and/or resale in the ordinary course of such person's business.
- 1.6 **By-laws:** The By-laws of the Association, attached as Exhibit B and incorporated by reference, as they may be amended.
- 1.7 **Class "B" Control Period:** The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board as provided in Section 3.3 of the By-laws.
- 1.8 **Common Area:** Those areas of the Property designated as Common Area on maps recorded in the Catawba County Registry or in this Declaration, and those areas, if any, for which the Association assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contract or agreement or by its own volition.

1.9 Common Expenses: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the board may find necessary and appropriate pursuant to this Declaration, the By-laws, and the Articles of Incorporation.

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1.10 Damage: Damage to or destruction of all or any portion of the Property.

1.11 Declarant: NDI, Inc. and its successors, heirs and assigns; also, any person who takes title to the Property or any portion of the Property, or any interest therein, and who is designated as Declarant in the recorded instrument executed by Declarant. If Declarant or any of their successors, heirs or assigns, shall transfer their interest in the Property or assigns their rights under this Declaration, the successor shall be substituted for such party and shall be entitled to exercise the rights of Declarant under this declaration of the By-laws.

1.12 Easement: Any easement reserved to the Declarant or utility companies or shown on recorded maps or plats or described within this document.

1.13 FHA and VA: The Federal Housing Administration of the United States Department of Housing and Urban Development, and the Veteran's Administration, respectively. If either or both of these federal agencies shall hereafter cease to exist or perform the same or similar functions they now serve, references hereto to FHA or VA shall be deemed to mean and refer to such agency or agencies as may succeed to the duties and services now performed by either or both of these departments.

1.14 Governing Documents: This Declaration, the Articles of Incorporation, the By-laws, any Rules promulgated under the By-laws, and any amendments and supplements thereto, including any additional recorded covenants.

1.15 Lot: Any single-family residential lot which is a numbered plot of land to be used for single-family residential purposes shown upon any subdivision plat of the Property, or any portion of the Property, subject to this Declaration, and recorded in the Office of the Register of Deeds for Catawba County, North Carolina.

1.16 Member: A Person or entity who is subject and entitled to membership in the Association pursuant to section 3.2, and Declarant, as long as the Class "B" membership exists under Section 3.2.

1.17 Mortgage: A deed of trust, mortgage, deed to secure debt or any other form of security conveyance of real property.

1.18 Mortgagee: A beneficiary or holder of a Mortgage.

1.19 Mortgagor: Any person or Entity who gives a Mortgage.

1.20 Owner: One or more Persons or Entities who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

1.21 Person: A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.22 Property: The real property described and shown within the plat referenced hereinabove, together with such additional property as may be subjected to this Declaration pursuant to Section 14(e).

1.23 Recorded: Recorded in the Office of the Register of Deeds for Catawba County, North Carolina.

1.24 Repair: Repair to or reconstruction of property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in the applicable building codes.

1.25 Special Assessment: Assessments levied in accordance with Section 9.5.

1.26 **Specific Assessment:** Assessments levied in accordance with Section 9.6

1.27 **Supplemental Declaration:** An instrument filed in the Office of the Register of Deeds for Catawba County, North Carolina, pursuant to Section 14(e) which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

**ARTICLE 2
PROPERTY RIGHTS**

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2.1 Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Area, subject to:

- (a) This Declaration and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area;
- (d) The right of the Association to dedicate or transfer all or any part of the Common Area pursuant to Section 4.7; and
- (e) The right of the Association to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend such Owner's right of use and enjoyment to guests and invitees, subject to reasonable regulation by the Board.

**ARTICLE 3
MEMBERSHIP AND VOTING RIGHTS**

3.1 **Function of Association:** The Association shall be the entity responsible for management, maintenance and control of the Common Area, and for enforcement of this Declaration and such reasonable rules regulating use of the Property as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural standards and controls for Windsong set forth in the Declaration.

3.2 **Membership:** The Association shall have two (2) classes of membership, Class A and Class B.

- (a) Class A. The Class A Members of the Association shall be the owners.
- (b) Class B. The sole Class B Member shall be the Declarant. The Class B membership shall terminate and become converted to Class A membership upon the earlier of:
 - (i) conveyance of one hundred percent (100%) of the Lots from Declarant; or
 - (ii) at such time as the Declarant shall elect to terminate its Class B membership and convert same to Class A membership.

3.3 **Voting:**

- (a) Class A. Class A Members shall be entitled to one (1) vote per lot.
- (b) Class B. The Class B Member shall be entitled to final voting authority so long as Lots are owned by Declarant.

- (c) **Exercise of Voting Rights.** A member's voting rights may be exercised by the Member, if a natural person, or if not a natural person, by any duly authorized officer or director of a corporation, partner or a general partnership, limited partner of a limited partnership or manager of a limited liability company. No vote shall be exercised for any property which is exempt from assessment under Section 9.10.

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ARTICLE 4

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Common Area: The Association shall manage and control the Common Area and all improvements thereon, and shall keep it in good, clean and attractive condition, pursuant to the Governing Documents.

4.2 Personal Property and Real Property for Common Use: The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real estate located on the Property, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter maintained by the Association at its expenses for the benefit of the Owners and occupants of the Property, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

4.3 Enforcement: The Association may impose sanctions for violations of the Governing Documents, in accordance with procedures set forth in the By-laws, including reasonable monetary fines. The Association, through the Board and in accordance with Section 3.19 of the By-laws, may exercise self-help to cure violations, and may suspend any services it provides to any Member (or to such Member's property) who is more than thirty (30) days delinquent in paying any charge due to the Association. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents, if the Association is awarded any damages or relief, it shall be entitled to recover from the opposing party all reasonable costs and attorney's fees incurred in such action. Any judgment awarding the Association monetary relief shall bear interest at the rate of sixteen percent (16%) or the maximum rate allowed on contracts by law, whichever is greater.

4.4 Board Authority: Except as otherwise specifically provided in the Governing Documents or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Governmental Interests: As long as Declarant owns any portion of the Property, Declarant may designate sites within the Property for fire, police, water, or other utility facilities, parks and other public or quasi-public facilities. If the sites include the Common Areas, the Association shall take any action ordered by Declarant and necessary to permit such use, including conveyance of the site. The sites may include property not owned by Declarant if the owner of such site consents.

4.6 Indemnification: The Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any suit or other proceeding (including settlement if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions as to which the liability of officers and directors is limited under the Articles of Incorporation and North Carolina law. This right to indemnification shall not be exclusive of any other rights such person may be entitled. The Association may, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance if reasonably available.

4.7 Dedication of Common Area: The Association may not dedicate, mortgage or convey portions of the Common Area to the State of North Carolina, to Catawba County, to any other local, state, or federal governmental entity and to other entities without the approval or seventy-five percent (75%) of the Members (excluding the Declarant). Any dedication of the Common Area during the Class B Control Period shall require the prior approval of the HUD/VA.

If ingress or egress to any lot or residence thereupon is through any common area, any conveyance or encumbrance of such common area pursuant to section 4.7 shall be made subject to the easement of the owner of said Lot for ingress and egress.

4.8 **Security:** The Association may, but shall be not obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. Neither the Association, the Declarant, nor any successor Declarant shall be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide security or by reason of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system, or other security measures cannot be compromised or circumvented, nor that any such security measures undertaken will in all cases prevent loss or provide the service for which it is intended. Each Owner understands and covenants to inform its tenants that the Association, its Board and committees, the Declarant, and any successor Declarant are not insurers and that each Person using the Property assumes all risks of personal injury and loss or damage to property resulting from acts of their parties. Nothing in this paragraph, however, shall be construed as an intent to waive or as a waiver of any rights, causes of action or demands of any kind on behalf of any Owner against any firm, person or corporation whose acts or omissions directly or indirectly result in bodily injury, personal injury or damage to property.

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ARTICLE 5 MAINTENANCE

5.1 **Association's Responsibility:** The Association shall maintain and keep in good repair the following:

- (a) all landscaping and other flora, lakes and ponds, structures and improvements situated upon the Common Area;
- (b) all primary entry features and signage for Windsong to the extent that such rights-of-way lie within or adjacent to the Property;
- (c) such additional property as may be included as Common Area by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association.

Except as provided above, the responsibilities of the Association under Article 5 shall not be reduced by any means except with the prior written approval of Declarant, as long as Declarant owns any portion of the Property. The Declarant, however, may unilaterally reduce the obligations of the Association, provided that such reduction does not materially alter any property rights of any Owner.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement necessary under this Article 5 shall be a Common Expense to be allocated among all Members as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, any Supplemental Declaration, other recorded covenants, or agreements with the owner(s) of such property.

5.2 **Individual Responsibility:** Each Owner shall maintain that Owner's Lot, and all structures, parking areas, and other improvements on that Property in a manner consistent with the standards accepted by the Association and all applicable covenants.

5.3 **Standard of Performance:** Unless specifically provided herein or in other instruments, maintenance shall include necessary repair and replacement. All maintenance shall be performed consistent with the standards adopted by the Association, the Windsong Architectural Control Committee (if any) and the covenants. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

ARTICLE 6
INSURANCE AND CASUALTY LOSSES

6.1 Association Insurance:

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- (a) The Association shall maintain in full force and effect fidelity insurance coverage protecting against dishonest acts by Association officers, directors, trustees, and employees and all others who are responsible for handling funds of the Association in the amount of one (1) year's operating budget, plus projected reserve balances during the budget year. If professional management is obtained by the Association and it has this coverage and it handles the funds, then this requirement will be satisfied;
- (b) If the Board of Directors so elects, officers and directors liability insurance covering the officers and directors of the Association may be obtained in such amount as the Board of Directors shall determine;
- (c) The Association shall have the right to purchase and maintain comprehensive general liability insurance coverage and such other insurance coverage as the Board of Directors may deem necessary and appropriate;
- (d) Premiums upon insurance policies purchased by the Association shall be paid by the Association as common expenses to be assessed and collected from all of the Owners.
- (e) All insurance policies purchased by the Association shall be for the benefit of the Association.

ARTICLE 7
NO PARTITION

Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. This Article shall not prohibit the Board from acquiring and disposing of real property which may or may not be subject to this Declaration, or tangible personal property.

ARTICLE 8
CONDEMNATION OF COMMON AREA

[Reserved]

ARTICLE 9
ASSESSMENTS

9.1 **Creation of Assessments:** During the Class B Control Period, the Declarant shall establish any and all assessments. After termination of the Class B Control Period, the following provisions of this Article shall become effective.

The Association is hereby authorized to levy assessments for all expenses incurred or expected to be incurred by the Association in performing its duties and exercising its rights under the Governing Documents, including, but not limited to:

- (a) expenses of maintaining, repairing, replacing, building additions, operating and insuring the Common Area and other areas under the Association's responsibility;
- (b) the cost of insurance and fidelity bond coverage obtained pursuant to Article VI;
- (c) expenses of monitoring and enforcing compliance with the provisions of this the Governing Documents;

- (d) expenses arising out of the Association's indemnification obligations under Section 4.6;
- (e) expenses arising out of any measures undertaken to enhance the safety of the Property pursuant to Section 4.8;
- (f) expenses arising out of its exercise of architectural control under Article X;
- (g) all reasonable expenses of managing the Association (provided, during the Class B Control Period the directors appointed by the Class B Member shall receive no compensation for their management of the Association);
- (h) legal, accounting and other professional fees; and
- (i) such other expenses as the Board deems necessary or desirable to keep the Property in good, clean and attractive condition.

There shall be three (3) types of assessments: (a) Base Assessment to fund Common Expenses based on the annual budget prepared in accordance with Section 9.3; (b) Special Assessments as described in Section 9.5; and (c) Specific Assessments as described in Section 9.6. Each owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Property, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest (at a rate of sixteen percent (16%) or the highest rate permitted by law or contracts, whichever is higher) from the date of delinquency, late charges, costs, and reasonable attorney's fees (collectively, "Fees"), shall be a charge and continuing lien upon the Property of the defaulting owner of each Lot until paid, as more particularly provided in Section 9.7. Such assessments and Fees shall be the personal obligation of the Person who was the Owner of the Lot at the time the assessment arose. Upon transfer of title to the Lot, the grantee shall be jointly and severally liable for all and any assessments and Fees due at the time of the conveyance. However, no first Mortgagee or other Person who obtains title to the Lot upon exercise of the remedies provided in such Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title, the lien of any assessment shall be subordinate of any first mortgage.

The Association shall, upon request, furnish to any Member or Owner a certificate signed by the Association stating whether such assessment has been paid, which shall be conclusive evidence of payment. The Association may require advance payment of a reasonable processing fee for the issuance of such certificate.

All Base Assessments for each calendar year shall be due on January 1 of that year (except during the first year that Base Assessments are due, in which event the Base Assessments shall be due, on a pro-rated basis, on the first day of the month subsequent to the Person taking title to the property in the subdivision). Special Assessments and Specific Assessments shall be due and payable as determined by Declarant or by the Association. If any reason is, or becomes, delinquent on any assessment, the Board may accelerate all assessments due for that calendar year and may require that all assessments be paid in full immediately.

No Owner may except himself from liability for assessments by any means. The obligation to pay assessments is a separate covenant on the part of each Member and Owner. No diminution of assessments shall be allowed for any alleged failure of the Association or Board to take some action required of it, or for inconvenience arising from the making of repairs or from any other action.

The Association is specifically authorized to enter into subsidy or "in kind" contracts with any Member or Owner for payment of Common Expenses.

The Association is further specifically authorized to enter into contractual agreements with persons and/or other legal entities for the collection of fees and for the management of common areas as referenced herein, and such collection of fees may include automatic bank drafts should any property owner so elect.

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9.2 Declarant's Obligation for Assessment: During the Class B Control Period, Declarant may elect: (1) to pay only necessary expenses; (2) to pay one-third of the regular assessments on that portion of the Property which it owns; or (3) to pay the difference between the amount of assessments levied on all other assessed property and actual expenditures by the Association during the fiscal year. Unless Declarant notified the Board in writing sixty (6) days before the beginning of each fiscal year, Declarant shall continue paying on the same basis as during the preceding year. Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials or construction of improvements on Common Area. After termination of the Class B Control Period, Declarant shall be obligated for assessments on that portion of the Property which it owns at a rate of one-third the rate charged to other Owners.

9.3 Computation of Base Assessments: At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses for the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 9.4. Such budget may, in the Board's discretion, take into account any income anticipated from other sources other than Base Assessments.

The total dollar amount to be raised through the levy of Base Assessments shall be assessed against each Lot pro-rata, and the Board shall establish a cut-off date for determining what property is part of the Property for purposes of allocating the assessment.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment due for the following year to each Member at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. The budget shall become effective unless disapproved by at least seventy-five percent (75%) of the total Class A votes and by the Class B Member, if existing. The Board need not call a meeting to consider the budget except on petition of the Members as provided in the By-laws, presented to the Board within ten (10) days after notice.

If the proposed budget is disapproved or the Board fails to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

9.4 Reserve Budget and Capital Contribution: The Board shall annually prepare a reserve budget, setting the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect to both amount and timing by annual Base Assessments over the budget period.

9.5 Special Assessments: In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise provided in the Declaration, any Special Assessment shall require the vote of at least fifty-one percent (51%) of the total Class A votes, and of the Class B Member, if the Class B Member still owns any of the Property. Special Assessments shall be payable in a manner and at such times as determined by the Board.

9.6 Specific Assessments: The Board shall have the power to specifically assess against individual Lots fines authorized by the Governing Documents and expenses incurred as a consequence of the conduct of less than all Owners. The Association may also levy a Specific Assessment against any Lot for costs incurred in bringing any Lot into compliance with the provisions of the Governing Documents, provided the Board gives prior notice to the Owner and an opportunity for a hearing.

9.7 Lien for Assessments: The Association shall have a lien against each Lot to secure payment of delinquent assessments, and Costs. Such lien shall be superior to all other liens, except: (a) liens superior by law; and (b) the lien of any first Mortgage of record made in good faith and for value. Such lien, when delinquent, may be enforced in the same manner as mechanics' liens under North Carolina law.

The sale or transfer of any Lot shall not affect the assessment lien or any subsequent assessments, except that the sale or transfer of a lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A purchaser of a Lot who obtains title pursuant to foreclosure shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be reallocated among all Lots, and may be added to and collected as part of the following year's Base Assessment against such Lots.

9.8 Failure to Assess: Failure of the Board to fix assessment amount or to deliver notice to each Member shall not waive any Owner from the obligation to pay assessments. In such event, each Member or Owner shall pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

9.9 Exempt Property: The following property shall be exempt from payment of Base Assessments and Special Assessments: common areas and property dedicated to and accepted by any governmental authority or public utility.

9.10 Initial Base Assessment: Until modified in accordance with the procedures set out herein, the Base Assessment for each Lot shall be \$/ea per year. The first annual base assessment for each Lot shall begin eighteen (18) months after the purchase of lot from Declarant or after purchase of completed dwelling from builder, whichever occurs first.

ARTICLE 10 ARCHITECTURAL STANDARDS

No building, fence, signs, wall or other structure shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein (including but not limited to, color or painting of the exterior and type of exterior finish) be made, except in exceptional cases, when in such cases, three (3) copies of the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board (said committee being hereinafter referred to as the "Architectural Control Committee"). Absent such approval, the proposed improvement may not be commenced.

In the event on Owner of any Lot in the Properties shall make unauthorized changes to the premises and the improvements situated thereon in a manner unsatisfactory to the said Board of Directors or the Architectural Control Committee, said board of directors or its agents and employees, to enter upon said parcel and to repair, maintain and restore the Lot and exterior of the Buildings and any other improvements erected thereon. In addition, or in the alternative, the board, the Architectural Control Committee, or any Member shall have the right to undertake legal action to redress the unapproved modification or improvement. The cost of such exterior maintenance and any other costs or attorney's fees incurred in the enforcement of the rights under these provisions shall be considered a Specific Special Assessment against that Owner(s) and his/her Lot(s). Any approval by the said Board of Directors of the Architectural Control Committee shall be in accordance with the requirements set forth hereafter.

The Declarant shall serve as the Architectural Control Committee until Declarant conveys all lots which comprise the Property.

ARTICLE 11 RESTRICTIONS ON USE

11.1 Residential Use: All Lots shall be used for single family residential purposes only, and subject to the restrictions of this Article 11. No structure erected, altered, placed or permitted to remain on any Lot shall exceed three and one-half stores in height.

No business may be conducted from the dwellings constructed upon the Lots except that which is done from a private office; that which does not require visitation by equipment and/or commercial vehicles; and that which does not invite traffic and parked vehicles.

11.2 Setbacks: No building shall be located nearer to the front, back and/or side property lines than the building setback lines as shown on the recorded maps of Lots. Deviations from building line requirements not in excess of ten percent (10%) thereof shall not be construed as a violation of the building line requirements as long as such deviation does not violate any local ordinance or zoning.

11.3 Animals and Pets: No animals of any kind shall be kept on any Lot except generally accepted household pets, which may be kept thereon for the sole pleasure and use of the occupants, but not for commercial use. No more than three (3) pets over the age of six (6) months shall be permitted at any time. Birds shall be confined in cages. In no instance shall household pets become a nuisance to other Owners, or infringe upon the property rights of other Owners.

11.4 Signs: No advertising signs of any type or kind shall be erected, placed, or permitted to remain upon or above any Lot or Common Area with the exception of a single sign "For Rent" or "For Sale", which sign shall not exceed two (2) feet by three (3) feet in dimension and shall refer only to the premises on which displayed, there being only one (1) sign to a Lot. Notwithstanding the above, Declarant may erect and place signs of any size or shape on any unsold Lot or the Common Area. Declarant shall also have the right of ingress, egress and regress over the aforesaid Lots and Common Area in order to maintain and replace any such signs until one hundred percent (100%) of the Lots have been conveyed by Declarant.

11.5 Nuisances: No activity may be carried on which shall or may be offensive, illegal, or an annoyance or nuisance, as determined by Declarant. No Lot or right-of-way shall be used for rubbish disposal, or for storage, if such storage may cause such Lot or right-of-way to appear unclean or unsightly; nor shall anything be kept upon any Lot or right-of-way that will emit a foul odor or will cause noise that might disturb the peace. However, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other such debris for pick up by trash removal service units, but such deposits shall only be permitted upon the specific day of pick up. In the event any Owner fails or refuses to keep his Lot free from unsightly objects, weeds, or underbrush, or to maintain the main structures on each Lot in a manner satisfactory to the Board of Directors, the Board of Directors may, five (5) days after delivering notice to the Owner requesting the Owner's compliance with the requirements of this paragraph, enter and remove all such unsightly objects or vegetation at the Owner's expense, and the Owner agrees to pay such costs incurred by the Association in the enforcement of this paragraph. No such entry as provided herein shall be deemed a trespass. The foregoing provisions shall not apply to Declarant or to a Builder while constructing residences upon any Lots.

11.6 Clotheslines, Garbage Cans, Etc: All clotheslines, garbage cans, lawn mowers, stored materials, wrecked, unlicensed or inoperable vehicles, and similar equipment shall be kept in an enclosed structure, as determined by the Board of Directors. Incinerators for garbage, trash or other refuse shall not be permitted on any Lot.

11.7 Antennas: No freestanding radio or television transmission or reception towers, antennas, dishes or disks shall be erected on a Lot. Radio and television antennas not exceeding seven and one-half (7 1/2) feet in height above the roof-line of the residence and dishes or disks not exceeding three (3) feet in diameter and not visible from the street in front of the residence may be attached to the structure of the residence only.

11.8 Walls, Fences and Hedges: Walls and fences must be first approved by the Declarant and/or the Board; however, such approval shall not be unnecessarily withheld so long as both sides of such structures are constructed of identical materials and identical designs, chicken wire being specifically prohibited. For masonry walls, no exposed concrete block will be permitted. Hedges shall be maintained in a neat condition on both sides. All walls, fences, and hedges shall not be located within setbacks or sight triangles as described herein or shown on record maps of the Property.

11.9 Pools: In-ground pools shall be permitted upon Lots but such pools must be located directly behind the residence of each Lot, screened from view by a six (6) foot privacy fence, and be at least twenty (20) feet from both side Lot lines and the rear Lot line.

11.10 Driveways and Parking Areas: Only driveways and parking areas constructed of a natural color concrete shall be permitted, and all such driveways shall be a minimum of one and one-half (1.5) feet wider than the garage doors. Parking of vehicles shall be contained within these driveways and parking areas only. Parking of vehicles in the streets shall be prohibited.

11.11 Vehicles, Boats and Trailers: No vehicles, boats, trailers, recreational vehicles or similar items, and no noxious or undesirable equipment or vehicles, shall be allowed to remain upon any Lot unless parked within an enclosed structure approved by the Declarant or, thereafter, the Board of Directors.

No construction equipment or commercial vehicles, with or without logos or trade decals, shall be allowed to remain parked outside the dwellings, for all such vehicles must be parked within an enclosed structure as specified hereinabove.

11.12 Use of Outbuildings and Similar Structures: There shall be no structure of a temporary nature on any Lot. No trailer, shed, tent, garage or any other similar structure shall be used as a residence. Provided, however, this paragraph shall not be construed to prevent Declarant from using sheds or other temporary structures during construction. Provided, further, this paragraph shall not be construed to prevent Owners from constructing a permanent detached garage, carport, or utility shed (such shed not to exceed twelve (12) feet by sixteen (16) feet in area) if approved by the Board; if constructed of materials similar to those used in the residence upon such Lot; if located behind the rear wall of the residence; if constructed in conformity to existing structures within the immediate area; and if not located within any easements.

11.13 Basketball Goals and Mailboxes: Basketball goals shall be permitted on a Lot if placed a minimum of twelve (12) feet behind the concrete curb into such Lot and placed outside of the public right-of-way. All goals and surrounding areas are to be maintained in a neat and orderly condition so as not to create a nuisance, as described in Section 11.5. All mailboxes are to be uniform in design and construction as determined by the Declarant and as approved by the North Carolina Department of Transportation. The Declarant has selected a vendor to provide and install same. Mailboxes shall be uniform and approved by Declarant or his successor.

11.14 Minimum Square Footage: Single family dwellings shall contain not less than a minimum of 1200 square feet of heated floor areas, exclusive of garage, carport, unheated storage areas and non-living space for dwellings. Each such single family dwelling shall also contain a minimum of an attached one (1) car garage, measuring fourteen (14) feet by twenty-one (21) feet, and each such garage shall have a finished interior [sheetrock and painting] and shall have doors for complete closure.

11.15 Minimum Building Materials: Each Builder shall comply with the following minimum guidelines during the construction of each dwelling located upon the Property:

- (a) Each dwelling shall be constructed of first grade vinyl siding, brick, or stucco as approved by the Board of Directors as provided herein;
- (b) Each dwelling shall be constructed upon a brick foundation;
- (c) A slab foundation shall be standard for each dwelling; however, a crawlspace foundation is optional.
- (d) All garages shall be attached, shall be a minimum size of fourteen (14) feet by twenty-one (21) feet, shall have interior sheetrock and painting, and shall have doors for complete closure, as previously specified in Paragraph 11.14 hereinabove.
- (e) Each dwelling shall be constructed with a minimum roof pitch of seven (7) on twelve (12).

- (f) All driveways shall be constructed of all natural color concrete and shall be a minimum of one and one-half (1.5) feet wider than the garage doors, as previously specified in Paragraph 11.10 hereinabove.
- (g) Each dwelling shall be landscaped with a minimum package containing twelve (12) shrubs and two (2), two and one-half (2 1/2) inch caliper HARDWOOD trees of six (6) feet in height.
- (h) Each dwelling shall be constructed with vinyl or vinyl-clad windows.
- (i) Each Builder shall secure a warranty program for FHA/VA sales.
- (j) Each builder shall gravel driveways during construction, shall maintain a wired area for construction debris, shall confine construction debris and any and all miscellaneous trash during construction, and shall provide silt fences when necessary.
- (k) Each Builder shall provide natural gas heat and a natural gas water heater for each dwelling.
- (l) Each Builder shall be subject to an architectural review committee which shall approve all building and landscaping plans before construction, including exterior color combinations, as specified in Article 10.

11.16 Side Setbacks: [See Section 11.2]

11.17 Waiver: Declarant may, but need not, waive in writing any violation of the designated and approved building location lines on either side Lot line, horizontal measurement only, provided that such violation does not exceed ten percent (10%) of the applicable requirements and provided such violation does not violate any local ordinance or zoning.

11.18 Subdivision of Lots: No Lot shall be subdivided by sale or otherwise, except by and with the written consent of Declarant and in compliance with local ordinances.

11.19 Fire: In the event any home or structure is destroyed or partially destroyed, said damage must be repaired and the improvement reconstructed within twelve (12) months.

11.20 General: Each Lot now or hereafter subjected to this Declaration shall be subject to all Easements. No structure of any type shall be erected upon a Lot which will interfere with the rights and/or use of any Easement.

11.21 Utility and Drainage: An easement on each Lot is hereby reserved by Declarant for itself and its successors and assigns along, over, under and upon a strip of land ten (10) feet in width along the front and rear Lot lines of all Lots shown on the recorded plats, and an easement ten (10) feet in width along the said Lot lines of all Lots shown on the recorded plats, in addition to any other Easements. The purpose of these easements shall be to provide, maintain, and operate drainage facilities and utility service lines to, over, or for each of the Lots. Within these easements, no structure, plating or other material shall be placed which may interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels in the easements except for party walls located on a portion of the side line of lines of a Lot. The easement area and all improvements in it shall be maintained by owner, except for those improvements for which a public authority or utility company is responsible. With ten (10) days prior written notice to Owner, Declarant may exercise the right to remove obstructions in such easements upon Owner's failure to do so, at Owner's expense, and Owner agrees to pay costs incurred by Declarant in doing so. For the purpose of this covenant, Declarant reserves the right to modify or extinguish the easements herein along any Lot lines in its sole discretion. For the duration of these restrictions, no such utilities shall be permitted to occupy or otherwise encroach upon any of the easement areas reserved without first obtaining this prior written consent of Declarant; provided, however, local service from utilities within easement areas

to residences constructed upon any such Lots may be established without first obtaining separate consents therefor from Declarant.

11.22 Emergency: There is hereby served a general easement to all firemen, ambulance personnel, police and security guards and all similar persons to enter upon the Property or any portion thereof, in the performance of their respective duties.

11.23 Declarant's Consent to Sales Material: Until all of the Lots have been conveyed by Declarant, all sales and advertising materials, and all forms of deeds, contracts for sale, and other closing documents for the sale of Lots by any Builder shall be subject to the prior approval of Declarant, which approval shall not be unreasonably withheld. If Declarant fails to notify a Builder of approval or disapproval within thirty (30) days, Declarant shall be deemed to have approved the foregoing. Upon disapproval, Declarant shall provide Builder a list of required changes, and the above procedure shall be repeated until approval is obtained.

11.24 Declarant's Consent to Amendments: This Article 11 may not be amended without the express written consent of Declarant until all Lots which are a part of the Property have been conveyed by Declarant; provided, however, the rights of Declarant contained in this Article shall terminate upon the earlier of (1) twenty (20) years from the date this Declaration is Recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

11.25 Duration: The restrictions, conditions and covenants of this Article shall be binding for a term of twenty (20) years from the date this Declaration is Recorded, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated as provided in Section 11.25.

11.26 Amendments and Termination: Article 11 of this Declaration may be terminated during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Owners and signed by Declarant if Declarant shall own any Lots, and thereafter may be terminated by an instrument signed by not less than seventy-five percent (75%) of the Owners of Lots. Article 11 of this Declaration may be amended upon the affirmative vote or written consent of a majority of the Owners of Lots and the written consent of Declarant; provided, however, that Declarant may amend this Article 11 to correct minor and clerical errors, as determined by Declarant, without approval of Owners, and should the Federal National Mortgage Association or the Federal Home Loan Mortgage corporation subsequently delete or relax any of their requirements which necessitate provisions of this Declaration, Declarant, without approval of Owners, may amend this Declaration to reflect such changes. Any such amendment or termination shall not be effective until an instrument evidencing such change has been filed of record in the Office of the Register of Deeds for Catawba County.

11.27 Enforcement: If any Owner shall violate or attempt to violate any of these restrictions, it shall be grounds for an action to recover sums due, damages or injunctive relief, or both, maintainable by Declarant or, in the proper case, by an aggrieved Owner. Failure by Declarant, the Association, or any Owner to enforce any of the foregoing restrictions or other provisions shall not be deemed a waiver of their right to do so.

11.28 Unintentional Violation: In the event of an unintentional violation of any of the foregoing restrictions with respect to any Lot, Declarant reserves the right (with the mutual written consent of the then Owner of such Lot) to change, amend, or release any portion of the foregoing restrictions as the same may apply to that particular Lot.

11.29 Association as Successor to Declarant: For purposes of this Article, the Association shall be deemed to be vested with all rights and authority that is reserved to Declarant in this Article, upon the termination of the Class B Control Period.

12.1 Easements of Encroachment: There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area or adjacent Lot due to the unintentional placement or settling of the improvements thereon to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. No such easement shall exist if such encroachment occurred due to the willful and knowing consent of an Owner, occupant, or the Association.

12.2 Easements for Utilities, Etc.: There is hereby reserved unto Declarant, so long as Declarant owns any portion of the Property, the Association, and the assigns of each, access and maintenance easements upon, across, over and under all of the Property to the extent reasonable necessary for the purpose of replacing, repairing and maintaining television reception systems, security and similar systems, roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, and for the purpose of installing any of the foregoing on property owned by the Person exercising the easement or within the Easements. These easements shall not entitle the holders to construct or install any of the foregoing systems, facilities or utilities over, under or through any existing structure on a Lot, and such installation shall occur only within fifty (50) feet of the Lot boundary line unless otherwise consented to in writing by the Owner of the affected Lot, whose consent shall not unreasonably be withheld. Any damage to a Lot resulting from the exercise of these easements shall promptly be repaired at the expense of the Person exercising the easement. The exercise of these easements shall not unreasonably interfere with the sue of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant. Nothing therein shall be deemed to obligate the Declarant or the Association to undertake any duties not explicitly set out in this Declaration.

Declarant specifically grants to the local water supplier, electric company, cable television provider, telephone utility, and natural gas supplier, easements across the Property for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the structures on any Lot, nor shall any utilities be installed or relocated on the Property, except as approved by the Board or Declarant.

ARTICLE 13 MORTGAGEE PROVISIONS

The other provisions of this Declaration notwithstanding:

An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a first Mortgage held, insured or guaranteed by such Eligible Holder (hereinafter "Mortgaged Lot");
- (b) Any violation of the Governing Documents affecting the Mortgaged Lot, where such violation has not been cured within sixty (60) days;
- (c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association;
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

ARTICLE 14
DECLARANT'S RIGHTS

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The other provision of this Declaration notwithstanding:

(a) Any or all of the special rights and obligations of Declarant set forth in this Declaration or the By-laws may be transferred, in whole or in part, to other Persons if the transfer does not reduce an obligation nor enlarge a right beyond that contained in the Governing Documents. No transfer shall be effective unless in a writing signed by Declarant and Recorded.

(b) Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Common Area such facilities and activities as in the sole opinion of Declarant may be reasonably required or convenient to the construction on or sale of such Lots. Declarant and authorized Builders shall have easements for access to and use of such facilities.

(c) Declarant and its employees and agents shall have a right and easement over and upon all of the Common Area for the purpose of constructing and installing such improvements to the Common Area as Declarant deems appropriate in its sole discretion.

(d) No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's written consent. Any attempted recordation without such consent shall be void unless subsequently approved by a writing signed by Declarant and Recorded.

(e) Declarant shall have the unilateral right at any time to make additional property subject to the terms of this Declaration, provided that such additional property is contiguous to the Property described herein. Such addition shall be accomplished by the identification of such additional property, and the execution and recordation of any instrument ("Supplemental Declaration") expressly making such property subject to the terms of this Declaration.

(f) This Article may not be amended without the written consent of Declarant. The rights contained in this Article shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

(g) Declarant shall have, at all times during the Class B Control Period, the right to modify the Governing Documents in order to: (1) correct clerical or other patent errors; (2) bring the Declarations into compliance with HUD, VA, FNMA, FHLC, or any other governmental agency or entity; (3) reduce the obligations of the Association and/or the Members or Owners; and (4) for any other reason which does not materially affect the rights or interests of any member or Owner.

ARTICLE 15
GENERAL PROVISIONS

15.1 **Term:** Unless earlier terminated by an instrument signed by Members holding seventy-five percent (75%) of the Class A votes and by the Class B Member, if any, and Recorded, this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association, any successors and assigns for a term of forty (40) years from the date this Declaration is Recorded. After such time, this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by Members holding a majority of the Class A votes and the Class B Member, if the Class B membership has not been terminated, has been Recorded within the year preceding any such extension, agreeing to amend or terminate this Declaration. Provided, nothing in this Section shall be construed to permit the termination of any easement without the consent of the holder of such easement.

15.2 **Amendment:**

(a) **By Declarant:** Until termination of the Class B membership, Declarant may unilaterally amend all articles of the Governing Documents for any purpose identified in

Section 14(g) above. Thereafter, Declarant may unilaterally amend such articles if such amendment is necessary:

- (i) to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination;
- (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots;
- (iii) to enable any institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make or purchase mortgage loans on the Lots;
- (iv) to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; or
- (v) to satisfy the requirements of any governmental agency.

Declarant may also unilaterally amend the Governing Documents at any time to correct minor or clerical errors provided that such amendments do not adversely affect any right of any Owner.

So long as Declarant still owns any portion of the Property, it may unilaterally amend the Government Documents for any other purpose, provided the amendment has not material adverse effect upon any right of any Owner.

The foregoing notwithstanding, any amendment made during the Class B Control Period shall require HUD/VA approval, if any right of any Owner is materially and adversely affected.

Any amendment made pursuant to this Section that does materially and adversely affect the right of any Owner shall not be effective until approved in accordance with Section 15.2(b).

(b) By Members: Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five percent (75%) of the total Class A votes in the Association and the consent of the Class B Member, if the Class B membership has not been terminated. In addition, the approval requirements set forth in Article 14(f) shall be met if applicable.

No amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

(c) Effective Date and Validity: To be effective, any amendment must be Recorded.

If any Owner consents to any amendment to this Declaration or by By-laws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or Contract between the Owner and a third party will affect the validity of such amendment.

15.3 Severability: Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provision or applications.

15.4 Perpetuities: If any of the provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of Lorin Weaver.

15.5 Use of the Words "Windsong": No Person shall use the word "Windsong" or any derivative in any materials without Declarant's prior written consent, except that Builders may use the term where it is used solely to specify that particular property is located within Windsong, and the Association shall be entitled to use the word "Windsong" in its name.

15.6 Compliance: Every Owner of any Lot shall comply with the Governing Documents. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity.

15.7 Notice of Sale or Transfer of Title: Any Owner desiring to sell or transfer title to his or her Lot shall give the Board at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot until the date upon which such notice is received by the Board.

15.8 Enforcement by Individual Owners: In addition to the enforcement rights granted to the Association in Section 4.3, each Owner shall also have the right to enforce the terms of this Declaration, including the right to seek injunctive relief to prevent or discontinue any violation hereof.

NDI, INC.

By: Ken J. Weaver
President

ATTEST:

Secretary

[Corporate Seal]

STATE OF NORTH CAROLINA

COUNTY OF

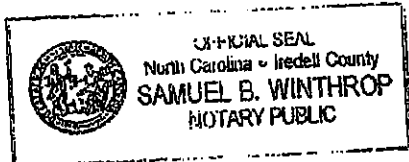
I, Samuel B Winthrop, a Notary Public
for IREDELL County and State, do hereby certify that
Lorin L Weaver

personally appeared before me this day and acknowledged
that (s)he is President of NDI INC of Windsong Village
Subdivision and acknowledged that on behalf of Windsong Village Subdivision, the due
execution of the foregoing instrument. NDI Inc.

Witness my hand and official seal, this the 27 day of April,
2000.

Samuel B Winthrop
Notary Public

My commission expires: 11-08-2006



BOOK 2203 PAGE 1016

FILED
RUTH MACKIE

'00 APR 28 AM 11 05

REGISTER OF DEEDS
CATAWBA CO., N.C.

STATE OF NORTH CAROLINA, CATAWBA COUNTY

The foregoing certificate of Samuel B. Winthrop, a Notary Public of Iredell Co, N.C. is certified to be correct. Filed this 28th day of April, 2000 at 11:05 A.M. and duly recorded in the office of the Register of Deeds of Catawba Co, N.C. in Book 2203, Page 999.

Ruth Mackie

RUTH MACKIE, REGISTER OF DEEDS

rsb