

BY-LAWS
OF
HEATHERBROOKE PROPERTY OWNERS ASSOCIATION, INC.

Article I
Name, Principal Office, and Definitions

1.1. Name.

The name of the corporation is Heatherbrooke Property Owners Association, Inc. ("Association").

1.2. Principal Office.

The principal office of the Association shall be located in Cobb County, Georgia. The Association may have such other offices, either within or outside of the State of Georgia, as the Board of Directors may determine or as the affairs of the Association may require.

1.3. Definitions.

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Declaration of Covenants, Conditions, and Restrictions for Heatherbrooke, Recorded in Cobb County, Georgia, as it may be amended and/or supplemented from time to time ("Declaration"), unless the context indicates otherwise, or the meanings given in the Georgia Nonprofit Corporation Code (O.C.G.A. Section 14-3-101, *et seq.*) (the "Nonprofit Code"). Statutory references shall be construed as meaning the referenced statute or portion thereof as the same may exist from time to time.

Article II
Membership: Meetings, Quorum, Voting, Proxies

2.1. Membership.

The Association shall have two classes of membership, as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference.

2.2. Place of Meetings.

Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board, either within the Community or as convenient as is possible and practical.

2.3. Annual Meetings.

The first meeting of the Association, whether a regular or special meeting, shall be held within one year from the closing of the first home or when twenty five percent (25%) of the homes in the Community have been sold, whichever is later, unless the Board determines that it is in the best interest of the Community to hold it earlier. Subsequent regular and annual meetings shall be set by the Board on a date and at a time set by the Board in its sole discretion.

2.4. Special Meetings.

The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon the delivery of a petition signed and dated by Members representing at least twenty five percent (25%) of the total votes in the Association.

2.5. Notice of Meetings.

Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. For so long as Declarant owns any property subject to the Declaration or may annex additional property to the Declaration, a copy of the notice shall also be delivered, either personally or by certified mail, return receipt requested, at the address it has registered with the Secretary of the Association, or alternatively, if no address is on file with the Secretary, the address of the registered agent on file with the Georgia Secretary of State to Declarant not less than ten (10) nor more than fifty (50) days before the date of such meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at its address as it appears on the records of the Association and to the Declarant at its address on file with the Georgia Secretary of State, with postage prepaid.

2.6. Waiver of Notice.

Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing or by electronic transmission signed by the Member entitled to notice and delivered to the Association for inclusion in the minutes for filing with the Association's records, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or the Member's proxy shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member or proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings.

If any meeting of the Association cannot be held because a quorum is not present, Members or their proxies holding a majority of the votes represented at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members and the Declarant in the manner prescribed for regular meetings.

The Members represented at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8. Voting.

The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such provisions are specifically incorporated by this reference.

2.9. Proxies.

At all meetings of Members, each Member may vote in person (if a corporation, partnership, or trust, through any officer, director, partner, manager, member or trustee duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of Georgia law. All proxies shall be either in writing or by electronic transmission specifying the Unit(s) for which it is given, signed by the Member or its duly authorized attorney-in-fact, dated and filed with the Association's Secretary or his or her designee prior to any meeting for which it is to be effective. Unless otherwise

specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. An electronic transmission must contain or be accompanied by information from which it can be determined that the Member, Member's agent or Member's attorney-in-fact authorized the electronic transmission. Proxies may be delivered to the Board of Directors by personal delivery, U.S. mail or electronic transmission to the Secretary or other officer or agent authorized to tabulate votes. Every proxy shall be revocable and shall automatically cease upon: (a) receipt of notice by the Secretary of the death or judicially declared incompetence of a Member; (b) receipt by the Secretary or other officer or agent authorized to tabulate votes of written revocation signed by the Member; (c) receipt by the Secretary or other officer or agent authorized to tabulate votes of a subsequent appointment form signed by the Member; (d) attendance by the Member and voting in person at any meeting; or (e) the expiration of eleven (11) months from the date of the proxy appointment form unless an earlier date is specified therein.

2.10. Majority.

As used in these By-Laws, the term "majority" shall mean those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

2.11. Quorum.

Except as otherwise provided in these By-Laws or in the Declaration, the presence, in person or by proxy, of Members entitled to cast twenty five percent (25%) of the total votes in the Association shall constitute a quorum at all meetings of the Association. The Members present at a duly called meeting at which a quorum is present may continue to do business until adjournment notwithstanding the withdrawal of enough Members to leave less than quorum.

2.12. Conduct of Meetings.

The President or any designee the Board approves shall preside over all Association meetings. The Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13. Action Without a Meeting.

Any action required or permitted to be approved by the Members may be approved without a meeting if one (1) or more consents, in writing or by electronic transmission, setting forth the action so taken, shall be signed, either personally or by an electronic transmission, and dated by Members (including the Declarant, if the consent

of the Declarant is required) holding the voting power required to pass such action at a meeting held on the record date for such action. The record date for such action shall be the date that the first Member signs a consent. Such action shall be approved when the Secretary receives a sufficient number of such consents dated within seventy (70) days of the record date for such action. If less than unanimous consent is obtained, the approval shall be effective ten (10) days after the Secretary gives written notice of the approval to all Members who did not sign a consent. Each consent in writing or by electronic transmission shall be included in the minutes of meetings of Members filed in the permanent records of the Association. No consent in writing or by electronic transmission shall be valid unless: (1) the consenting Member has been furnished the same material that, pursuant to the Nonprofit Code, would have been required to be sent to Members in a notice of a meeting at which the proposed action would have been submitted to the Members for action; or (2) the written consent contains an express waiver of the right to receive the material otherwise required to be furnished.

2.14. Action by Written Ballot.

Any action that may be taken at any annual, regular or special meeting of Members may be taken without a meeting if approved by ballot in writing or by electronic transmission as provided herein. The Association shall deliver a ballot in writing or by electronic transmission to each Member entitled to vote on the matter and the Class B Member. The ballot in writing or by electronic transmission shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by ballot in writing or electronic transmission shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; and specify the time by which a ballot must be received by the Association in order to be counted. A timely received ballot in writing or by electronic transmission received by the Association may not be revoked. Approval by ballot in writing or by electronic transmission of an action shall only be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. The results of each action by ballot in writing or by electronic transmission shall be certified by the Secretary and shall be included in the minutes of meetings of Members filed in the permanent records of the Association.

2.15. Record Date.

The Board of Directors shall fix in advance a record date for a determination of Members entitled to notice of and to vote at any meeting of Members or any adjournment thereof, or to make a determination of Members for any other purpose, such date to be not more than seventy (70) days before the date on which the particular action requiring such determination of Members is to be taken.

Article III
Board of Directors: Selection, Meetings, Powers

A. Composition and Selection.

3.1. Governing Body: Composition.

The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to directors appointed by Declarant, the directors shall be Members or residents; provided, no Owner and resident representing the same Unit may serve on the Board at the same time. In the case of a Member which is not a natural person, any officer, director, partner, employee, or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by Declarant.

3.2. Number of Directors.

The initial Board shall consist of three (3) directors determined by the Declarant in writing in its sole discretion. Thereafter, the Board shall consist of three (3) directors, as provided in Section 3.5 below.

3.3. Directors Appointed by Declarant.

Declarant shall have the right to appoint or remove any Board member or members or any Association officer or officers until such time as the first of the following events shall occur:

- (a) twenty (20) years from the date the Declaration was Recorded;
- (b) the date on which all of the Units permitted under the applicable zoning density for the Community as shown on the Recorded Plat are sold; or
- (c) the surrender by Declarant, in writing, of the authority to appoint and remove the Association's directors and officers.

3.4. Nomination and Election Procedures.

Elected directors shall be nominated from the floor and may also be nominated by a nominating committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualification to the Members and to solicit votes.

After the Declarant's right to appoint directors and officers terminates, the Association shall call a special meeting (or take action under Section 2.13 or Section 2.14 in lieu of a meeting) and the Class A Members shall elect three directors as follows: the initial term of two (2) directors shall be fixed at two (2) years, and thereafter successors shall be elected to a term of two (2) years; the initial term of one (1) director shall be fixed at one (1) year, and thereafter successors shall be elected to a term of two (2) years. At annual meetings thereafter (or pursuant to Section 2.13 or Section 2.14 in lieu of a meeting), directors shall be elected as necessary to fill vacant seats on the Board. All eligible Members of the Association may vote on all directors to be elected, and the candidates receiving the most votes shall be elected. Notwithstanding anything herein to the contrary, the members of the Board of Directors shall continue in office until their respective successors shall have been elected and take office.

3.5. Removal of Directors and Vacancies.

Any director elected by the Class A Members may be removed, with or without cause, by Class A Members holding a majority of the votes entitled to be cast. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Members to fill the vacancy for the remainder of the term of such director.

Additionally, any director elected by the Class A Members who has three (3) or more consecutive unexcused absences from Board meetings, or who is more than thirty (30) days delinquent in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director elected by the Class A Members, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members shall elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by Declarant nor to any director serving as a representative of Declarant. Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by or elected as a representative of Declarant.

B. Meetings.

3.6. Organizational Meetings.

The first meeting of the Board following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as the Board shall fix.

3.7. Regular Meetings.

Regular meetings of the Board may be held at such time and place as a majority of the directors shall determine.

3.8. Special Meetings.

Special meetings of the Board of Directors shall be held when called by written notice signed by the President or Vice President or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered.

3.9. Notice; Waiver of Notice.

(a) Notice of the time and place of a regular meeting shall be communicated to directors not less than four (4) calendar days prior to the meeting. Notice of the time and place of a special meeting shall be communicated to directors not less than seventy-two (72) hours prior to the date of the meeting. No notice need be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall be given to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, computer, fiberoptics, or such other electric communication device. All such notices shall be given at the director's telephone number, fax number, electronic mail number, or sent to the director's address as shown on the records of the Association.

Notices sent by first class mail shall be deposited into a United States mailbox at least seven business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least seventy-two (72) hours before the time set for the meeting.

(b) The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if: (i) a quorum is present, and (ii) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10. Telephonic Participation in Meetings.

Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the

meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.11. Quorum of Board of Directors.

At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called, may be transacted without further notice.

3.12. Compensation.

Directors shall not receive any compensation from the Association for acting as such. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested director.

3.13. Conduct of Meetings.

The President or any designee the Board approves by resolution shall preside over all Board meetings. The Secretary shall keep a minute book of Board meetings recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.14. Open Meetings.

Subject to the provisions of Section 3.16, all meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude Members, to discuss matters of a sensitive nature, such as pending or threatened litigation and personnel matters.

3.15. Action Without a Formal Meeting.

Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if one or more consents, in writing or by electronic transmission, setting forth the action so taken, shall be signed by a majority of the directors and delivered to the Association for inclusion in the minutes for filing in the corporate records. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

3.16. Telephonic Participation.

One or more directors may participate in and vote during any meeting of the Board by telephone conference call or any other means of communication by which all directors participating may simultaneously hear each other during the meeting. Any such meeting at which a quorum participates shall constitute a meeting of the Board.

C. Powers and Duties.

3.17. Powers.

The Board of Directors shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, By-Laws and Articles of Incorporation and as provided by law. The Board may do or cause to be done all acts and things as are not directed by the Declaration, By-Laws, Articles of Incorporation or Georgia law to be done and exercised exclusively by the membership generally.

3.18. Duties.

The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) levying and collecting assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;

(f) making and amending use restrictions and rules in accordance with the Declaration;

(g) opening bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;

(i) enforcing by legal means the provisions of the Governing Documents and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the Members concerning the Association, which enforcement power shall include, without limitation, the power to levy fines as provided herein and in the Declaration in such amounts as from time to time the Board of Directors may deem proper in the circumstances, counting each day a violation continues after notice from the Board of Directors as a separate violation;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Community;

(n) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required under Georgia law, the Articles of Incorporation, or the Declaration; and

(o) authorizing contracts on behalf of the Association.

3.19. Right of Declarant to Disapprove Actions.

So long as Declarant owns any property in the Community or has the right to add additional property to the Community as provided in the Declaration, Declarant shall have a right to disapprove any action, policy, or program of the Association, the Board, and any committee which, in the sole judgment of the Declarant, would tend to impair the rights of Declarant, Developer or builders under the Governing Documents, or interfere with the development of or construction on any portion of the Community, or diminish the level of services being provided by the Association.

(a) Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board, or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, or if no address is on file with the Secretary, notice shall be given to the address of the registered agent on file with the Secretary of State of the State of Georgia, and shall set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy, or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met.

Declarant, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. Declarant, acting through any officer, director, agent, or authorized representative, may exercise its right to disapprove at any time within ten (10) days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) days following receipt of written notice of the proposed action. This right to disapprove may be used to block the proposed actions set forth in subsection (a) above, but shall not include a right to require any action or counteraction on behalf of any committee, the Board, or the Association. Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.20. Management.

The Board of Directors may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. Declarant, or an affiliate of Declarant, may be employed as managing agent or manager. The term of any management agreement shall not exceed one year and shall be subject to termination by either party without cause and without penalty upon not more than ninety (90) days written notice. The Board of Directors may delegate to one (1) of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.21. Borrowing.

The Association shall have the power to borrow money for any legal purpose; provided, however, except as otherwise provided in the Declaration, the Board shall obtain membership approval in the same manner as for special assessments, in the event that the total amount of such borrowing exceeds or would exceed ten percent (10%) of the annual budget of the Association.

3.22. Enforcement.

In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable monetary fines, which shall constitute a lien upon the Unit of the violator, and to suspend an Owner's right to vote for the violation of any duty imposed under the Governing Documents. In addition, the Board may suspend any services provided by the Association to an Owner or the Owner's Unit or the right to use and enjoy the Common Area if the Owner is more than thirty (30) days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, tenant, employee, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the occupant; provided, if the fine is not paid by the occupant within the time period set by the Board, the fine shall be assessed against the Unit and its Owner upon notice from the Association. The Board's failure to enforce any provision of the Governing Documents shall not be deemed a waiver of the right to do so thereafter.

(a) Notice. Prior to imposition of a fine (a late charge shall not constitute a fine), the Board or the Declarant, as the case may be, or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation and the time period in which to correct it, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days or, in the event of an unapproved sign, twenty-four (24) hours, within which the alleged violator may present a written request for a hearing to the Board; (iv) the name, address and telephone number of the person to contact to challenge the fine; (v) that statements, evidence, and witnesses may be

produced by the violator at the hearing; and (vi) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is made within ten (10) days, or twenty-four (24) hours in the event of an unapproved sign, of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed; provided, the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period or the twenty-four (24) hour period, as applicable. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If a hearing is requested within the allotted ten (10) day or twenty-four (24) hour period, as applicable, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules) or, by following with the dispute resolution procedures set forth in Article XIV of the Declaration, if applicable. In addition, the Board shall have the right to file suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Unit for purposes of exercising this power of self-help shall not be deemed as trespass.

3.23. Board Standards.

While conducting the Association's business affairs, the members of the Board shall act as fiduciaries and are subject to insulation from liability as provided for directors of corporations by Georgia law and as otherwise provided by the Governing Documents. Directors shall exercise the ordinary and reasonable care of directors of a corporation subject to the business judgment rule.

A director shall act in accordance with the business judgment rule so long as the director:

(a) acts within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*;

(b) affirmatively undertakes to make decisions which are necessary for the Association's continued and successful operation and, when decisions are made, they are made on an informed basis;

(c) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in such decisions and actions; and,

(d) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

A director acting in accordance with the business judgment rule shall be protected from personal liability. Unless the Governing Documents require that specific action be taken, the failure to take such specific action shall not, without further showing that the Board acted in violation of the business judgment rule, be deemed a violation of a Board duty.

Board determinations of the meaning, scope, and application of Governing Document provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair, non discriminatory manner and shall adhere to the procedures established in the Governing Documents.

Article IV Officers

4.1. Officers.

The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary. This Section 4.1 shall not apply to the Declarant during the period in which the Declarant has the right to appoint and remove the officers and directors of the Association.

4.2. President

The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members and directors. The immediate supervision of the affairs of the Association shall be vested in the President. It shall be the President's duty

to attend to the business of the Association and maintain strict supervision over all of its affairs and interests. The President shall keep the Board of Directors fully advised about the affairs and conditions of the Association, and shall manage and operate the business of the Association pursuant to and in accordance with such policies as may be prescribed from time to time by the Board of Directors.

4.3. Vice President.

The Vice President(s), if any, shall act in the President's absence or disability and shall have all powers, duties, and responsibilities provided for the President when so acting, and shall perform such other duties as shall from time to time be imposed upon any Vice President by the Board or delegated to a Vice President by the President.

4.4. Secretary.

The Secretary shall keep the minutes of all meetings of the Members and of the Board of Directors; notify the Members and directors of meetings as provided by these By-Laws and Georgia law; have custody of the records and books of the Association; have custody of the seal of the Association; affix such seal to any instrument requiring the same; attest the signature or certify the incumbency or signature of any officer of the Association; and perform such other duties as the President, or the Board of Directors may prescribe. The Secretary shall perform the duties of the Treasurer of the Association in the absence or disability of the Treasurer.

4.5. Treasurer.

The Treasurer shall keep, or cause to be kept, the financial books and records of the Association, and shall faithfully account for the Association's funds, financial assets, and other assets entrusted to the Treasurer's care and custody. The Treasurer shall make such reports as may be necessary to keep the President and the Board of Directors informed at all times as to the financial condition of the Association, and shall perform such other duties as the President, or the Board of Directors may prescribe. The Treasurer shall maintain the money and other assets of the Association in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. The Treasurer may provide for the investment of the money and other assets of the Association consistent with the needs of the Association to disburse such money and assets in the course of the Association's business. The Treasurer shall perform the duties of the Secretary of the Association in the absence or disability of the Secretary.

4.6. Election and Term of Office.

Except for officers appointed by the Declarant, the Board shall appoint the officers of the Association at the first meeting of the Board following each annual meeting of the Members, to serve until their successors are elected.

4.7. Removal and Vacancies.

The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.8. Powers and Duties.

The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the Association's chief executive officer. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.9. Resignation.

Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.10. Compensation.

Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.12.

4.11. Additional Officers and Agents.

The Board of Directors may appoint such other officers, including assistant secretaries and assistant treasurers, and agents as it shall deem necessary. Such officers and agents shall hold their respective offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

Article V Committees

Advisory committees to perform such tasks and to serve for such periods as may be designated by the Board or as provided in the Declaration are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the Declaration or resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors. An advisory committee shall not be authorized to exercise any authority of the Board under the Articles of

Incorporation, the Declaration, these By-Laws or the Georgia Nonprofit Corporation Code.

Article VI **Miscellaneous**

6.1. Fiscal Year.

The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2. Parliamentary Rules.

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Georgia law or the Governing Documents.

6.3. Conflicts.

If there are conflicts between the provisions of Georgia law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Georgia law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit, any Member, the Declarant, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit the following documents: (i) the Declaration, By-Laws, and Articles of Incorporation and any amendments to the foregoing; (ii) the Use Restrictions and Rules; (iii) the membership register; (iv) books of account; and (v) the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at the office of the management agent or manager, if any, or at such other place within the Community as the Board shall designate.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and,

(iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.5. Notices.

Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, and other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or when sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or if by electronic transmission by a form of electronic transmission consented by the Board of Directors as provided in a resolution of the Board of Directors and otherwise in accordance with the Nonprofit Code; or,

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section or if by electronic transmission by a form of electronic transmission consented by the Board of Directors as provided in a resolution of the Board of Directors and otherwise in accordance with the Nonprofit Code.

6.6 Electronic Records, Signatures and Documents. To the extent permitted by Georgia law, the Declaration and these Bylaws, the Association and its members, officers, directors, Owners and Occupants may perform any obligation or exercise any right by use of any technological means providing sufficient security, reliability, identification and verifiability, which technological means have been approved by the Board of Directors in its sole discretion.

6.7. Amendment.

(a) By Declarant. So long as Declarant has the right to appoint and remove officers and directors, Declarant may unilaterally amend these By-Laws for any purpose. Thereafter, Declarant may amend these By-Laws if such amendment is specifically required to enable any governmental or institutional lender, purchaser, guarantor, or insurer of mortgage loans to make, purchase, insure, or guarantee mortgage loans on the Units; provided that any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing.

(b) By Members. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least two-thirds (2/3) of the total votes in the Association, and the consent of Declarant, so long as Declarant owns any property in the Community or has the right to unilaterally annex additional property to the Community. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon Recordation, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

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.

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