

**BYLAWS**

**OF**

**BEAUMONT**

**HOMEOWNERS' ASSOCIATION, INC.**

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## B. DEFINITIONS

As used in these Bylaws, the following terms shall have the following meanings, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

- 1.1 **"Architectural Committee"** shall have the meaning set forth in the Declaration.
- 1.2 **"Articles"** shall mean the Articles of Incorporation of the Association, as filed in the Office of the Judge of Probate of Shelby County, Alabama, in Book \_\_\_\_\_, Page \_\_\_\_\_, as said Articles may be amended from time to time.
- 1.3 **"Assessment"** shall have the meaning set forth in the Declaration.
- 1.4 **"Association"** shall mean Beaumont Homeowners' Association, Inc., an Alabama non-profit corporation, formed under the Alabama Nonprofit Corporation Act, as well as its successors or assigns.
- 1.5 **"Board"** or **"Board of Directors"** shall mean the Board of Directors of the Association as set forth in Article III hereof.
- 1.6 **"Bylaws"** shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.
- 1.7 **"Common Area"** or **"Commons Areas,"** as the case may be, shall have the meaning set forth in the Declaration.
- 1.8 **"Common Expenses"** shall have the meaning set forth in the Declaration.
- 1.9 **"Control Period"** has the meaning set forth in Section 14 hereof.
- 1.10 **"Declaration"** shall mean the Declaration of Protective Covenants, Conditions and Restrictions for Beaumont Residential Subdivision filed with the Office of the Judge of Probate of Shelby County, Alabama.
- 1.11 **"Developer"** shall mean Investment Associates, LLC, an Alabama limited liability company, its successors and/or assigns.
- 1.12 **"Lot" or "Lots,"** as the case may be, shall have the meaning set forth in the Declaration.
- 1.14 **"Member"** shall mean any person who is a Member of the Association. Each Owner is automatically a Member of the Association, and is entitled to the voting rights specified in the Declaration and herein.
- 1.15 **"Membership"** shall have the meaning set forth in Article II, Section 1 hereof.
- 1.16 **"Mortgage"** shall have the meaning set forth in the Declaration.
- 1.17 **"Mortgagee"** shall mean the holder of any Mortgage.

1.18 **"Owner"** shall have the meaning set forth in the Declaration.

1.19 **"Property"** shall have the meaning set forth in the Declaration..

1.22 **"Subdivision"** shall have the meaning set forth in the Declaration.

1.23 Any addition, undefined capitalized terms contained herein shall have their meanings as set forth in the Declaration.

## **ARTICLE I. THE ASSOCIATION**

Section 1. Identity. These are the Bylaws of Beaumont Homeowners' Association, Inc., a nonprofit corporation, which was formed under the Alabama Nonprofit Corporation Act [Code of Alabama 1975 §§ 10-3A-1 et seq.] by filing the Articles with the Office of the Judge of Probate of Shelby County, Alabama, on June \_\_\_, 2007. The purposes for which the Association has been organized are set forth in the Articles. The provisions of these Bylaws are expressly subject to the terms, provisions, covenants and conditions contained in the Articles and the Declaration.

Section 2. Principal Office. The principal office of the Association in the State of Alabama shall be located in the County of Shelby, State of Alabama. The Association may have such other offices, either within or without the State of Alabama, as the Board of Directors may designate or as the business of the Association may require from time to time.

Section 3. Registered Office. The registered office of the Association, required by the Alabama Nonprofit Corporation Act to be maintained in the State of Alabama, may be, but need not be, identical with the principal office in the State of Alabama, and the address of the registered office may be changed from time to time by the Board of Directors.

## **ARTICLE II. MEMBERSHIP**

Section 1. Membership. The Members of the Association shall consist of all Owners, and the Membership shall be appurtenant to, and may not be separated from, ownership of any Lot. Membership shall attach automatically upon the acceptance of delivery of the instrument of transfer of such ownership interest, provided that such instrument is promptly recorded in the Office of the Judge of Probate of Shelby County, Alabama, and a true copy of such recorded instrument is promptly delivered to the Association.

Membership shall terminate automatically upon the tendering of delivery of an instrument of transfer of such ownership interest (provided such tender is accepted) or upon such ownership interest being divested in some other manner.

Section 2. Members in Good Standing. A Member shall be a "Member in Good Standing" ONLY if such Member:

(a) has, at least ten (10) days prior to the taking of any vote by the Association, fully paid all Assessments and other charges levied by the Association as provided herein;

(b) has not received a notice of default for unpaid Assessments or has pending against such Owner any enforcement proceeding as described in Article VI of the Declaration; and

(c) has discharged all other obligations to the Association as provided herein or in the Articles and By-Laws.

The Board shall have the sole authority for determining the good standing status of any Member at any time and shall make such determination with respect to all Members prior to any vote being taken by the Association on any matter. The Board shall have the authority and right, in its sole discretion, to waive the 10-day prior payment requirement and require only that such payment be made before such vote is taken. Any Member not conforming with the provisions of this Section 2 shall be declared by the Board not to be a Member in Good Standing and shall be disqualified from voting on matters before the Association until Member in Good Standing status is attained and so declared by the Board.

Section 3. Annual Meeting. The annual meeting of the Membership shall be held in the month of April in each year, on such date as shall be fixed by the Board of Directors, beginning with the year 2008 (unless the Control Period is still in force, and then, under such circumstances, the first annual meeting shall occur in the month of April beginning with the year following the year in which the Control Period ended) at the hour of 10:00 a.m., for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the election of directors shall not be held on the day designated herein for any annual meeting of the Membership, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Membership as soon thereafter as conveniently may be.

Section 4. Special Meetings. Special meetings of the Membership, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or by the Board of Directors and shall be called by the President or the Secretary at the request of Owners of one half (1/2) or more of the total Lots of the Property.

Section 5. Place of Meeting. The Board of Directors may designate any place, within or without the State of Alabama, as the place of meeting for any annual meeting or from any special meeting of the Membership. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be the principal office of the Association in the State of Alabama.

Section 6. Notice of Meeting. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, or of a meeting which is required by statute to be held for any special purpose, or of any annual meeting at which special action is to be taken, the purpose or purposes for which the meeting is called, or the special action which is proposed to be taken, shall, unless otherwise prescribed by statute or otherwise herein, be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the President, the Secretary, or the persons

calling the meeting, to each Member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 7. Fixing of Record Date. The Board of Directors may fix in advance a date as the record date for the purpose of determining the Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or for any other proper purpose, such date in any case to be no more than fifty (50) days and, in case of a meeting of the Membership, not less than ten (10) days prior to the date on which the particular action, requiring such determination of Members, is to be taken. If no record date is fixed for the determination of Members entitled to notice of or to vote at a meeting of the Membership, the date on which notice of the meeting is mailed shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of the Membership has been made as provided in this section, such determination shall apply to any adjournment thereof.

Section 8. Voting Lists. The officer or agent having charge of the records of Members of the Association shall make, at least ten (10) days before each meeting of the Membership, a complete list of the Members entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address of each Member, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the principal office of the Association and shall be subject to inspection by any Member making written request therefor at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any Member during the whole time of the meeting.

Section 9. Quorum. The presence at any meeting of the Membership of the Members entitled to cast at least 10% of the votes in the Association, represented in person or by proxy, shall constitute a quorum. If a quorum is not present at any meeting, a majority of the Members so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The Members present or represented at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 10. Majority Vote. The vote of Members entitled to cast a majority of the votes represented at a meeting of the Membership at which a quorum is present shall be the act of the Members of the Association, unless the vote of a greater number is required by law, the Declaration, the Articles, or these Bylaws.

Section 11. Proxies. At all meetings of the Membership, a Member may vote in person or by proxy executed in writing by the Member or by his duly authorized attorney in fact. Such proxy shall be filed with the Secretary of the Association before or at the time of the meeting. No proxy shall be valid after ninety days from the date of its execution, unless otherwise provided in the proxy.



Section 12. Voting Rights. Subject to the restrictions hereinafter set forth, each Member shall be entitled to one (1) vote for each Lot in which he holds the interest required for Membership. When one or more persons hold such interest, all such persons may be Members, but in no event shall more than one vote be cast with respect to any Lot. If an Owner is a corporation or other entity, the person entitled to cast the vote for the Lot shall be designated by a certificate duly executed by such corporation or other entity and filed with the Secretary of the Association. Such certificate shall be valid until revoked or until superseded by a subsequent certificate or a change in the ownership of the Lot concerned. A certificate designating the person entitled to cast the vote of a Lot may be revoked at any time by any Owner of a Lot. There shall be no fractional voting. The votes of an Owner of more than one Lot cannot be divided for any issue and must be voted as a whole. Except where otherwise required under the provisions of the Declaration, the Articles or these Bylaws, the affirmative vote of Owners who own a majority of the total Lots within the Property which is represented at any meeting of Members duly called, and at which a quorum is present, shall be binding upon the Members. Voting may take place by proxy executed and delivered in the manner set forth herein.

Section 13. Informal Action by Members. Any action required to be taken at a meeting of the Membership, or any other action which may be taken at a meeting of the Membership, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof.

Section 14. Control Period.

(a) Notwithstanding any provision contained herein to the contrary, in view of the Developer's financial commitment to the Subdivision, Developer's obligations as an initial owner of the Lots to pay the expenses of the Subdivision and Developer's need to insure the success of the Subdivision, until such time as Developer has sold and no longer retains ownership of any of the Lots within the Subdivision or until Developer elects to terminate its control of the Association, whichever is earlier (such period of time being referred to herein as the "Control Period"), Developer shall have (a) the right to manage all of the affairs and decisions of the Association, (b) the exclusive right to elect the Directors of the Association (who need not be Owners), (c) the right to amend these Bylaws from time to time as hereafter set forth.

(b) During the Control Period, Developer shall pay all expenses otherwise payable by the Association and as reimbursement therefor and as compensation for its management services, Developer shall be entitled to receive and retain all of the Assessments payable by the Owners during said Control Period, and Developer shall have all of the rights of the Association to levy and enforce payment of Assessments. Developer's contributions to the Subdivision via the development thereof shall be credited against any Assessments otherwise due by Developer for Lots owned by Developer and upon which a Dwelling has been completed. During the Control Period, Developer shall not be required to assess or create any reserves and at the termination of the Control Period and the assumption of the operation of the Association by the Members, Developer shall not be required to render an accounting of income and expenses incurred during said Control Period.

**ARTICLE III.  
BOARD OF DIRECTORS**

Section 1. General Powers. The business and affairs of the Association shall be managed by or under the direction of its Board of Directors.

Section 2. Number, Tenure and Qualifications. The number of directors of the Association shall consist of three (3) directors. Each director shall hold office until his successor shall have been elected. Directors need not be residents of the State of Alabama or Members of the Association during the Development Control Period. Following the conclusion of the Development Control Period, all directors must be Members of the Association.

Section 3. Election of Directors.

(a) Election of directors shall be held at the annual meeting of the Membership. The election shall be by written secret ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast. The Owner of each Lot shall be entitled to cast the number of votes fixed by Section 11 of Article II for each of as many nominees as there are vacancies to be filled at the time of election. There shall be no cumulative voting. The names receiving the largest number of votes shall be elected.

(b) Notwithstanding the provisions of subparagraph (a) above, Developer, its successors and assigns, shall elect the Members of the Board of Directors of the Association, and in the event of vacancies, Developer shall fill vacancies, until all Lots are owned by Owners other than Developer or until Developer elects, at its option, to terminate control of the Association. Within sixty (60) days after the date of termination of control of the Association by Developer, the Board of Directors shall call and give not less than ten (10) nor more than thirty (30) days notice of a special meeting of the Membership for the purpose of electing the Members of the Board of Directors.

Section 4. Nominations Committee. Nominations for a full slate of Directors for election to the Board of Directors by the Members shall be made by the Nominations Committee. The Nominations Committee shall consist of three (3) persons appointed each year by the Board of Directors, one (1) of whom shall be a Director, and two (2) of whom shall be non-directors. Members of the Nominations Committee shall be appointed each year by the Board of Directors at least sixty (60) days prior to the date on which the election for the member(s) of the Board of Directors is to be held, and the slate of the Directors to be nominated by the Nominations Committee shall be nominated at least thirty (30) days before the date of such election. No member of the Nominations Committee shall be eligible for nomination for the Board of Directors by such Committee. In addition, nominations for the Board of Directors may be made by petition signed by more than twenty (20) Members of the Association, provided that such petitions are filed with the Secretary of the Association at least thirty (30) days before the date of the meeting at which the Director(s) are to be elected.

Section 5. Ballots. All elections to the Board of Directors shall be made on a written ballot which shall: (a) describe the vacancies to be filled; (b) set forth the names of those nominated by the Nomination Committee for such vacancies and those nominated by petition

timely filed with the Secretary of the Association; and (c) contain a space for a write in vote of the Members for each vacancy. Such ballots shall be prepared and mailed by the Secretary of the Association to the Members of the Association at least fourteen (14) days in advance of the date set forth therein for return (which shall be a date not later than the date for the annual meeting or special meeting called for election).

Section 6. Voting Procedures. Each Member shall receive as many ballots as he or she has Parcels in which such Member holds an interest required for membership by the Articles of Incorporation and these Bylaws. Each Member shall indicate next to the name of each nominee on the ballot his vote for the election of such nominee to the Board of Directors, or shall write in the name of a person not so nominated in the space on the ballot provided for this purpose. All ballots shall be signed by the Member casting it and returned to the Secretary of the Association, who, upon receipt of each ballot, shall immediately place it in a safe or other locked place until the day set forth for the annual or other special meeting at which the elections are to be held. On that date, the ballots shall be turned over to an election committee ("Election Committee") which shall consist of three (3) to five (5) Members appointed by the Board of Directors. The Election Committee shall then adopt a procedure which shall:

(a) Establish that the number of ballots turned in by each Member corresponds with the number of Parcels owned by such Member or his proxy identified on the ballot; and

(b) Establish that the signature of the Member or his proxy on the ballot is genuine; and

(c) If the vote is by proxy, establish that a proxy has been filed with the Secretary of the Association as required under these Bylaws, and that such proxy is valid.

If any ballot is found to contain more than the number of votes which the Member signing, or his proxy, is entitled to cast, all votes on such ballot shall be disqualified and shall not be counted. After the announcement of the results by the Elections Committee, unless a review of the procedure is demanded by thirty-five percent (35%) of the Members casting ballots in the election is made within ten (10) days following the election, the ballots shall be destroyed at such time, allowing for said review demand to lapse.

Section 7. Directors' Terms of Services. At the first annual meeting of the Members there shall be elected in the manner set forth in these Bylaws, three (3) Directors; one (1) such Director being elected for three (3) years, one (1) such Director being elected for two (2) years, and one (1) such Director being elected for one (1) year. The Member receiving the largest number of votes shall serve the three (3) year term, the Member receiving the second largest number of votes shall serve the two (2) year term, and the Member receiving the third largest number of votes shall serve the one (1) year term.

Section 8. Regular Meetings. A regular meeting of the Board of Directors may be held without other notice than this By-Law immediately after, and at the same place as, the annual meeting of the Membership, provided, however, any such regular meeting may be held at any other time or place which shall be specified in a notice given as hereinafter provided for

special meetings, or in a consent and waiver of notice thereof, signed by all directors. The Board of Directors may provide, by resolution, the time and place, within or without the State of Alabama, for the holding of additional regular meetings without other notice than such resolution.

Section 9. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or any two directors.

Section 10. Notice. Notice of any special meeting shall be given at least three (3) days previously thereto by written notice delivered personally or mailed to each director at his business address, or by telegram. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 11. Quorum. A majority of the number of directors fixed by Section 2 of this Article III shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

If a quorum is present when the meeting is convened, the directors present may continue to do business, until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum present, or the refusal of any director present to vote.

Section 12. Manner of Acting. The act of the majority of a majority of the directors present at a meeting at which a quorum is present is necessary to constitute the act of the Board of Directors unless a greater number is required under the Alabama Nonprofit Corporation Act.

Section 13. Action Without a Meeting. Any action that may be taken by the Board of Directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

Section 14. Vacancies. Subject to the provisions of subparagraph (b) of Section 3 of this Article III, any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the number of directors may be filled by a majority of the remaining directors. A director elected or appointed, as the case may be, shall be elected or appointed for the unexpired term of his predecessor in office.

Section 15. Compensation. By resolution of the Board of Directors, the directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors. No such payment shall preclude any director from serving the Association in any other capacity and receiving compensation therefor.

Section 16. Committees. The Board of Directors may, by resolution or resolutions, passed by a majority of the whole Board, designate one or more committees, each of which shall consist of two or more directors and which to the extent provided in said resolution or resolutions or in the Bylaws of the Association shall have and may exercise all of the powers of the Board of Directors in the management of the activities and affairs of the Association and may have power to authorize the seal of the Association to be affixed to all papers which may require it; except that no such committee shall have the authority of the Board of Directors in reference to amending, altering or repealing the Bylaws; electing, appointing or removing any Member of any such committee or any director or officer of the Association; amending the Articles, restating the Articles, adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the Association; authorizing the voluntary dissolution of the Association or revoking proceedings therefore; adopting a plan for the distribution of assets of the Association; or amending, altering or repealing any action or resolution of the Board of Directors which by its terms provides that it shall not be amended, altered, or repealed by such committee. The designation of such committee or committees or the delegation thereto of authority shall not operate to relieve the Board of Directors of any individual director of any responsibility imposed upon it or him by law.

Section 17. Resignations. Any director of the Association may resign at any time either by oral tender of resignation at any meeting of the Board or by giving written notice thereof to the Secretary of the Association. Such resignation shall take effect at the time specified therefor; and the acceptance of such resignation shall not be necessary to make it effective.

Section 18. Replacement of Board Members. Unexpected vacancies in the Board of Directors shall be filled by the majority of the remaining Directors, any such appointed Director to hold office until his or her successor is elected by the Members who are entitled to elect the Director, at the next annual meeting of the Members or at any special meeting duly called for that purpose.

Section 19. Place of Meeting. The Board of Directors may designate any place within or without the State of Alabama as the place of meeting for any regular or special meeting of the Board of Directors.

Section 20. Presumption of Assent. A director of the Association who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 21. Levy Fines. Levy fines against Owners for violations of the Declaration. The Board of Directors may levy a fine against an Owner, not to exceed One Hundred Dollars (\$100.00) for each such violation by the Owner, or his or her family members, tenants, guests, visitors, or invitees. A fine may be levied on the basis of each day of a continuing violation, with

a single notice and opportunity for hearing, except that no such fine shall exceed Two Thousand Five Hundred Dollars (\$2,500.00) in the aggregate. Written notice of the nature of the violation and an opportunity to attend a hearing shall be given prior to the levy of the initial fine. No written notice or hearing shall be necessary for the levy of a separate fine for repeat or continued violations if substantially similar to the initial violation for which notice and a hearing was provided. The Board of Directors shall have the authority to adopt rules, regulations and policies to fully implement its fining authority.

The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable notice of not less than fourteen (14) days and said notice shall include:

- (a) A statement of the date, time and place of the hearing;
- (b) A statement of the provisions of the Declaration, Association Bylaws, or other governing documents which have allegedly been violated; and
- (c) A short and plain statement of the matters asserted by the Association.

The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. The hearing shall be conducted before a panel of three (3) Owners appointed by the Board, none of whom may then be serving as a director, officer or employee of the Association, or be a spouse, parent, child, brother, or sister of an officer, director, or employee. If the panel, by majority vote, which may be taken by secret ballot, does not agree with the fine, it may not be levied.

#### **ARTICLE IV OFFICERS**

Section 1. Number. The officers of the Association shall be a President, one or more Vice President(s) (the number thereof to be determined by the Board of Directors), a Secretary, and a Treasurer, each of whom shall be elected by the Board of Directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. Any two or more offices may be held by the same person, except the President and Secretary. The failure of the Board of Directors to elect any officer other than a President and a Secretary shall not constitute a violation of these Bylaws.

Section 2. Election and Term of Office. The officers of the Association to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the Membership. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall have resigned or shall have been removed in the manner hereinafter provided.

Section 3. Removal. Any officer or agent elected or appointed by the Board of Directors may be removed at any time, by the affirmative vote of the Board of Directors, whenever in their judgment the best interests of the Association will be served thereby. Any such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer shall not of itself create any contract rights in favor of such officer.

Section 4. Vacancies. A vacancy in any office elected or appointed by the Board of Directors because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 5. President. The President shall be the chief executive officer of the Association and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Association. He shall preside at all meetings of the Membership. He may sign, with the Secretary or an Assistant Secretary, any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 6. Vice President. In the absence of the president or in the event of his death, inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 7. Secretary. The Secretary shall: (a) keep the minutes of the proceedings of the Members and of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the Association and see that the seal of the Association is affixed to all documents the execution of which on behalf of the Association under its seal is duly authorized; (d) keep a register of the post office address of each Member which shall be furnished to the Secretary by such Member; (e) have general charge of the records of the Members of the Association; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 8. Treasurer. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Association; (b) receive and give receipts for monies due and payable to the Association from any source whatsoever, and deposit all such monies in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article V of these Bylaws; and (c) in general perform all of the duties as from time to time may be assigned to him by the President or

by the Board of Directors. Notwithstanding any provision contained within this Section to the contrary, the Association may hire and/or contract with third parties to carry on the functions described in subsections (a) and (b) above, and in such event, it shall be the Treasurer's responsibility to oversee the fulfillment of these functions by any such third parties. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors shall determine.

Section 9. Assistant Secretaries and Assistant Treasurers. The Assistant Secretaries and Assistant Treasurers, in general, shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors. The Assistant Treasurers shall respectively, if required by the Board of Directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine.

Section 10. Salaries. The salaries of the officers shall be fixed from time to time by the Board of Directors and no officer shall be prevented from receiving such salary by reason of the fact that he is also a director of the Association.

## **ARTICLE V. CONTRACTS, LOANS, CHECKS AND DEPOSITS**

Section 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

Section 2. Loans.

(a) No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

(b) No loans shall be made by the Association to its directors or officers. Any director or officer who assents to or participates in the making of such loan shall be liable to the Association for the amount of such loan until the repayment thereof.

Section 3. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits. All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Directors may select.

Section 5. Proxies. Unless otherwise provided by resolution of the Board of Directors, the President may from time to time appoint an attorney or agent of the Association, in



the name and on behalf of the Association, to cast the votes which the Association may be entitled to cast as the holder of stock or other securities in any other corporation any of whose stock or other securities may be held by the Association, at meetings of the holders of the stock or other securities of such other corporation, or to consent in writing, in the name and on behalf of the Association, as such holder, to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed, in the name and on behalf of the Association and under its corporate seal or otherwise, all such written proxies or other instruments as he may deem necessary or proper in the premises.

## **ARTICLE VI. BOOKS AND RECORDS**

Section 1. Accounting. The Association shall keep correct and complete books and records of account and shall keep minutes of the proceedings of the Members, Board of Directors and committees thereof and shall keep at its registered or principal office in Alabama a record of the names and addresses of Members entitled to vote, directors and officers. The accounting records shall be maintained in accordance with generally accepted accounting principles. All books and records of the Association shall be open to inspection by the Members of their authorized representatives for any proper purpose at any reasonable time.

Section 2. Budget. The Board of Directors shall adopt a budget for each calendar year that shall include the estimated funds required to defray the Common Expenses and to provide and maintain funds for the foregoing accounts and reserves according to good accounting practices. Copies of the budget and proposed assessments shall be transmitted to each Member on or before December 1 proceeding the year for which the budget is made. If the budget is amended substantially, a copy of the amended budget shall be furnished to each Member.

Section 3. Assessments. Assessments against the Members as provided in the Declaration shall be made for the calendar year annually in advance on or before December 31, preceding the year for which the assessments are made. Such assessments shall be due in annual, quarterly or monthly installments, as may be determined by the Board of Directors of the Association. In the event the annual assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board of Directors.

Section 4. Assessments for Emergencies. Assessments for Common Expenses for emergencies that cannot be paid from the annual assessments for Common Expenses shall be made only after notice of the need for such is given to the Members concerned, and it shall be due thirty (30) days after such notice in such manner as the Board of Directors of the Association may require in the notice of assessment.

Section 5. Bonds. Fidelity bonds may be required by the Board of Directors from all persons handling or responsible for Association funds. The amount of such bonds shall be determined by the Board of Directors, but shall not be less than three times the amount of the

total annual assessments against Members for Common Expenses. The premiums of such bonds shall be paid by the Association.

**ARTICLE VII.  
SEAL**

The Board of Directors shall provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association and the state of incorporation and such other words as the Board of Directors may prescribe.

**ARTICLE VIII.  
WAIVER OF NOTICE**

Whenever any notice is required to be given to any Member or director of the Association under the provisions of these Bylaws, the Articles of Incorporation, the Declaration, the provisions of the Alabama Nonprofit Corporation Act, and any act amendatory thereof, supplementary thereto or substituted therefor, or the Alabama Constitution, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**ARTICLE IX.  
FISCAL YEAR**

The fiscal year of the Association shall be the calendar year.

**ARTICLE X.  
INDEMNIFICATION**

Section 1. Actions Not Brought By or in Right of Association. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. Actions Brought By or in Right of Association. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

Section 3. Terms of Indemnification.

(a) To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 1 and 2, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(b) Any indemnification under Sections 1 and 2 (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 1 and 2. Such determination shall be made (i) by the Board of Directors by a majority vote of directors who were not parties to such action, suit or proceeding, or (ii) if disinterested directors so direct, by independent legal counsel in a written opinion, or (iii) by the Members.

(c) Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this section.

(d) The indemnification provided by this section shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of Members or disinterested director or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

**ARTICLE XI.  
AMENDMENT**

The Bylaws may be amended, altered or repealed by Developer until such time as all Lots are owned by Owners other than Developer or until Developer elects, at its option, to terminate control of the Association. Upon termination of control, the Bylaws may be amended by the Members at any regular or special meeting upon the affirmative vote of the Owners of not less than two-thirds (2/3) of the total Lots of the Property.