

2008005233

TRANSLYVANIA CO, NC FEE \$95.00
PRESENTED & RECORDED:
09-03-2008 12:07:02 PM
CINDY M OWNBEY
REGISTER OF DEEDS
BY: BETH C SALES
ASSISTANT
BK:DOC 471
PG:112-139

BYLAWS
OF
LAKE TOXAWAY COMMUNITY ASSOCIATION, INC.
AMENDED AND RESTATED
JULY 26, 2008

BYLAWS
OF
LAKE TOXAWAY COMMUNITY ASSOCIATION, INC.
AMENDED AND RESTATED
JULY 26, 2008

ARTICLE 1: NAME, PRINCIPAL OFFICE, AND DEFINITIONS

1.1 Applicability. These Bylaws provide for the self-governance of Lake Toxaway Community Association, Inc., in accordance with the North Carolina Planned Community Property Act, as applicable, the Articles of Incorporation, as amended, and pertinent covenants, conditions, restrictions and/or easements regarding Lake Toxaway Estates which are or will be filed in the Public Records.

1.2 Name. The name of the corporation is Lake Toxaway Community Association, Inc. (hereinafter referred to as the "Association"), a North Carolina nonprofit corporation.

1.3 Principal Office. The principal office of the Association shall be located in Transylvania County, North Carolina.

1.4 Definitions. The words used in these Bylaws shall be given their normal, commonly understood definitions. Capitalized terms shall be defined as set forth in Exhibit "A".

ARTICLE 2: MEMBERSHIP AND VOTING RIGHTS

2.1 Only Lake Toxaway Estate Property owners are eligible for membership in the Association. Membership is obtained in the following manner: (a) by the covenant or deed when the property is/was purchased; (b) by the Owner recording his property for membership by filing a "Statement of Consent of Required Membership" in the Public Records of Transylvania County; or (c) by paying all current dues, fees, and assessments when billed.

There shall be only one membership per Property/Unit. If more than one person owns the Property/Unit, all persons shall share the privileges of Membership. If a Corporation, Company, Association, Partnership or Trust owns the Property/Unit, the Member must designate who owns the membership rights in writing to the secretary of the Association.

2.2 Voting. Each Member shall have one equal vote for each Property/Unit in which he or she holds the interest required for membership under Section 2.1; provided, however, there shall be only one vote per Property/Unit. All votes shall be cast as provided herein. If there is more than one owner of a

Property/Unit, the vote for such Property/Unit shall be exercised as the co-owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Property/Unit's vote shall be suspended if more than one Person seeks to exercise it. No vote shall be exercised on behalf of any Property/Unit if any assessment for such Property/Unit is delinquent. The Board may adopt policies and procedures regarding the methods of casting votes, such as written ballots, secret ballots or Computer Access.

2.3 Classes of Membership The Association shall have one class of membership. The Board with the approval of the membership may create additional classes of membership as deemed necessary.

ARTICLE 3: PROPERTY RIGHTS

3.1 Common Area. Every Member shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Area, which is appurtenant to and shall pass with the title to each Property/Unit, subject to:

- (a) these Bylaws, deeds and deed restrictions, and all Governing Documents;
- (b) the right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area
- (c) the right of the Board to suspend a Member's use of recreational facilities within the control of the Association in the event any dues, assessments or fees for the Property/Unit of such Member are delinquent and not brought current within the time periods provided for in Section 4; provided, however, that in no event shall the Board have the right to suspend any Member's right to have ingress/egress to and from his or her Property/Unit over the private road system of the Association.
- (d) the right of the Board, with Association approval, to dedicate or transfer all or any part of the Common Area, provided, however, that any dedication or transfer of the private road system may be done only in accordance with Section 4.2 of these Bylaws;
- (e) the right of the Association, acting through the Board, to charge reasonable admission or other use fees for the use of any facility situated upon the Common Area;
- (f) the right of the Board, with Association approval, to mortgage, pledge or hypothecate any or all of its Common Area real or personal property as security for money borrowed or debts incurred; provided, however, that any such mortgage, pledge, or hypothecation shall be subject in all respects to the easements and other usage rights of the Members: and
- (g) the right of the Board to conduct activities within the Common Area, such as tournaments, charitable events, and promotional events which could restrict Members from using the Common Area during such activities, provided such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Members' use and enjoyment of the Common Area and shall not exceed four (4) consecutive Days.

3.2 No Partition. Except as permitted in these Bylaws, there shall be no judicial partition

of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of these Bylaws. This Article shall not prohibit the Association, acting through the Board, from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property that is not part of the Common Area and which may or may not be subject to these Bylaws.

3.3 Condemnation. In the event of a taking of any of the property of the Association by condemnation or by eminent domain, the provisions of the Act shall prevail and govern; provided, however, that any related award disbursed to the Association shall be used for such purposes as the Board shall determine.

ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all improvements thereon. The Association shall be the primary entity responsible for enforcement of these Bylaws and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 10. The Association shall also be responsible for administering and enforcing these Bylaws, including, without limitation, the architectural standards and controls set forth herein. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of North Carolina.

4.2 Personal Property and Real Property for Common Use. The Association, acting through the Board, may acquire, hold, and transfer lots that are not part of the Common Area and tangible and intangible personal property. The Board, with the approval of the membership, may acquire, hold and transfer Common Area, provided, however, that in no event shall the Association transfer all or any portion of the private road system except (i) to dedicate such private roads as public streets or (ii) to a successor to the Association which shall establish by a deed covenant recorded in the Public Records the obligation to maintain such private roads into perpetuity in a comparable manner to the public streets in the neighboring vicinity of Lake Toxaway Estates.

4.3 Dedication of or Grant of Easement on Common Area. The Association may dedicate sections or parcels of the Common Area to which it has such right to Transylvania County, North Carolina, or to any other local, state, or federal governmental or quasi-governmental entity or private utility provider.

4.4 Easements for Utilities, Etc.

(a) Members hereby grant to the Association and its designees (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable television systems, master television antenna or satellite systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity, and utility meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

The Association, acting through the Board, may specifically grant to local water suppliers, sewer service providers, electric company, cable company and gas supplier the easements set forth herein across the Properties for ingress, egress, installation, reading, replacing,

repairing, and maintaining utility lines, meters and boxes, as applicable; provided, however, that if at any point any such utility easement is not entirely located within ten feet (10') of a property line of any Property/Unit, the location thereof shall be subject to the reasonable approval of the Property/Unit Owner.

(b) Any damage to a Property/Unit or Common Area resulting from the exercise of the easements described in this Section shall promptly be repaired by, and at the expense of, the Person or entity exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures or dwellings on any property, nor shall it unreasonably interfere with the use of any property or dwelling, and except in an emergency, entry onto any Property/Unit shall be made only after reasonable notice to the Member or occupant.

4.5 Enforcement. The Board may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in Section 4.6. Such sanctions may include, without limitation:

- (a) imposing monetary fines which shall constitute a lien upon the Property/Unit of the violator (In the event that any occupant, guest or invitee of a Property/Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Member shall pay the fine upon notice from the Board.);
- (b) filing liens in the Public Records for nonpayment of any dues, assessments or fees;
- (c) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;
- (d) suspending a Member's right to vote;
- (e) suspending any services provided by the Association to a member or the Member's Property/Unit if the Member is more than thirty (30) Days delinquent in paying any assessment or other charge owed to the Association; and
- (f) levying Specific Assessments to cover costs incurred in bringing a Property/Unit into compliance in accordance with Section 8.5.

All remedies set forth in these Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right of the Association to enforce such provision under any circumstances or prevent the Association from enforcing any other covenant, restriction or rule.

4.6 Appeal & Due Process Procedure

(a). Notice. Prior to imposition of any sanction requiring compliance with these procedures as set forth in Section 4.5, the Board or its designee, shall serve the Property Member with written notice including (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the Property Member may present a written request for a hearing to the Board within fifteen (15) Days of the notice; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received within fifteen (15) Days of the notice.

If a timely request is not received, the sanction stated in the notice shall be imposed; provided, however, the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the fifteen (15) Day period, or in the case of a violation which cannot be cured within such fifteen (15) Day period, such person has commenced to cure and is diligently pursuing such cure to conclusion. 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. In the event of a continuing violation, each day the violation continues beyond the fifteen (15) Day period shall constitute a separate offense, and fines may be imposed on a per diem basis without further notice to the Property Member. In the event of a violation which recurs within one year from the date of any notice hereunder, the Board or its covenants committee may impose a sanction without further notice to the violator.

(b) Hearing. If a hearing is requested within the allotted fifteen (15) day period, the hearing shall be held before the Board in executive session or the covenants committee pursuant to Section 15.2. Prior to imposing any sanction, 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 delegate who delivered such notice. The notice requirement shall be deemed satisfied if the Property Member 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. The Board may adopt a schedule of sanctions for violations of the Governing Documents.

4.7 Security. The Association may, but shall not be obligated to maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. The Association shall not in any way be considered an insurer or guarantor of security within the Properties, nor shall it be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any security system or measure, including any mechanism or system for limiting access to the Properties, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Member acknowledges, understands, and covenants to inform its tenants and all occupants of its Property that the Association, its Board of Directors and its committees are not insurers and that each person using the Properties assumes all risks of personal injury and loss or damage to property, whether real property, personal property or intangible property, resulting from acts of third parties.

4.8 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by these Bylaws or the Act, or reasonably implied to effectuate any such right or privilege. All lawful rights and powers of the Association not expressly reserved in these Bylaws for a vote of the Members may be exercised by the Board without a vote of the membership.

4.9 Indemnification. The Association shall indemnify and hold harmless every officer, director, Architectural Review Board (ARB) member, and committee member against all damages, liability, and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, ARB member, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and North Carolina law.

The officers, directors, and ARB and other committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, nonfeasance, misconduct, or bad faith. The officers, directors and ARB and other committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors or ARB or other committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and ARB and other committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or ARB or other committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation.

ARTICLE 5: MAINTENANCE

5.1 Association's Responsibility.

(a) The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility. The Association may, as a Common Expense, maintain other property and improvements which it does not own, including, without limitation, property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by the property Owner, if the Board of Directors determines that such maintenance is necessary or desirable in order to maintain the Community-Wide Standard.

(b) All costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Property/Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the Member(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to these Bylaws, any Cost Sharing Agreements, any recorded covenants, or any agreements with the Member(s) thereof.

(c) The Association, in accordance with section 5.2, may mow and maintain on each unimproved Property/Unit any vegetation within that portion of the Property/Unit located between the lot boundary adjacent to the street to the rear property line. For purposes of this Section, unimproved Property/Unit shall mean a Property/Unit without a dwelling.

5.2 Member's Responsibility. Each Member shall maintain his or her Property/Unit, and all structures, parking areas, landscaping and other flora and other improvements comprising the Property/Unit in a manner consistent with the Community-Wide Standard and all Governing Documents. If a Member fails to perform properly his or her maintenance responsibility, the Association may, after proper notice as set forth in Section 4.6 of these Bylaws, perform such maintenance responsibilities and assess all costs incurred by the

Association against the Property/Unit and the Member in accordance with Section 4.6. When entry is required due to an emergency situation, the Association may enter onto the property of a Member without notice.

5.3 Standard of Performance. All maintenance, repairs and replacements shall be performed in a manner consistent with the Community-Wide Standard and all Governing Documents. Neither the Association nor any Member shall be liable for any damage or injury occurring on, or arising out of, the condition of, property which such Person does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.4 Cost Sharing Agreements. The Association may enter into Cost Sharing Agreements with property Owners served by, adjacent to or near Common Areas which would benefit both.

ARTICLE 6: INSURANCE AND CASUALTY LOSSES

6.1 Required Coverage. The Association, acting through the Board or its duly authorized agent, shall obtain and maintain at all times, as a Common Expense, insurance as required by Section 47F-3-113 of the Act, as amended, together with such other insurance as the Board of Directors may determine to be necessary. Such insurance shall run to the benefit of the Association, the Board of Directors, officers, committee members, all agents and employees of the Association, the Members, and their respective Mortgagees, and all other persons entitled to occupy any Property/Unit, as their interests may appear. Unless the Association otherwise provides by notice in writing to the Members, improvements and betterments made upon Property/Units shall be excluded from this required coverage.

ARTICLE 7: ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1 Annexation and withdrawal by Membership. The Association, acting through the Board, may annex or withdraw any Owner's lot to or from the provisions of the Association and these Bylaws with the consent of the Owner of such property and the affirmative vote of two-thirds of the Board. The Association may annex, withdraw, dedicate or transfer all or any part of the Common Area to or from the provisions of the Association and these Bylaws upon the affirmative vote of a Majority of the votes of the Members of the Association at which a quorum is present in person or by proxy at a meeting duly called for such purpose, provided, however, that in no event shall the Association dedicate or transfer all or any portion of the private road system except pursuant to Section 4.2 of these Bylaws.

Such annexation or withdrawal, dedication or transfer may be accomplished by filing an instrument describing the property being annexed or withdrawn, dedicated or transferred in the Public Records. Any such instrument shall be signed by the president and the secretary of the Association and by the Owner of the annexed or withdrawn property in the case of annexation or withdrawal of an Owner's lot and shall be signed by the president and secretary of the Association in transactions involving Common Area. Any such annexation, withdrawal, dedication or transfer shall be effective upon filing unless otherwise provided therein.

7.2 Annexation of Individual Lots and Existing Developments. Existing within Lake Toxaway Estates are certain groups of lots, with each group being governed by a separate set of covenants, conditions, restrictions, and/or easements (the "Existing Developments"). Any Existing Development may be annexed and submitted to the provisions of these Bylaws by amending the document or documents governing the Existing Development in accordance with their terms, to strike any or all of the terms of such documents as may be necessary or desired for annexation and/or to strike such documents in their entirety, and to adopt these Bylaws, subject to consent of the Board in writing. Additionally, any owner of a lot within Lake Toxaway Estates may individually submit and annex his or her property to the provisions of these Bylaws, if outside of an Existing Development, by executing an owner consent form acknowledging and consenting to

the terms of these Bylaws. Any such amendment or owner consent as set forth in this Section 7.2 shall be filed in the Public Records and shall require the prior written consent of the Board.

7.3 Additional Covenants and Easements. The Association, acting through the Board, may subject any portion of the annexed Properties under its control to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Members and obligating such Members to pay the costs incurred by the Association through Specific Assessments. Such additional covenants and easements shall be set forth in an instrument filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the Owner(s) of such property or, in the alternative, the requisite consent set forth in the document or documents being amended in order to adopt the additional covenants and easements.

ARTICLE 8: ASSESSMENTS

8.1 Types of Assessments. Assessments shall be used for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments: (a) General Assessments, including dues and fees, to fund Common Expenses for the general benefit of all Property/Units; (b) Special Assessments as described in Section 8.4; and (c) Specific Assessments as described in Section 8.5. Each Member, by accepting a deed or entering into a contract of sale for any portion of the Properties, agrees to pay these assessments.

All assessments and fees, together with interest, late charges, costs of collection, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Property/Unit against which the assessment is made until paid, as more particularly provided in Section 8.6 and 8.7. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Member of such Property/Unit at the time the assessment arose. Upon a transfer of title to a Property/Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Property/Unit by exercising the remedies provided in its Mortgage or through a deed in lieu of foreclosure shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon written request, furnish to any Member liable for any type of assessment a written statement signed by an Association officer setting forth whether such assessment has been paid. Such statement shall be furnished within ten (10) business days after receipt of the request and shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid within thirty (30) days of receipt. Any assessment or installment thereof shall be considered delinquent on the 15th day following the due date unless otherwise specified by Board resolution.

No Member may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Property/Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Member. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for “in kind” contribution of services, materials, or a combination of services and materials with other entities for payment of Common Expenses.

8.2 Computation of General Assessment. At least thirty (30) Days before the beginning of each fiscal year, the Board shall adopt a budget covering the estimated Common Expenses during the coming year. This may include a capital contribution to establish a reserve fund in accordance with Section 8.3.

General Assessments shall be levied against all Property/Units subject to assessment; provided, however, that each Property/Unit shall be assessed at such amounts as may be determined by the Board.

General Assessments shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses.

No later than the date notice of the annual meeting of Members is mailed pursuant to Section 12.4, the Board shall send to each Member a summary of the proposed budget for the ensuing fiscal year accompanied by year-to-date financial statements for the current fiscal year showing all expenses actually incurred as compared to the budget. A request for Member ratification of the proposed budget will be made at the Annual Meeting. Such budget and related assessment amount shall become effective and ratified by a Majority of the total votes of those Members of the Association present at said meeting where a quorum has been established voting in person or by proxy. Assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Board shall send a copy of the revised budget to each Member at least thirty (30) Days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

8.3 Reserve Budget and Capital Contribution

(a) Existing Capital Improvements: The Board may annually prepare a reserve budget which takes into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. If a reserve budget is prepared, the Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing, as appropriate, over the budget period.

(b) New Capital Improvements: In the event the Board determines it to be appropriate to construct new capital improvements in the Areas of Common Responsibility, notice of the description, location and cost thereof shall be provided to all Members and a meeting of the Association shall be held no sooner than thirty (30) days subsequent to the date of such notice to decide whether such new capital improvements shall be constructed. Such proposal and the inclusion of the cost thereof as an increase of the General Assessment shall be effective only if approved by at least a Majority of the total votes of those Members present at said meeting where a quorum has been established voting in person or by proxy. The Board shall then be authorized to construct such new capital improvements and to determine, in its discretion, when the additional General Assessments shall be due and payable by the Property/Unit Owners.

8.4 Special Assessments. The Board of Directors may at any time and in addition to any other rights it may have, levy a Special Assessment against all Members, notice of which shall be sent to all Members. Any Special Assessment which would cause the average total of Special Assessments levied in one fiscal year to exceed \$250.00 per Property/Unit (except as required regarding repair or reconstruction of casualty damage to or destruction of all or part of the Properties) shall be approved by a Majority of the total votes of those Members of the Association present in person or by proxy where a quorum has been established voting at a duly called meeting for said purpose prior to becoming effective.

8.5 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Property/Unit to cover costs, including, but not limited to overhead, administrative costs and services incurred in bringing the Property/Unit(s) into compliance with the terms of the Governing Documents or costs incurred as a consequence of the conduct of the Member or occupants of the Property/Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, however, the Board shall give the Property/Unit Member prior written notice and an opportunity for a hearing, in accordance with Section 4.6 of the Bylaws, before levying any Specific Assessment under this subsection.

8.6 Date of Commencement of Assessments. The first annual General Assessment and Special Assessment, if any, levied on each Property/Unit shall be adjusted according to the number of Days remaining in the fiscal year at the time assessments commence on the Property/Unit

8.7 Remedies for Non-Payment of Assessments. Any assessments or other charges which are not paid when due shall be delinquent. Delinquent assessments shall bear interest from the due date at the rate established by the Board of Directors of the Association, or if not set by the Board, at the highest rate allowed by law, together with such late fees as may be set by the Board. The Association may file a lien of record against any Property/Unit where there remains an assessment unpaid for a period of sixty (60) Days or longer. Said lien shall be filed in the Public Records in a manner provided therefore by Section 47F-3-116 of the Act. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Association may bring an action at law against any Member personally obligated to pay any assessments, charges, interest, or other costs. Costs and reasonable attorneys' fees for the prosecution of any such action shall be added to the amount due. In the event of such action at law and in the further event that such action results in a judgment being entered against the Member and in favor of the Association, then, and in that event, the Association shall collect on such judgment in such manner and to the extent provided and permitted by the laws of the State of North Carolina, including, but not limited to, foreclosure under Chapter 45 of the North Carolina General Statutes.

The sale or transfer of any Property/Unit shall not affect the assessment lien or relieve such Property/Unit from the lien for any subsequent assessments. However, the sale or transfer of any Property/Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Property/Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Property/Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Members of all Property/Units subject to assessment under this Article 8, including such acquirer, its successors and assigns.

8.8 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Member an assessment notice shall not be deemed a waiver, modification or a release of any Member from the obligation to pay assessments. In such event, each Member shall continue to pay General

Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.9 Exempt Property. The following property shall be exempt from payment of General Assessments, and Special Assessments:

- (a) All Common Area and such portions of the property included in the Area of Common Responsibility; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

ARTICLE 9: ARCHITECTURAL STANDARDS

9.1 General. The Board of Directors shall adopt and enforce, through the Architectural Review Board, reasonable rules, standards, and regulations for the aesthetic harmony and living environment of the Community. Such standards shall be maintained at the office of the Board.

9.2 Structures. No exterior structure or improvement shall be placed, erected, installed, made, or demolished upon any Property/Unit, or adjacent to any Property/Unit, except as otherwise provided herein, without first obtaining the written approval of the ARB.

9.3 Limitation of Liability. Review and approval of any application pursuant to this Article are made on the basis of aesthetic considerations only and neither the Board of Directors nor the ARB shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements. Neither the Association, the Board of Directors, the ARB, nor any member of any of the foregoing shall be held liable for any injury, damages or loss arising out of or resulting from the manner or quality of approved construction or modifications to any Property/Unit.

ARTICLE 10: USE RESTRICTIONS

10.1 General. This Article sets out certain use restrictions which must be complied with by all Members and occupants of any Property/Unit. The Properties shall be used only for residential purposes of a single family, recreational and related purposes.

10.2 Rules and Regulations. In addition to the use restrictions set forth in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify or delete rules and regulations applicable to the Properties. Rules and regulations shall be made available to Members and occupants prior to the date that they are to become effective and shall thereafter be binding upon all Members and occupants until and unless overruled, canceled or modified by the Board.

10.3 Residential Use. Property/Units may be used only for residential purposes of a single family, according to deed restrictions and may not be used for a business or trade. Incidental use of the Property/Units shall be considered ancillary so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound or smell from outside the Property/Unit; (b) the activity conforms to all zoning requirements for the Properties; (c) the activity does not involve regular visitation of the Property/Unit by

clients, customers, suppliers, or other invitees or door-to-door solicitation of residents of the Properties; (d) the activity does not increase traffic or include frequent deliveries within the Properties; (e) the activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board, and (f) employees are members of the family and are living in the home.

The incidental leasing or rental of a Property/Unit for residential purposes of a single family shall not be considered a business or trade within the meaning of this Section.

10.4 Vehicles. All vehicles of any and every kind, including, but not limited to, automobiles, pleasure, commercial and recreational vehicles shall be subject to such reasonable rules and regulations as the Board of Directors may adopt.

10.5 Boats and Watercraft. All boats and watercraft of any and every kind shall be subject to such reasonable rules and regulations as the Board of Directors may adopt.

10.6 Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept, or permitted on any Property/Unit, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board. No animals shall be kept, bred or maintained for commercial purposes. All pets shall be reasonably controlled by the owner whenever outside a Property/Unit and shall be kept in such a manner as to not become a nuisance. The owners of the pet shall be responsible for all of the pet's actions.

10.7 Leasing. Property/Units may be leased for residential purposes of a single family only. All leases shall require that the tenant comply with these Bylaws, use restrictions, and rules and regulations of the Association.

10.8 Occupants Bound. All provisions of the Governing Documents which govern the conduct of Members and establish sanctions against Members shall also apply to all occupants. Fines may be levied jointly or severally against Members or occupants.

10.9 Nuisance. It shall be the responsibility of each Member and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property shall be used, in whole or in part, for storage of any thing that will cause such Property/Unit to appear to be unclean or untidy or that will be obnoxious to the eye; or that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the Members or occupants of surrounding property.

Each Member shall maintain its Property/Unit in a neat and orderly condition throughout construction of a residential dwelling and not allow trash and debris from its activities to be carried by the wind or otherwise scattered within the Properties. Storage of construction materials on the Property/Unit shall be subject to such conditions, rules, and regulations as may be adopted by the Board. Each Member shall keep roadways, easements, swales, and other portions of the Properties clear of silt, construction materials and trash from its activities at all times.

10.10. Drainage and Grade. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Member or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers or storm drains.

No Person shall alter the grade of any Property/Unit without prior approval of the ARB pursuant to Article 9 of these Bylaws. No Person may fill in or pipe any roadside or lot-line swale, except as necessary to provide a minimum driveway crossing, nor may any Person pipe, fill in or alter any lot line swale used to meet Transylvania County regulations.

10.11 Lakes and Other Bodies of Water. The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of any lakes, ponds, or streams within the Properties. All lakes, streams and other bodies of water, including, but not limited to, the Lakes, shall be used only in accordance with Lake Use Restrictions, as adopted by the Board from time to time.

ARTICLE 11: MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of Mortgages on Property/Units in the Properties.

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

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Properties
- (b) Any violation of these Bylaws, delinquency in the payment of assessments or charges owed by a Property/Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) Days, or any other violation of these Bylaws relating to such Property/Unit or the Member or Occupant which is not cured within sixty (60) Days;
- (c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association; or
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Holders pursuant to Federal Home Loan Mortgage Corporation requirements.

11.2 No Priority. No provision of these Bylaws gives or shall be construed as giving any Member or other party priority over any rights of the first Mortgagee of any Property/Unit in the case of distribution to such Member of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

11.3 Notice to Association. Upon violation of these Bylaws, rules and regulations, and for the purpose of curing said violations, each Member shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Member's Property/Unit.

11.4 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) Days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE 12: ASSOCIATION: MEMBERSHIP, MEETINGS, QUORUM, PROXIES

12.1 Place of Meetings. Meetings of the Association shall be held at a suitable place convenient to the Members as the Board may designate. Meetings may be held by means of telephone conference, video conference or similar communications equipment, where persons participating in the meeting can converse with each other. Meetings may also be held by Computer Access. Participation by one of these methods shall constitute presence in person at such meeting.

12.2 Annual Meetings. The annual meeting shall be set by the Board so as to occur during the fourth quarter of the Association's fiscal year on a date and at a time set by the Board.

12.3 Special Meetings. The president may call special meetings. In addition, it shall be the duty of the president to call a special meeting within thirty (30) Days if so directed by resolution of the Board or upon a petition signed by Members representing at least ten (10%) of the total votes in the Association.

12.4 Notice of Meetings. Written notice stating the place, day, and time of any meeting of the Members shall be hand delivered or sent by Computer Access or sent prepaid by U.S. Mail to each Member entitled to vote at such meeting, not less than twenty (20) or more than sixty (60) 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.

In the case of a special meeting or when otherwise required by statute or these Bylaws, 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.

12.5 Waiver of Notice. Attendance at a meeting shall be deemed a waiver of any objection as to notice of the time, date, and place thereof, unless a specific objection as to the lack of proper notice is given at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a 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.

12.6 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, Members representing a Majority of the votes represented at such meeting may adjourn the meeting to a time not more than thirty (30) Days from the date the original meeting was called. At the reconvened meeting, the quorum requirement shall be two thirds (2/3) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. Once 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 set by those in attendance at the original meeting or if for any reason a new date is set for reconvening the meeting after adjournment, notice for reconvening the meeting shall be given to Members in the manner prescribed in Section 12.4.

12.7 List for Voting. After setting a record date for notice of a meeting, the Board shall prepare an alphabetical list of the names of the Members entitled to notice of such meeting. The list for voting shall be made available for inspection in accordance with North Carolina law.

12.8 Proxies. At all meetings of Members, each Member may vote in person (if a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then through any officer, director, manager, partner, or trustee duly authorized to act on behalf of such Member) or by proxy, on a form approved in advance by the Board, which is hand delivered or sent prepaid US Mail or sent via Computer Access to every Member entitled to vote, subject to the limitations of North Carolina law. Every proxy shall be in writing specifying the Property/Unit(s) for which it is given, shall designate the proxy

holder, be signed by the Member or such Member's duly authorized attorney-in-fact, dated, and be filed with the secretary of the Association prior to the meeting for which it is to be effective. 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. Every proxy shall be revocable and shall automatically cease upon conveyance of any Property/Unit for which it was given, or upon receipt of notice by the secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or eleven (11) months from the date of the proxy, unless a shorter period is specified in the proxy.

12.9 Quorum. At all meetings of the Association thirty (30%) of the total votes of Members present in person or by proxy who are members in good standing of the Association shall constitute a quorum for the transaction of business. A Majority of the votes of Members present or by proxy at a meeting at which a quorum is present shall constitute the decision of the Members unless otherwise specifically provided in these Bylaws. If a quorum is present at a duly called or held meeting, business may be continued until adjournment, notwithstanding the withdrawal of Members leaving less than a quorum, provided that any action taken is approved by at least a Majority of the votes of Members then present at the time of the vote, whether in person or by proxy.

12.10 Conduct of Meetings. The president, when present, shall preside over all meetings of the Association, and 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. In the absence of the president, any other officer of the Board may conduct such meeting.

12.11 Action Without a Formal Meeting; Written Ballot. In the discretion of the Board, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the Association delivers a written ballot by hand delivery or prepaid US Mail or Computer Access to every Member entitled to vote on the matter.

- (a) A written ballot shall: (1) set forth each proposed action; and (2) provide an opportunity to vote for or against each proposed action.
- (b) Approval by written ballot pursuant hereto shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the 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.
- (c) All solicitations for votes by written ballot shall: (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of directors; and (3) specify the time by which a ballot must be received by the Association in order to be counted.
- (d) A written ballot may not be revoked. The Association shall maintain such ballots in its file for a period of at least three (3) years.

ARTICLE 13: BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

A. Composition and Selection.

13.1 Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. The directors shall be eligible Members or their spouses in good standing; provided, however, no Member and spouse representing the same Property/Unit may serve on the Board at the same time. No Member or spouse shall be eligible to be elected to serve as a director if any assessment or other charge for such Member's Property/Unit is delinquent

13.2 Number of Directors. The Board shall consist of twelve (12) directors. In the event that a vacancy or vacancies occurs on the Board, the Board may nonetheless continue to function until such time as such vacancies are filled.

13.3 Nomination and Election Procedures.

(a) Nomination of Directors. The Board may establish a nominating committee consisting of a chairperson, who shall be a member of the Board, and three (3) or more Members. If established, the nominating committee shall be appointed by the Board not less than thirty (30) Days prior to each election to serve a term of one (1) year or until their successors are appointed, and such appointment shall be announced at the election. A nominating committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled pursuant to Section 13.4.

Nominations by petition are permitted by voting Members representing five (5%) of the total votes of the Association signing the petition. If a valid petition is received by the Board in a timely manner (at least two days prior to printing of the ballots), the name of such nominee shall be placed on the written ballot of candidates. Nominations shall also be permitted from the floor at a meeting of the Association. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

(b) Election Procedures. Each Member may cast his or her vote for each position to be filled from the slate of candidates on which such Member is entitled to vote. There shall be no cumulative voting. The number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may serve no more than 2 full consecutive terms. Following three (3) consecutive years' absence from service as a member of the Board, a former director is again eligible for election to the Board for an additional two full consecutive terms.

13.4 Election and Term of Office. Annually, the Association shall hold an election at which the Members shall be entitled: (i) to elect 1/3 of the directors, who shall serve a term of three (3) years each and until a successor is elected, and (ii) to elect successors to the Board for the remainder of any unfilled directors' terms.

13.5 Voting The voting rights of the Members shall be set forth in these Bylaws. The Board may adopt policies and procedures regarding the methods of casting votes, such as written ballots, secret ballots or computer access.

13.6 Removal of Directors and Vacancies. Any director may be removed, with or without cause, by Members representing a Majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director the Board may appoint a successor to fill the vacancy until the next annual meeting, at

which time the Members entitled to fill such directorship may elect a successor for the remainder of that director's term.

Any director who has four (4) or more absences from Board meetings within a fiscal year, or who is more than ninety (90) Days delinquent (or is the resident of a Property/Unit that is more than ninety (90) days delinquent or is an officer, director, partner, member, employee, or trust officer of a Member who is more than ninety (90) days delinquent) in the payment of any assessment or other charge due the Association, may be removed by a Majority of the directors, and the Board may appoint a successor to fill the vacancy until the next annual meeting, at which time the Members entitled to fill such directorship may elect a successor for the remainder of that director's term.

In the event of the death, disability or resignation of a director or the adoption of a Board resolution increasing the number of directors, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members entitled to fill such directorship may elect a successor for the remainder of the term.

B. Meetings.

13.7 Organizational Meetings. A meeting of the Board shall occur promptly after the adjournment of the annual meeting for the purpose of electing new officers and such other organizational business as shall properly come before the meeting.

13.8 Regular Meetings. Regular meetings of the Board may be held at such time and place as a Majority of the directors shall determine, but at least seven (7) such meetings shall be held during each fiscal year.

13.9 Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the president or vice president or by any three (3) directors.

13.10 Notice. Notice of a regular meeting shall be communicated to directors not less than four (4) Days prior to the meeting. Notice of a special meeting shall be communicated to directors not less than seventy-two (72) hours prior to 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 specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. Notices shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) 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; (d) telecopier transmission to the director's home or office, with confirmation of receipt by the receiving telecopier; (e) telegram, charges prepaid; (f) overnight or same day delivery, charges prepaid; or (g) Computer Access using Internet accessible equipment and services if the director has consented in writing to such method of delivery and has provided the Board with an e-mail address. All such notices shall be given at the director's telephone or telecopier number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated when deposited into a Property/United States mailbox. Notices given by personal, overnight or courier delivery, telephone, telecopier, telegraph, or Computer Access shall be deemed communicated when delivered, telephoned, telecopied, sent by Computer Access, or given to the telegraph company.

13.11 Waiver of Notice. 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 (a) a quorum is present, or (b) either before or after the meeting each of the directors not present signs a written

consent to holding the meeting, or an approval of the minutes, or (c) each of the directors present signs a waiver of notice. 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.

13.12 Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee personally or by means of telephone conference, video conference or similar communications equipment, by means of which all persons participating in the meeting can converse with each other. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

13.13 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 Bylaws. 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 more than twenty (20) 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.

13.14 Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by Members holding a Majority of the total votes in the Association. 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.

13.15 Conduct of Meetings. The president, when present, shall preside over all meetings of the Board, and the secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings. In the case of a tie vote on a motion or resolution before the Board, the motion or resolution is considered lost.

13.16 Action Without a Formal Meeting, Written Consent. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting, without prior notice and without a vote if written consent, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

13.17 Powers and Duties. The Board 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 Governing Documents and as provided by law, including, but not limited to, interpretation of the Bylaws, Rules and Regulations of the Association. The Board may do or cause to be done all acts and things which the Governing Documents or North Carolina law do not direct to be done and exercised exclusively by the membership generally.

13.18 Management. The Board 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. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority.

The Board may delegate to one 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.

13.19 Governmental Interests. The Board may designate common areas within the Properties for fire, police, utility facilities and other public or quasi-public facilities. No Members' approval shall be required for such designation.

13.20 Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) cash or accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;
- (d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any item of value received shall be for the benefit of the Association;
- (e) any financial or other interest which the managing agent, a Board member or officer of the Association may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;
- (f) an annual financial report shall be made available to all Members within seventy-five (75) Days after the close of the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines.

13.21 Borrowing. The Association shall have the power to borrow money for any legal purpose. If the proposed borrowing is for the purpose of making capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous twelve (12) month period, would exceed twenty-five percent (25%) of the budgeted gross expenses of the Association for that fiscal year, the Board shall obtain a Majority of the votes of Members present or by proxy at which a quorum is present at an annual meeting or any duly called meeting for such purpose prior to borrowing such money.

13.22 Right to Contract. The Association acting through the Board shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other Members or residents associations, within and outside the Properties.

ARTICLE 14: OFFICERS

14.1 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.

14.2 Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each election of new directors. Such officers shall serve until their successors are elected.

14.3 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.

14.4 Powers and Duties. The officers of the Association 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 chief executive officer of the Association. The vice president shall undertake the duties of the president when the president is absent, or, in their absence, the treasurer shall act. The treasurer shall have primary responsibility for the preparation of the budget as provided for in these Bylaws and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both. The secretary shall be responsible for preparing minutes of meetings of the Association and the Board and for authenticating records of the Association. Amendments to the Governing Documents shall be prepared and recorded upon the direction of the president, and shall be executed and certified by the president and secretary or, in their absences, may be executed and certified by any 2 officers.

14.5 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.

14.6 Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least 2 elected officers or by such other person or persons as may be designated by Board resolution.

14.7 Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 13.14.

ARTICLE 15: COMMITTEES

15.1 General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution. Unless otherwise provided by the Board, committee members shall be eligible Members or their spouses; provided, however, no Member may have more than one representative on the same committee at any time. No committee appointed by the Board shall be empowered to take any affirmative action nor to bind the Board or the Association without the consent of the Board.

15.2 Covenants Committee. In addition to any other committees that the Board may establish pursuant to these Bylaws, the Board may appoint a covenants committee consisting of at least three (3) and no more than twelve (12) Members. Acting in accordance with the provisions of these Bylaws, and resolutions the Board may adopt, the covenants committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 4.6 of these Bylaws.

ARTICLE 16: MISCELLANEOUS

16.1 Fiscal Year. The fiscal year of the Association shall begin on August 1st of each year unless the Board establishes a different fiscal year by resolution.

16.2 Parliamentary Rules. Except as may be modified by Board resolution, *Robert's Rules of Order Newly Revised* (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law, the Articles of Incorporation, or these Bylaws.

16.3 Conflicts. If there are conflicts between the provisions of North Carolina law, the Articles of Incorporation, and these Bylaws, the provisions of North Carolina law, the Articles of Incorporation, and the Bylaws (in that order) shall prevail.

16.4 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 Property/Unit, any Member, or the duly appointed representative of any of the foregoing, at any reasonable time, these Bylaws, the Articles of Incorporation, any amendments and supplements to the foregoing, the rules of the Association, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection in accordance with the terms of Article 16 of the North Carolina Nonprofit Corporation Act, as such act may be amended.

(b) Rules for Inspection. The Board may 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.

16.5 Notices. Except as otherwise provided in these Bylaws, all notices, demands, bills, statements, and other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if 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 Property/Unit of such Member; or
- (b) if to the Association, the Board, or the managing agent, at the principal office of the Association, or the Board's principal office with 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.

If mailed, any notice shall be deemed to be delivered when deposited in the United States mail addressed with postage prepaid. To increase flexibility, any Person, including the Association, may consent to or request in writing additional methods of receiving notice, including, but not limited to, facsimile, electronic mail or Computer Access.

16.6 Amendment.

- (a) By the Board. The Board of Directors may unilaterally amend these Bylaws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Property/Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Property/Units; (iv) to satisfy the requirements of any local, state, or federal governmental agency; or (v) to correct errors of spelling, grammar, punctuation or syntax. However, any such amendment shall not adversely affect the title to any Property/Unit unless the Member shall consent thereto in writing.
- (b) By Members. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, representing a Majority of the votes of Members of the Association present in person or by proxy where a quorum has been established at a duly called meeting of the Association.

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. Any amendment to these Bylaws shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one year 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 Bylaws.

If a Member consents to any amendment to these Bylaws, it will be conclusively presumed that such Member has the authority 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.

16.7 Construction of Bylaws. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under these Bylaws or North Carolina law for any of the acts set out in this Article.

ARTICLE 17: SEVERABILITY.

Invalidation of any provision of these Bylaws, in whole or in part, or any application of a provision of these Bylaws by judgment or court order shall in no way affect other provisions or applications.

Exhibit "A"
Definitions

1. **"Act"**: The North Carolina Planned Community Act, North Carolina General Statutes, Section 47F-1-101 et seq., as such may be amended from time to time.
2. **"ARB"**: The Architectural Review Board as described in Article 9.
3. **"Area of Common Responsibility"**: The Common Area, together with those areas, if any, for which the Association has or assumes responsibility pursuant to the terms of these Bylaws or other applicable covenant, contract, or agreement.
4. **"Articles of Incorporation" or "Articles"**: The Articles of Incorporation of Lake Toxaway Community Association, Inc. as filed with the Secretary of State of North Carolina and as amended pursuant to the Articles of Amendment of Lake Toxaway Property Owners Association, Inc.
5. **"Association"**: Lake Toxaway Community Association, Inc., a North Carolina nonprofit corporation, its successors or assigns.
6. **"Board of Directors" or "Board"**: The body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as the board of directors under North Carolina corporate law.
7. **"Bylaws"**: The Bylaws of Lake Toxaway Community Association, Inc., as they may be amended from time to time.
8. **"Common Area"**: All real and personal property, including easements and licenses, which the Association owns, leases or holds possessory or use rights in for the common use and enjoyment of the Owners.
9. **"Common Expenses"**: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including a reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.
10. **"Community-wide Standard"**: The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard initially has been established by the Lake Toxaway Company and may be more specifically determined by the Board of Directors and the ARB.
11. **Computer Access**: Electronic means, including by electronic mail over the Internet to an electronic mailing address designated by the Owner.
12. **"Cost Sharing Agreement"**: Any agreement, contract or covenant between the Association and an owner or operator of property adjacent to, in the vicinity of, or within the Properties, for the allocation of expenses that benefit both the Association and the owner or operator of such property.
13. **"Days"**: Calendar days; provided, however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday, or legal holiday, such time period shall be automatically extended to the close of business on the next regular business day.
14. **"General Assessment"**: Assessments levied on all Property/Units subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Property/Units, as more particularly described in Sections 8.1 and 8.2.
15. **"Governing Documents"**: The Bylaws, Articles of Incorporation, the architectural standards, design guidelines, rules of the Association, an instrument pertaining to the Association that may be recorded in the Public Records, or any of the above, as each may be amended from time to time.

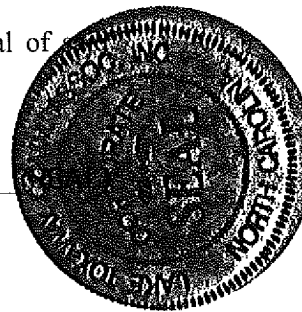
16. "Lakes": Those certain bodies of water located within Lake Toxaway Estates and commonly referred to as Lake Toxaway and Lake Cardinal, collectively.
17. "Lake Use Restrictions": Use restrictions, rules and procedures promulgated by the Association for use of any lake, pond, stream, or other bodies of water within Lake Toxaway Estates or the Properties, including, but not limited to the Lakes.
18. "Lake Toxaway Estates": That certain planned community located in Transylvania County and Jackson County, North Carolina and commonly known and referred to as Lake Toxaway Estates.
19. "Majority": Those votes, Owners, members, or other group, as the context may indicate, totaling more than 50% of the total eligible number necessary for any given action.
20. "Member": A person entitled and subject to membership in the Association pursuant to Article 2.
21. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Property/Unit.
22. "Mortgagee": A beneficiary or holder of a Mortgage.
23. "Owner": One or more Persons who hold the record title to any Property/Unit, excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Property/Unit is sold under a recorded land sales contract, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. If a Property/Unit is owned by more than one Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of such Owner.
24. "Person": A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person or any other legal entity.
25. "Properties": The real property subjected to the terms of the Association and these Bylaws.
26. "Residential": Use of a lot or Unit for single family purposes.
27. "Single Family", as a capitalized or lower case term:- For purposes of these Bylaws, Governing Documents, and Covenants, "single family" shall mean: (i) a group of one or more living persons each related to the other by blood, marriage or legal adoption, or having a guard/ward relationship created by decree of a Court of competent jurisdiction, or (ii) a group of not more than four (4) living persons not all so related, who maintain a dwelling as a common household. Notwithstanding the foregoing, time shares, interval ownerships, or cooperative forms of ownership an/or use of a single family dwelling shall not be permitted and are not considered "residential" for the purposes of these Bylaws, Governing Documents and Covenants. Consistent with the four (4) "person" limitation noted above, no single family structure shall be divided into more than four (4) undivided interests. The foregoing definition does not preclude the taking of title to a Property/Unit in the form of a partnership, limited liability company, corporation, etc. so long as no more than four (4) non-related living persons possess occupancy rights to the single family dwelling during a calendar year.
28. "Public Records": The Office of the Register of Deeds of Transylvania County, North Carolina.
29. "Special Assessment": Assessments levied in accordance with Section 8.4.
30. "Specific Assessment": Assessments levied in accordance with Section 8.5.
31. "Unit": A portion of the Properties, including lots, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of

the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Area or property dedicated to the public. Nor shall the term include within its meaning time share units, interval ownership units or fractional ownership units or any derivatives thereof. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

Notwithstanding the above, in the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to be a single Unit until such time as a subdivision plat or condominium plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this paragraph.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of Association this 27 day of August, 2008.

Jason M. Holton
Secretary

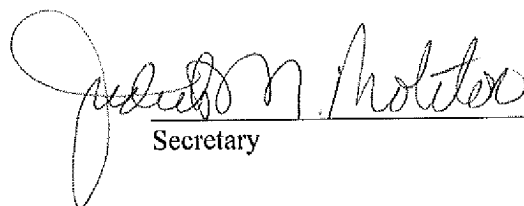


- Predecessor Bylaws adopted by Association Members at Special Meeting held on April 20, 2002.
- Bylaws Section 12.9 amended by Association Members on June 21, 2004. Reduced quorum for Association meetings from 40% to 30%.
- Bylaws Section 13.2 amended by Association Members on June 20, 2005. Reduced number of directors from fifteen (15) to twelve (12).

**SECRETARY'S CERTIFICATION
AMENDED AND RESTATED BYLAWS
OF
LAKE TOXAWAY COMMUNITY ASSOCIATION
LAKE TOXAWAY, NC**

I, Judy Molitor, do hereby certify that I am the duly elected and acting Secretary of the Lake Toxaway Community Association, Inc. located in Lake Toxaway, NC (the "Association"), and that the foregoing Amended and Restated Bylaws are a true and complete copy of such Bylaws adopted by a vote of 444 FOR and 21 AGAINST at the Annual Meeting of the Members of the Association, duly noticed and held on July 26, 2008, at Lake Toxaway, NC, at which Meeting a quorum for the transaction of business was present and acting throughout, that the proceedings of the Members were in accordance with the Articles of Incorporation and Bylaws of the Association, and that said Bylaws have not been amended, and are, at the date hereof, in full force and effect.

IN WITNESS WHEREOF, I affixed my hand and seal of the Association this 27 day of August, 2008.

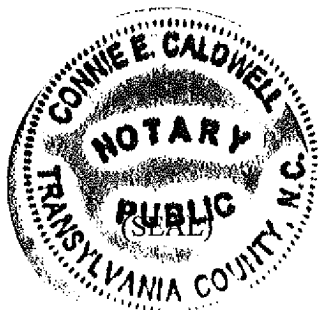


Secretary (SEAL)

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

I, a Notary Public of said State and County, do hereby certify that the following person personally appeared before me this day, acknowledging to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Judy Molitor.

WITNESS my hand and Notarial Seal, this the 27 day of August, 2008.





Signature of Notary Public

Connie E. Caldwell
Printed or typed name of Notary Public

My commission expires: March 13, 2013