

BY-LAWS

OF

PARK PLACE AT MALTA HOMEOWNERS' ASSOCIATION, INC.

Town of Malta, County of Saratoga  
State of New York 12020

**BY-LAWS  
OF  
PARK PLACE AT MALTA HOMEOWNERS' ASSOCIATION, INC.**

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## BY-LAWS

### PARK PLACE AT MALTA HOMEOWNERS' ASSOCIATION, INC.

#### ARTICLE I

##### NAME, LOCATION AND MEMBERSHIP

Section 1.01. Name and Location. The name of the not-for-profit corporation, organized pursuant to the New York State Not-for-Profit Corporation Law, is Park Place at Malta Homeowners' Association, Inc.. The Certificate of Incorporation was filed in the Office of the Secretary of State of the State of New York November 26, 2008 . The Corporation (hereinafter referred to as the "Association") was organized for the purpose of taking title to the Property deeded, or to be deeded, to the Association and administering the operations of the Association. The principal office of the Association shall be located in the Town of Malta, County of Saratoga, State of New York.

Section 1.02. Applicability of By-Laws. The provisions of these By-Laws are applicable to the Property of the Association and the use thereof.

Section 1.03. Personal Application. All present and future Owners, their guests, lessees, licensees, invitees and any other person having a right to use all or a portion of the Property by virtue of rights previously granted by deed and any other person who may use the facilities of the Property in any manner, are subject to these By-Laws, the Declaration and Rules and Regulations (as hereinafter defined).

#### ARTICLE II

##### DEFINITIONS

Section 2.01. Definitions. All capitalized terms herein, which are not separately defined or denominated herein shall have the meanings given to those terms in Article I of the Declaration.

## ARTICLE III

### OWNERS; VOTING RIGHTS

**Section 3.01. Membership in the Association.** The Association shall have as Members only Owners of single-family Homes within the Park Place at Malta community. All Owners shall, upon becoming such, be deemed automatically to have become Members and there shall be no other qualification for membership. Membership, as set forth in Article III, Section 3.02 of the Declaration, shall be appurtenant to, and shall not be separated from, the ownership of any of the interests described in the definition of the word "Owner" as found in Article I of the Homeowners' Association Declaration. Any person or entity holding an interest in a Home merely as security for the performance of an obligation shall not be a Member, as set forth in Article III, Section 3.03 of the Homeowners' Association Declaration.

**Section 3.02. Voting.** In accordance with Section 611(e) of the New York State Not-for-Profit Corporation Law, each Owner (including the Sponsor, if the Sponsor shall then own or hold title to one (1) or more Homes and/or Lots) shall be entitled to cast one (1) vote, regardless of the number of Homes and/or Lots owned, at all meetings of Owners. In the event that any Home is owned by more than one person, a trust, corporation, limited liability company or partnership, the vote shall be cast by the person named in an "Authorized Voting Owner Certificate" signed by all Owners of such Home and filed with the Secretary of the Association. Such "Authorized Voting Owner Certificate" shall be valid until revoked by a subsequent Certificate. If such Certificate is not on file, the person first named on the deed by which title was obtained shall be the person considered the Authorized Voting Owner or Member.

A fiduciary shall be the Authorized Voting Member with respect to any Home owned in a fiduciary capacity and a Certificate shall be filed with the Secretary.

Voting rights of any Owner delinquent in the payment of his or her Assessments may not be suspended.

**Section 3.03. Right to Vote.** At any meeting of Owners, every Authorized Voting Owner having the right to vote shall be entitled to vote in person, by mail (absentee ballot) or by a person, who need not be an Owner, designated by the Owner, to act as proxy on his or her behalf.

**Section 3.04. Proxies.** All proxies shall be in writing and shall be filed with the Secretary no less than three (3) days prior to the commencement of the meeting at which the same are to be used. Such proxies shall only be valid for such meeting or subsequent adjourned meetings thereof. A notation of such proxies shall be made in the minutes of the meeting.

**Section 3.05. Absentee Ballot.** All absentee ballots shall be in writing and signed and shall be filed with the Secretary no less than three (3) days prior to the commencement of the meeting at which the same are to be used. Such absentee ballots shall be valid only for such meeting or subsequent adjourned meeting thereof. A notation of such absentee ballots shall be made in the minutes of the meeting.

**Section 3.06. Voting Regulations.** The Board may make such regulations, consistent with the terms of the Declaration, the Certificate of Incorporation, these By-Laws and the Not-for-Profit Corporation Law of the State of New York, as it deems advisable for any meeting of the Owners in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of election, registration of Owners for voting purposes, the establishment of representative voting procedures and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

**Section 3.07. Sponsor's Right to Assign its Vote.** The Sponsor may, subject to a duly filed amendment to the Offering Plan for the sale of the improved Lots, together with interests in the Association, assign its membership in the Association to any person, corporation, association, trust or other entity, and such assignee, and any future assignee of such membership, may take successive like assignments. Membership in the Association shall not otherwise be transferable or assignable.

## ARTICLE IV

### MEETING OF OWNERS

**Section 4.01. Annual Meeting.** Upon the Transfer of Control Date as defined in Article I, Section 1.01 ("w") of the Declaration the Sponsor shall notify all Owners that the first meeting of Owners shall be held within thirty (30) days thereafter or as soon thereafter as practical. The annual meeting of Owners thereafter shall be held on or about the same date each succeeding year, at a time to be determined by the Board of Directors and at such place convenient to the Board of Directors and adequate in size to accommodate all Owners. Failure to hold an annual meeting at the designated time shall not terminate the Association's existence or otherwise affect valid acts of the Association. At such meeting, the Owners shall elect the Board in accordance with the provisions of Section 5.03 hereof and may transact such other business as may properly come before them.

Notwithstanding the foregoing, the date of the annual meeting may be changed by a simple majority vote of the Authorized Voting Owners at a duly called meeting of Owners, to such date as may be more convenient to the majority of Owners.

**Section 4.02. Special Meetings.** It shall be the duty of the President to call a special meeting of the Owners, if so directed by resolution of the Board, or upon a petition presented to the

Secretary signed by not less than forty percent (40%) of the Authorized Voting Owners. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

**Section 4.03. Notice of Meetings.** It shall be the duty of the Secretary to send to each Owner of record at such address as appears in the records of the Association, by first class mail, postage prepaid, a notice of each annual or special meeting of the Owners at least ten (10), but not more than fifty (50) days, prior to such meeting, stating the purpose thereof, as well as the time and place where it is to be held. Notwithstanding the foregoing, if the purpose of any meeting shall be to act upon a proposed amendment to the Declaration or to these By-Laws, the notice of meeting shall be mailed at least ten (10) days but not more than fifty (50) days prior to such meeting together with a complete copy of the amendment document with the amended sections clearly highlighted. The mailing of a notice of meeting shall be in the manner provided in this Section and shall be considered service of notice.

**Section 4.04. Waiver of Notice.** Whenever, under any provisions of these By-Laws, the Declaration, any agreement or instrument, or law, the Association, the Board or any committee is authorized to take any action after notice to any person, or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of such period of time, if at any time before or after such action is completed, the person entitled to such notice or entitled to participate in the action to be taken, or in the case of an Owner, by his or her duly authorized attorney-in-fact, submit a signed waiver of notice of such requirement. The attendance of an Owner at a meeting, in person, by mail ballot or by proxy, without protesting prior to the commencement of the meeting the lack of notice of such meeting, shall also constitute a waiver of notice by such Owner.

**Section 4.05. Waiver and Consent.** Wherever the vote of Owners at a meeting is required or permitted by any provision of the Declaration, these By-Laws or by law to be taken in connection with any action of the Association, the meeting and vote of the Owners may be dispensed with if all Owners who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such action being taken.

**Section 4.06. List of Owners.** A list of all Owners and a list of the Authorized Voting Owners, as of a request date, certified by the Secretary of the Board responsible for its preparation, shall be produced at any meeting of Owners upon the request thereat, or prior thereto, of any Owner. If the right to vote at any meeting is challenged, the inspectors of election, or person presiding thereat, shall require such list of Owners to be produced as evidence of the right of the persons challenged to vote at such meeting. All persons who appear from such list to be Authorized Voting Owners entitled to vote thereat, may vote at such meeting.

**Section 4.07. Quorum.** Except as otherwise provided in these By-Laws, the presence in person, by absentee ballot or by proxy of Owners having fifty-one percent (51%) of the total Authorized Voting Owners shall constitute a quorum at all meetings of the Owners. If, however, such quorum shall not be present or represented at any meeting of Owners, the Authorized Voting Owners entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting, without notice other than announcement at the meeting. However, written notice of the adjourned meeting, when determined by the Board, shall be sent to all Owners. At the adjourned meeting, if a quorum is still not present and/or represented, fifty-one percent (51%) of those present and/or represented by proxy or mail ballot in voting in favor of any business which might have been transacted at the meeting originally called, shall constitute the passing of any such business.

**Section 4.08. Majority Vote.** Members of the Board elected at any meeting of the Owners shall, except as otherwise provided by law, or these By-Laws, be elected by a simple majority of votes cast. All other actions shall be taken by vote of Owners by a majority of Authorized Votes cast at a meeting at which a quorum shall be present or represented by absentee ballot or proxy, except where a higher percentage vote, or other vote, is required by the Declaration, these By-Laws or by law. The term "simple majority of Owners" shall mean those Authorized Voting Owners having fifty-one percent (51%) or more of the total Authorized Votes cast in person, by absentee ballot or by proxy and voting at any meeting of Owners determined in accordance with the provisions of Section 3.02 of these By-Laws. Notwithstanding the foregoing, in the absence of a quorum, Section 4.07 herein shall be the basis for voting.

**Section 4.09. Inspectors of Election.** The Board, in advance of any meeting of Owners, may appoint two (2) or more persons, who need not be Owners, to act as inspectors of election at such meeting or any adjournment thereof. If inspectors of election are not so appointed prior to the meeting, the person presiding at such meeting may appoint two (2) or more inspectors of election. In case any person appointed fails to appear or act, the vacancy may be filled in advance of the meeting by the Board or at any meeting by the person presiding thereat.

The inspectors of election shall: (i) determine the Owners entitled to vote at the meeting; (ii) determine the existence of a quorum and the validity and effect of absentee ballots and proxies; (iii) receive ballots or determine votes or consents; (iv) hear and determine any challenges or questions arising in connection with any Owner's right to vote; (v) count and tabulate all votes, absentee ballots or consents and determine the result thereof; and (vi) do such other acts as may be proper to conduct an election or vote with fairness to all Owners.

**Section 4.10. Order of Business at Meetings.** The order of Business at all meetings of the Board or Owners should follow Roberts Rules of Order to the extent practicable to conduct an orderly meeting.

## ARTICLE V

### BOARD OF DIRECTORS

**Section 5.01. Initial Board.** The initial Board shall consist of three (3) persons designated by the Sponsor, who shall serve until the Transfer of Control.

**Section 5.02. Initial Board Successors.** Within approximately thirty (30) days after the Transfer of Control Date the first annual meeting of Owners shall be held and successors to the Initial Board shall be elected by Owners other than the Sponsor. Thereafter the Sponsor shall have no further right to elect any person to the Board.

**Section 5.03. Owner-Elected Board Members.** At the first annual meeting of Owners held within approximately thirty (30) days after the Transfer of Control date as defined in Article I, Section 101 "w" of the Homeowners' Association Declaration, the Owners, other than the Sponsor, shall elect no less than three (3) nor more than five (5) persons to the Board as successors to the Initial Board. Within thirty (30) days from the date of the election the members shall meet and elect Officers.

All members so elected by the Owners shall be in good standing and shall be: (i) Owners or spouses of Owners; (ii) a partner of a partnership Owner or First Mortgagee; (iii) officer or director of a corporate Owner or First Mortgagee; or (iv) a fiduciary.

Notwithstanding the foregoing, so long as the Sponsor has Unsold Homes, the Sponsor shall have the right, but not the obligation, to appoint one (1) person to the Board. However, such person shall be in addition to the five (5) members elected by the Owners and shall not be one of the three (3) or five (5) members so elected at the annual meeting and shall be such a member of the Board only until the initial transfer of title to the fifty fifth (55th) Home.

**Section 5.04. Nominations.**

- a. Nominations for election to the Board shall be made by the Nominating Committee, or in the absence of a Committee, by the Board. Nominations may also be made by write-in or from the floor at the annual meeting of Owners.
- b. The Nominations shall be at least as many of the number of vacancies that are to be filled as provided in Section 5.03 hereof.

**Section 5.05. Election and Term of Office.**

- a. At the first annual meeting of Owners a new Board shall be elected by the Owners, other than the Sponsor. If three (3) members are elected, then two (2) of such members shall serve for a term of two (2) years and one (1) shall serve for a term of one (1) year. If five (5) members are elected, then three (3) of such elected Board members shall serve for a term of two (2) years and two (2) shall serve for a term of one (1) year. Thereafter, successors to these Board members shall serve for terms of two (2) years.
- b. At each annual meeting thereafter, the Owners shall elect succeeding members to the Board to fill the expired terms. Any Board member whose term has expired may be re-nominated. Voting shall be by signed written ballot which shall: (i) set forth the number of vacancies to be filled; (ii) set forth the names of those nominated by the Board, nominating committee if there be one and/or volunteers by write-in at the annual meeting of Owners; (iii) be signed by the Authorized Voting Owner or proxy; and (iv) contain space for nominations from the floor.

**Section 5.06. Vacancies.** Vacancies in the Board caused by any reason, other than the removal of a member thereof by a vote of the Owners, shall be filled by vote of a majority of the remaining Board members at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum. Each person so elected shall be a member of the Board until the next annual meeting of the Owners or until a successor is elected.

**Section 5.07. Resignation.** A member of the Board may resign at any time by giving written notice to the President and/or Secretary of the Board. Unless otherwise specified in the letter of resignation, the resignation shall take effect immediately upon receipt thereof by the President and/or Secretary of the Board and acceptance of the resignation shall not be necessary to make it effective.

**Section 5.08. Removal.** At any regular or special meeting of Owners, any one (1) or more of the members of the Board elected by the Owners may be removed with or without cause by a majority vote of Authorized Voting Owners and a successor may then and there or thereafter be elected by such Owners to fill the vacancy thus created. Any member of the Board whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting.

The Board may remove a member of the Board for failure to be in good standing with regard to the payment of Assessments and/or monetary penalties and/or absence from three (3) consecutive duly called Board meetings, unless such absence is due to illness.

**Section 5.09. Compensation.** Members of the Board shall receive no compensation or salary for their services as members. However, any member of the Board may be reimbursed for his or her actual reasonable expenses incurred in the performance of his or her duties providing prior approval has been granted by resolution of the majority of the members of the Board. A member of the Board who serves in any other capacity, however, may receive compensation for such, if otherwise entitled to compensation, providing prior approval has been granted by resolution of the majority of the members of the Board.

**Section 5.10. Regular Meetings.** Regular meetings of the Board shall be held at least quarterly at such place and at such time convenient to the members of the Board, as may be designated from time to time, by resolution of the Board. Notice of meetings shall be given to each member of the Board personally, by mail, e-mail or fax, at least five (5) days prior to the date set for such meeting. The Board may hold executive meetings when necessary. Notice of Board meetings open to all Members shall be posted and any Owner wishing to address the Board at any such meeting shall notify the Secretary or Managing Agent, if there be one, at least five (5) days in advance of the meeting, and indicate the subject to be addressed.

**Section 5.11. Special Meetings.** Special meetings of the Board may be called at any time at the request of the President or any two (2) members of the Board upon no less than five (5) days notice to each member of the Board either personally, by mail, e-mail or fax, which notice shall specify the time, place and purpose of the meeting (within the State of New York) and the purpose of the meeting. The person or persons authorized to call such special meeting of the Board may fix any time and place convenient to the members of the Board. No business shall be transacted at a special meeting except as stated in the notice.

To the extent permitted by law, any one or more members of the Board (or any committee thereof) may participate in a meeting of the Board (or any committee thereof) by means of a telephone conference or similar communication equipment allowing all persons participating in the meeting to hear each other at the same time participation by such means shall constitute presence in person at such meeting.

**Section 5.12. Waiver of Notice.** Any member of the Board may, at anytime, waive notice of any meeting of the Board, in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of a member of the Board at any special meeting of the Board, without protesting prior to the commencement of the meeting the lack of notice, shall constitute a waiver of notice by him or her of the time and place thereof. If all members of the Board are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

**Section 5.13. Quorum and Voting.** At all meetings of the Board, a simple majority of the entire Board shall constitute a quorum for the transaction of business. Except in cases in which it is provided otherwise by statute, by the Certificate of Incorporation, the Declaration or these By-Laws, a vote of a simple majority of such quorum at a duly constituted meeting shall be sufficient to pass any measure. In the absence of a quorum, the members of the Board present may adjourn the meeting from time to time by a majority vote and without further notice, until a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted as originally called. If a quorum has not been able to assemble after three (3) adjourned meeting, at the fourth (4th) adjourned any measure may be passed by a simple majority vote of those Authorized Voting Owners and/or proxies present at such meeting.

**Section 5.14. Informal Action by Board.** Any action required or permitted to be taken at a meeting of the Board or any committee thereof may be taken without a meeting, provided a written consent to such action is signed by all members of the Board or all members of such committee, as the case maybe, provided, further, such written consent is filed with the minutes of proceedings of the Board or committee.

**Section 5.15. Powers and Duties.** The Board may exercise all the powers of the Association, except such as are conferred upon or reserved to the Owners by statute, the Certificate of Incorporation, the Declaration or these By-Laws. The powers, duties and authority of the members of the Board herein may be exercised by the Board, acting through its officers, without any further consent or action on the part of the Owners and shall specifically include, but shall not necessarily be limited to, the following:

- a. to establish and maintain such bank accounts as may be required for the operation of the Association;
- b. to determine, levy and collect Assessments, and expend such Assessments for the maintenance, repair, replacement and operation of the facilities, property and amenities of the Association and the Property;
- c. to operate, maintain, repair and replace the facilities and amenities of the Association and the Property;
- d. to procure and maintain adequate liability insurance covering the Association, its directors, officers, agents and employees if any; to procure and maintain adequate hazard insurance on such of the Association's real and personal properties, if any, as it deems appropriate as set forth in Article IX of the Declaration;
- e. as required by the Declaration and/or these By-Laws, to repair, restore or alter the properties, real or personal, of the Association after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;

- f. to employ and terminate the employment of employees, independent contractors and professionals, to purchase supplies and equipment, enter into contracts and generally have the powers of manager in connection with the matters set forth in the Certificate of Incorporation, the Declaration and these By-Laws;
- g. to adopt and publish rules and regulations governing the uses of Association Property and facilities, and the personal conduct of the Owners, members of Owners' families, lessees and invitees thereon, and establish penalties for infractions thereof;
- h. to collect delinquent Assessments by suit or otherwise, to abate nuisances and to enjoin or seek damages from Owners for violations of the provisions of the Declaration, these By-Laws or any rules or regulations of the Association by such Owners and/or any Owner's family members, lessees and invitees;
- i. to file such federal, state or other tax returns on behalf of the Association as may be required and to pay any and all taxes owing by the Association;
- J. to declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive meetings of the Board, except for illness, or is delinquent for more than sixty (60) days in his or her financial obligations to the Association;
- k. to keep a complete record of the actions of the Board and the corporate affairs of the Association and to present a statement thereof to the Owners at the annual meeting of Owners;
- l. to issue, or cause to be issued, upon demand by any person, an "Assessment Certificate", as provided in the Declaration, setting forth the status of payment of Assessments and Special Assessments, if any, on any Home as provided in the Declaration;
- m. to receive, by way of deed or gift, and hold any property of a real or personal nature;
- n. to purchase, or otherwise acquire, any real property upon the affirmative vote as set forth in Section 4.07 herein at any regular or special meeting thereof;
- o. to sell, lease or mortgage any real property belonging to the Association upon the affirmative vote as set forth in Section 4.07 herein at any regular or special meeting thereof;
- p. to exercise the rights and powers set forth in Article IV of the Declaration;

- q. to exercise for the Association all powers, duties and authority vested or delegated to the members of the Board and not reserved to the Owners by other provisions of these By-Laws, the Certificate of Incorporation and/or the Declaration; and
- r. to establish such committees as the Board deems necessary, or are required by the Declaration or these By-Laws, for the operation of the Association and the Association Property.

**Section 5.16. Managing Agent and Manager.** The Board may employ a Managing Agent and/or a manager, at a compensation established by the Board, to perform such duties and services as the Board shall authorize. Any contract entered into with a Managing Agent shall provide that: (i) the Managing Agent shall carry his or her own liability insurance; (ii) provide that such contract may be terminated by the Board, without penalty, upon not less than sixty (60) days written notice after the initial term of the Agreement; and (iii) the Board shall indemnify the Managing Agent against all expenses and liabilities, including fees of counsel, reasonably incurred by, or imposed upon, the Managing Agent in connection with any proceeding to which the Managing Agent may be a party as a result of carrying out the instructions of the Board, except in such cases wherein the Managing Agent is guilty of willful misfeasance or malfeasance in the performance of his or her duties.

The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, any rights to which the Managing Agent may otherwise be entitled. The Board and the Association shall indemnify and hold harmless the Managing Agent against all contractual liability to others arising out of contracts made by the Board on behalf of the Association unless such contract shall have been made in bad faith or contrary to the provisions of law, the Declaration, or these By-Laws. It is intended that the Managing Agent shall have no liability with respect to any contracts made by the Board on behalf of the Association.

**Section 5.17. Indemnification of Members of the Board.** Every member of the Board shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, reasonably incurred by, or imposed upon, such member of the Board in connection with any proceeding to which such a member may be a party, or in which such member of the Board may become involved by reason of being or having been a member of the Board at the time such expenses are incurred, except in such cases wherein the member is guilty of willful misfeasance or malfeasance in the performance of duties, provided that in the event of a settlement, the indemnification herein shall apply only when the Board approves such settlement as being in the best interests of the Association.

The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, any rights to which each such member of the Board may otherwise be entitled. The Association shall indemnify and hold harmless each of the members of the Board against all contractual liability to others arising out of contracts made by the Board on behalf of the Association unless such contract shall have been made in bad faith or contrary to the provisions of law, or the Declaration, or these By-Laws. It is intended that the Board shall have no liability with respect to any contracts made by it on behalf of the Association.

## ARTICLE VI

### OFFICERS

**Section 6.01. Officers.** The officers of the Association shall be the President, one (1) or more Vice Presidents (the number thereof to be determined by the Board), a Secretary and a Treasurer. Any two or more offices may be held by the same person, except the office of the President.

**Section 6.02. Election.** The election of officers shall take place at the first meeting of the Board following each annual meeting of Owners.

**Section 6.03. Term and Vacancies.** The officers shall be elected annually by the Board and each shall hold office until his or her successor shall have been duly elected, unless he or she shall sooner resign, or shall be removed or otherwise be disqualified to serve. The vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board for the unexpired portion of the term.

**Section 6.04. Resignation and Removal.** At any regular or special meeting of Owners, any one (1) or more of the members of the Board elected by the Owners may be removed with or without cause by a majority vote of Authorized Voting Owners and a successor may then and there or thereafter be elected by such Owners to fill the vacancy thus created. Any member of the Board whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting.

The Board may remove a member of the Board for failure to be in good standing with regard to the payment of Assessments and/or monetary penalties and/or absence from three (3) consecutive duly called Board meetings, unless such absence is due to illness.

**Section 6.05. President.** The President shall be the chief executive officer, shall supervise the work of the other officers, shall preside at all meetings of Owners, and shall preside at all meetings of the Board and shall perform such other duties and functions as are usually vested in the office of the President of a not-for-profit corporation. The President may not also serve simultaneously as any other officer.

**Section 6.06. Vice President.** The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. The Vice President shall also perform such other duties as shall, from time to time, be assigned to him or her by the Board or the President and may also serve as Secretary or Treasurer.

**Section 6.07. Secretary.** The Secretary shall cause notices of all meetings to be served as prescribed in these By-Laws, shall record the votes and keep the minutes of all meetings, shall have charge of the seal, if any, and corporate books and records of the Association and shall perform such other duties as are incident to the office of Secretary of a not-for-profit corporation, and as may be required of him or her by the Board or the President.

**Section 6.08. Treasurer.** The Treasurer shall have the custody of all monies and securities belonging to the Association and shall be responsible for keeping, or cause to be kept, full and accurate records and books of account, showing all receipts and disbursements necessary for preparation of required financial reports. He or she shall account to the Board, whenever it may so require, with respect to all transactions and of the financial condition of the Association, and shall in general perform all other duties incident to the office of Treasurer of a not-for-profit corporation.

**Section 6.09. Other Officers.** The Board may elect such other officers as it shall deem desirable. Such officers shall have the authority and shall perform such duties prescribed from time to time by the Board.

**Section 6.10. Agreements, Contracts, Deeds, Checks and Other Instruments.** All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any two (2) officers of the Board or, except as otherwise provided in Section 8.01 hereof, by such other person or persons as may be designated by the Board.

## ARTICLE VII

### COMMITTEES

**Section 7.01. Committees of the Board.** The Board, by resolution adopted by a majority of the members of the Board, may designate one or more committees, which committees, to the extent provided in the resolution, shall have and may exercise the authority of the Board in the management of the affairs of the Association, provided, however, that no such committee shall have the authority of the Board to approve an Amendment to the Certificate of Incorporation of the Association, the Declaration or these By-Laws or plan a merger or consolidation or establish Assessments or Special Assessments. The Board may form a legislative committee that would track legislation being proposed that would have direct impact on homeowners' associations and advise the Board and Owners on proposed legislation that the Association should advise their legislatures of its position on the pending bill or bills.

**Section 7.02. Committees of Owners.** The committees of the Association could be an Architectural Committee, Site Committee, Nominating Committee, Compliance Committee or such other committees as the Board or Owners shall deem desirable. Each committee shall consist of a Chairperson and two or more Owners and provide the Board with minutes of any and all committee meetings.

**Section 7.03. Rules.** Each committee may adopt rules for its own government not inconsistent with the terms of the resolution of the Board designating the committee, or with rules adopted by the Board.

## ARTICLE VIII

### FINANCE

**Section 8.01. Checks.** All checks, drafts and orders for payment of money, notes and other evidences of indebtedness, issued in the name of the Association shall be signed by two (2) Officers of the Board or such other persons as may be designated by the Board. In any event all checks must be signed by one Officer of the Board.

**Section 8.02. Fiscal Year.** The fiscal year of the Association shall be the twelve (12) calendar months, ending at such time as may be deemed appropriate by the Board or as may have been established while the Sponsor was in control of the Board.

**Section 8.03. Annual Report.** An annual report of the receipts and expenditures of the Association, prepared by an independent public accountant, shall be rendered by the Board to all Owners, within four (4) months from the end of each fiscal year. Annual financial statements shall be in such form as deemed acceptable by the Board. However, so long as the Sponsor is in control of the Board, such financial statements shall be audited statements prepared by a Certified Public Accountant which shall be at the expense of the Sponsor.

The cost of the annual report and other services required by this Section 8.03 shall be included by the Board in the annual budget.

## ARTICLE IX

### BOOKS, RECORDS AND LEGAL DOCUMENTS

**Section 9.01. Books and Records.** The Declaration, these By-Laws, Certificate of Incorporation and other books and records and papers of the Association, or copies thereof, shall, during reasonable business hours, upon reasonable notice, be subject to inspection by any Owner or agent of an Owner or Mortgagee, at the principal office of the Association. The Board may furnish copies of such documents to such parties and may charge reasonable fees to cover the cost of furnishing such copies.

Section 9.02. Separate Account for Capital Reserve Funds. Any funds of the Association collected or designated as reserves for the replacement of capital items and Working Capital shall be segregated from all other funds of the Association in two (2) or more separate accounts. This shall not preclude the Association from segregating other portions of its funds in separate accounts for a specific purpose.

## ARTICLE X

### CORPORATE SEAL OPTION

Section 10.01. Corporate Seal Optional. The Association, if the Board chooses, may have a corporate seal.

## ARTICLE XI

### AMENDMENTS

Section 11.01. Amendments. Except as herein provided otherwise, these By-Laws may be modified, altered, amended or added to at any duly called meeting of Owners in the same manner as the Declaration, in accordance with Section 10.05 of the Declaration.

Until Transfer of Control Date, the prior written consent of the Sponsor shall be required for any amendment which adversely affects a substantial interest or right of the Sponsor to become effective, which consent may not be unreasonably be withheld.

## ARTICLE XII

### RULES AND COMPLIANCE AND ARBITRATION

Section 12.01. Compliance with Rules of the Association Pursuant to These By-Laws. Should any Owner, member of his or her family, his or her employees, guests, lessees, licensees or other invitees fail to comply with any of the provisions of these By-Laws or the rules and regulations, and as such may be amended from time to time, the procedures set forth in Article XI of the Declaration shall be followed to obtain compliance.

## ARTICLE XIII

### MISCELLANEOUS

**Section 13.01. Notices.** Except as otherwise provided herein, all notices hereunder shall be in writing and sent by postage paid first class mail, addressed, if to the Board, at the office thereof, and if to an Owner, individual member of the Board or Mortgagee, to the address of such Owner or Mortgagee as appears on the books of the Association. All notices shall be deemed to have been given when mailed, except notices of change of address, which shall be deemed to have been given when received. Whenever any notice is required to be given under the provisions of the Declaration or these By-Laws, 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 the equivalent of such notice.

**Section 13.02. No Waiver for Failure to Enforce.** No restriction, condition, obligation or provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

**Section 13.03. Gender.** The use of the masculine gender in these By-Laws shall be deemed to include the masculine, feminine or neuter and the use of the singular shall be deemed to include the plural, whenever the context so requires.

**Section 13.04. Captions.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these By-Laws, or the intent of any provision thereof.

**Section 13.05. Severability.** Should any part of these By-Laws be deemed void or become unenforceable at law or in equity, the validity, enforceability or effect of the balance of these By-Laws shall not be impaired or affected in any manner.

**Section 13.06. Conflict with Certificate of Incorporation or the Declaration.** in the case of any conflict between the Certificate of Incorporation and these By-Laws, the Certificate of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.