

JAN 01, 2008

**AMENDED AND RESTATED BYLAWS OF
COTSWOLD OF PINEHURST HOMEOWNERS ASSOCIATION, INC**

**ARTICLE I
MEETINGS OF MEMBERS**

Section 1. The first annual meeting of the members was held on March 2, 2004, and each subsequent regular annual meeting of the members shall be held on or before October 15 of each year thereafter

Section 2. Special meetings of the members may be called at any time by the president or the executive board, or upon written request of ten percent (10%) of the members pursuant to NCGS § 47F-3-108 (as amended or as recodified).

Section 3. Written notice of each meeting shall be given by, or at the direction of, the secretary or person(s) authorized to call the meeting, by hand delivering or mailing a copy of such notice, postage prepaid, at least ten (10) days and not more than sixty (60) days before such meeting to each member as provided in NCGS § 47F-3-108 (as amended or as recodified).

Section 4. Within 30 days after adoption of any proposed budget for the association, the executive board shall provide a summary of the budget to all owners. The budget shall be considered at a meeting of the owners as set forth in NCGS § 47F-3-103(c) (as amended or as recodified).

Section 5. The presence at the meeting of members or proxies entitled to cast ten percent (10%) of the votes shall constitute a quorum for any action except as otherwise provided by law.

Section 6. Every owner shall be entitled to vote as provided in the Declaration.

Section 7. Pursuant to NCGS § 47F-3-110 (as amended or as recodified), votes allocated to a Lot may be cast pursuant to a dated written proxy signed by an owner. An owner may not revoke a proxy except by written notice delivered to the person presiding over a meeting of the Association. A proxy lapses eleven (11) months after its date unless it specifies a shorter term.

**ARTICLE II
OFFICERS AND EXECUTIVE BOARD; SELECTION, TERM OF OFFICE; COMMITTEES**

Section 1. The affairs of the Association shall be managed by an executive board of at least five (5) members and shall be entitled to act for and on behalf of the Association. Nomination for election of the executive board shall be made from the floor at the annual meeting. Election shall be by a majority of the owners when a quorum is present. Cumulative voting shall not be permitted.

Section 2. At the first annual meeting of the Association, at least five (5) executive board members shall be elected to serve until the following annual meeting.

Section 3. Any executive board member may be removed in accordance with NCGS § 47F-3-103(b) (as amended or as recodified). In the event of death, resignation or removal of a director, his successor shall be selected by a majority of the members voting at a meeting when a quorum is present.

Section 4. No executive board member shall receive compensation for any service he may render to the Association. However, with the prior approval of the executive board, any executive board member may be reimbursed for actual expenses incurred in the performance of his duties.

Section 5. The executive board shall have the right to take any action in the absence of a meeting that it could take at a duly held meeting by obtaining the written consent of all the executive board members to the action. Any action so approved shall be filed in the corporate books and records and shall have the same effect as though taken at a meeting of the executive board.

Section 6. Committees not having and exercising the authority of the executive board in the management of the Association may be designated by a resolution adopted by a majority of the members of the executive board present at a meeting at which a quorum is present. The members of each committee shall be appointed by vote of a majority of the members of the executive board present at a meeting at which a quorum is present.

ARTICLE III MEETINGS OF EXECUTIVE BOARD

Section 1. Meetings of the executive board shall be held quarterly without notice at such place and hour as may be fixed from time to time by resolution of the board. Special meetings of the executive board may be called by any member of the executive board upon not fewer than five (5) days notice to each executive board member.

Section 2. A majority of the executive board members shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the executive board members present at a duly held meeting shall be regarded as the act of the board.

ARTICLE IV POWERS AND DUTIES OF THE EXECUTIVE BOARD

Section 1. Subject to the provisions contained herein and applicable law, the executive board shall have the power and authority to exercise all the rights of the Association including, but not limited to, the right to:

- (a) adopt rules and regulations governing the use of the common elements and facilities, the personal conduct of the members and their guests thereon, and establish penalties for the infraction thereof;
- (b) suspend the voting rights and right of use of any recreational facilities of a member during any period in which such member shall be in default be suspended after notice and hearing before an adjudicatory panel as herein provided, for a period not to exceed sixty (60) days for infraction of published rules and regulations;
- (c) declare the office of a member of the executive board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the executive board;
- (d) employ a manager, an independent contractor, or other employees as they deem necessary, and prescribe their duties, including delegating any of the executive board duties to a managing agent, provided always, any contract for professional management

must contain a clause requiring not more than 90 days termination notice;

- (e) procure, maintain and pay premiums on an insurance master policy(s) and equitably assess the owners of the same for their pro rata portion of such expense;
- (f) impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than for service provided to owners;
- (g) exercise all other powers that may be exercised in this state by legal entities of the same type as the Association;
- (h) exercise any other powers necessary and proper for the governance and operation of the Association;
- (i) exercise all powers as set forth in the Declaration; and
- (j) have and to exercise any and all powers, rights, and privileges that a (i) corporation organized under the North Carolina Nonprofit Corporation Law or a (ii) community association subject to the North Carolina Planned Community Act by law may now or hereafter have or exercise.

Section 2. It shall be the duty of the executive board to:

- (a) cause the common elements and other areas designated in the Declaration to be maintained, repaired, and replaced as necessary, and to assess the owners to recover the cost of the upkeep of the common elements;
- (b) serve as the architectural review committee (or to appoint such a committee to serve at its pleasure);
- (c) keep a complete record of all its acts and corporate affairs and present a statement thereof to the members at the annual meeting, or at any special meeting when such statement is requested in writing by 10% of the members
- (d) supervise all officers, agents and employees of the Association, and see that their duties are properly performed;
- (e) fix the amount of the annual assessment at least thirty (30) days in advance of each annual assessment period pursuant to the provisions set forth in the Declaration and NCGS § 47F-3-103(c) (as amended or as recodified);
- (f) send written notice of each assessment to every owner at least thirty (30) days in advance of each annual assessment period;
- (g) foreclose the ~~lien~~^{lien} against any property for which assessments are not paid within thirty (30) days after due date and/or to bring an action at law against the owner personally obligated to pay the same;
- (h) issue, or have issued, a certificate setting forth whether or not any assessment has been paid; provided, however, that a reasonable charge may be made for the issuance of these certificates, and, if a certificate states an assessment has been paid, such certificate

shall be conclusive evidence of such payment;

- (i) procure and maintain, at all times, adequate hazard insurance on the property owned by the Association and all property for which the Association has the duty to maintain, and sufficient liability insurance to adequately protect the Association as provided in NCGS § 47F-3-113 (as amended or as recodified);
- (j) cause all officers or employees, including officers and employees of professional management, having fiscal responsibilities to be bonded as it may deem appropriate;
- (k) serve as an adjudicatory panel (or appoint such a panel to serve at its pleasure) to provide for hearings to determine if a unit owner should be fined for any violation of the declaration, these Amended and Restated Bylaws or rules and regulations of the Association pursuant to NCGS § 47F-3-107 (as amended or as recodified). Such panel shall accord to the party charged with the violation, notice of the charge, opportunity to be heard and to present evidence, and notice of the decision; and
- (l) serve as an adjudicatory panel (or appoint such a panel to serve at its pleasure) to provide for hearings to determine if a unit owner is legally responsible for any damage claim pursuant to NCGS § 47F-3-107(as amended or as recodified). Such panel shall accord to the party charged with causing damages, notice of the charge, opportunity to be heard and to present evidence, and notice of the decision

ARTICLE V OFFICERS AND THEIR DUTIES

Section 1. The officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer. The executive board may also elect additional Vice Presidents (who may be given a special designation such as Executive Vice President, First Vice President or the like), one or more Assistant Secretaries and one or more Assistant Treasurers. Except as otherwise specifically provided in these Amended and Restated Bylaws, such additional officers shall have such authority and perform such duties as from time to time may be prescribed by the executive board. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. The officers of the Association shall be elected by the executive board at the annual meeting. Each officer shall hold office until the next annual meeting and until his successor is elected and qualifies.

Section 3. Any officer or agent elected or appointed by the executive board may be removed by the executive board when in the judgment of the executive board the best interests of this Association will be served thereby.

Section 4. Vacancies among the officers of the Association may be filled by vote of a majority of the whole executive board at any annual or special meeting of the executive board.

Section 5. The President shall preside at all meetings of the executive board and shall serve be the chief executive officer of the Association and, subject to the control of the executive board, shall supervise and control the management of the Association in accordance with these Amended and Restated Bylaws. The President shall sign, with any other proper officer, instruments which may be lawfully executed on behalf of the Association except where required

or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be delegated by the executive board to some other officer or agent. In general, he shall perform all duties incident to the office of President and such other duties as may be prescribed by the executive board from time to time.

Section 6. The Vice President shall exercise the powers of the President during that officer's absence or inability to act. Any action taken by a Vice President in the performance of the duties of the President shall be presumptive evidence of the absence or inability to act of the president at the time such action was taken. The Vice President shall have such other powers and perform such other duties as may be assigned to him by the executive board.

Section 7. The Treasurer shall have custody of all funds and securities belonging to the Association and shall receive, deposit or disburse the same under the direction of the executive board; provided, that the executive board may appoint a custodian or depository for any such funds or securities, and the executive board may designate those persons upon whose signature or authority such funds may be disbursed or transferred.

Section 8. The Secretary shall keep accurate records of the acts and proceedings of all meetings of the executive board. He shall give all notices required by law and these Amended and Restated Bylaws. He shall have general charge of the corporate books and records. He shall sign such instruments as may require his signature and, in general, shall perform all duties incident to the office of Secretary and such other duties as may be assigned to him from time to time by the President or by the executive board.

ARTICLE VI INDEMNIFICATION OF OFFICERS AND EXECUTIVE BOARD MEMBERS

Section 1. Any person who at any time serves or has served as a director or officer of the Association (a "Claimant"), against whom a claim shall be made, in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether brought by or on behalf of the Association, a third party or otherwise, including all appeals therefrom (a "Proceeding"), seeking to hold the Claimant liable for civil liability for monetary damages by reason of the fact that he is or was serving in such capacity (whether the basis of such Proceeding is alleged action in such official capacity or in any other capacity while serving in such official capacity), shall have a right, to the maximum extent permitted by applicable law subject to the terms of this Article VI, to be indemnified and held harmless by the Association against all Liabilities and Litigation Expenses (as hereinafter defined); provided that such indemnification shall be limited to (a) that portion of any Liabilities or Litigation Expenses with respect to which the Claimant is not entitled to receive payment under any insurance policy or (b) any Liabilities or Litigation Expenses in relation to matters as to which he shall be adjudged in such Proceeding or otherwise determined by one of the means set forth in Section 5 of this Article VI to have (a) conducted himself in good faith, (b) reasonably believed (i) that his conduct was in the best interests of the Association in the case of conduct in his official capacity and (ii) that his conduct was, at least, not opposed to the best interests of the Association in all other cases, and (c) had no reason to believe, in the case of any criminal Proceeding, that his conduct was unlawful.

Section 2. As used in this Article VI, (a) "Liabilities" shall include, without limitation, (1) payments in satisfaction of any judgment, money decree, excise tax, fine or penalty for which the Claimant had become liable in any Proceeding and (2) payments in settlement of any such Proceeding subject, however, to Section 4 hereof; (b) "Litigation Expenses" shall include,

without limitation, (1) reasonable costs and expenses and attorneys' fees and expenses actually and necessarily incurred by the Claimant in connection with any Proceeding and (2) reasonable costs and expenses and attorneys' fees and expenses actually and necessarily incurred by the Claimant in connection with the enforcement of rights to the indemnification granted hereby or by applicable law, if such enforcement is substantially or wholly successful; and (c) "disinterested member of the executive board" shall mean member of the executive board who are not a party to the Proceeding in question.

Section 3.

- (a) Any Litigation Expenses shall be advanced to any Claimant within thirty days of receipt by the Secretary of the Association of the Claimant's demand therefor, together with the Claimant's undertaking to repay to the Association such amount unless it is ultimately determined that the Claimant is entitled to be indemnified by the Association against such expenses. The Secretary shall forward notice of such demand and undertaking immediately to all disinterested members of the executive board. Any disinterested members of the executive board may then, if desired, call a meeting of a committee which shall include all disinterested members of the executive board. No such advance shall be made unless a majority of the disinterested members of the executive board shall have determined that the Litigation Expenses are or have been incurred in relation to matters as to which the Claimant (i) conducted himself in good faith, (i) reasonably believed (1) that his conduct was in the best interests of the Association in the case of conduct in his official capacity and (2) that his conduct was, at least, not opposed to the best interests of the Association in all other cases, and (iii) had no reason to believe, in the case of any criminal Proceeding, that his conduct was unlawful.
- (b) No such advance of any particular items of Litigation Expenses shall be made if a majority of the disinterested members of the executive board affirmatively determines that such particular items are unreasonable. In any such case, such members of the executive board must determine the amount by which such items of expense were unreasonable, and the Association shall withhold advances of expenses only in such amount.

Section 4. The Association shall not be liable to indemnify the Claimant for any amounts paid in settlement of any Proceeding effected without the Association's written consent. The Association will not unreasonably withhold its consent to any proposed settlement.

Section 5. Except as may be determined in an action brought pursuant to Section 6 below, indemnification payments by the Association for Liabilities and Litigation Expenses (or a termination of the undertaking required under Section 3 of this Article VI with respect to advanced expenses) may be made only following a determination that the Claimant, with respect to the matter or matters in question, (a) conducted himself in good faith, (b) reasonably believed (i) that his conduct was in the best interests of the Association in the case of conduct in his official capacity and (ii) that his conduct was, at least, not opposed to the best interests of the Association in all other cases, and (c) had no reason to believe, in the case of any criminal Proceeding, that his conduct was unlawful. If the Proceeding shall result in an adjudication that (d) the conduct of the Claimant was contrary to the standards hereinabove set forth, (e) the member of the executive board was liable to the Association in connection with a Proceeding by or in the right of the Association or (f) the member of the executive board was liable based upon the receipt of an improper personal benefit, such adjudication shall be conclusive. If there shall be no such adjudication, the determination shall be made (g) by a majority of the disinterested

members of the executive board (if there is a quorum of disinterested members of the executive board), (h) if there is not a quorum of disinterested members of the executive board, or if a majority of the disinterested members of the executive board so directs, by special independent legal counsel in a written opinion or (i) in accordance with applicable law and any other reasonable procedures prescribed by the executive board prior to the assertion of the claim for which indemnification is sought. The reasonableness of amounts of settlements and Litigation Expenses may be approved by a majority of the disinterested members of the executive board.

Section 6. If a claim under Section 1 of this Article VI is not paid in full by the Association within thirty days after a written claim has been received by the Association, or a demand for advances is not paid within thirty days of receipt by the Association thereof with an undertaking as described in Section 3 of this Article VI, the Claimant may at any time thereafter bring suit against the Association to recover the unpaid amount of the claim or demand and, if successful in whole or in part, the Claimant shall be entitled to be paid also the expense of prosecuting such claim or demand. It shall be a defense to any such action that the Claimant's Liabilities or Litigation Expenses were incurred on account of a matter or matters as to which the Claimant acted in a manner described in Section 1(b) of this Article VI, but the burden of proving such defense shall be on the Association. Neither the failure of the Association (including its disinterested members of the executive board or independent legal counsel) to have made a determination prior to the commencement of such action that indemnification of the Claimant is proper in the circumstances, nor an actual determination by the Association (including its disinterested member of the executive board or independent legal counsel) that the Claimant had not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Claimant has not met the applicable standard of conduct.

Section 7. Any person who during such time as this Article VI of these Amended and Restated Bylaws is in effect serves or has served in any of the aforesaid capacities for or on behalf of the Association shall be deemed to be doing so or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. The right of indemnification provided herein shall inure to the benefit of the estate or personal representatives of any person who qualifies or would qualify as a Claimant hereunder and such right shall not be exclusive of any other rights to which such person or legal representative may be entitled apart from this Article VI.

Section 8. If, for any reason whatsoever, any provision of this Article VI shall be held invalid, the remaining provisions hereof shall not be affected thereby and shall continue in full force and effect to the maximum extent permitted by applicable law.

Section 9. The rights, remedies, and claims given, conferred upon, and granted under or in respect to this Article VI shall be limited to those persons who at any time serve or have served as a director or officer of the Association, and no provision of this Article VI shall be construed to give, confer upon or grant to any other person, trust, entity or any other third party hereto any right, remedy or claim under or in respect to this Article VI.

ARTICLE VII BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member or a mortgagee of any member. The articles of incorporation and the declaration and Amended and Restated Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may

be purchased at reasonable cost

**ARTICLE VIII
CORPORATE SEAL**

The Association shall have a seal in circular form having within its circumference the words "Cotswold of Pinehurst Homeowners Association, Inc." and the words "CORPORATE SEAL - 2001" in the center thereof.

**ARTICLE VIII
AMENDMENTS TO BYLAWS**

These Amended and Restated Bylaws may be amended, at a regular or special meeting of the members, by a vote of the majority of the members.

Adopted by vote of a majority of the members on this the ____ day of _____, 200__.

*Edward Fogel
President*