

Hermitage HOA By-Laws

AMENDED AND RESTATED BY-LAWS OF HERMITAGE HOMEOWNERS ASSOCIATION, INC. AS OF FEBRUARY 3, 2014

Article I

Name, Membership, Applicability, and Definitions

Section 1. Name. The name of the Association shall be Hermitage Homeowners Association, Inc. (hereinafter sometimes referred to as the "Association").

Section 2. Membership. The Association shall have one class of membership, as is more fully set forth in that Declaration of Protective Covenants for Hermitage (such Declaration as amended, renewed, or extended from time to time is hereinafter sometimes referred to as the "Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein.

Section 3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

Article II

Association: Meetings, Quorum, Voting, Proxies

Section 1. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the Board of Directors, either in the Community or as convenient thereto as possible and practical.

Section 2. First Meeting and Annual Meetings. An annual or special meeting shall be held within one (1) year from the date the Declaration is recorded. Annual meetings shall be set by the Board so as to occur no later than sixty (60) days after the close of the Association's fiscal year. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday (excluding Saturday and Sunday).

Section 3. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a Majority of the Board of Directors or upon a petition signed by Owners holding at least twenty-five (25%) percent of the total Association vote. The notice of any special meeting shall state the date, 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. Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of record of each Lot a notice of each annual or special meeting of the

Association stating the purpose of the special meeting, as well as the time and place where it is to be held. If an Owner wishes notice to be given at an address other than his or her Lot, he or she shall have designated same by notice in writing to the Secretary such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice. Notices shall be served not less than ten (10) nor more than thirty (30) days before a meeting.

Section 5. Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of notice of the time, date and place thereof, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

Section 6. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a Majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 7. Voting. The voting rights of the members shall be as set forth in the Declaration, and such voting rights are specifically incorporated herein.

Section 8. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing, dated and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his or her Lot, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a member, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

Section 9. Quorum. The presence, in person or by proxy, of Owners holding at least twenty-five (25%) percent of the total eligible Association vote shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Article III

Board of Directors: Number, Powers, Meetings

A. Composition and Selection.

Section 1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors. The Directors must reside in the Community and shall be Owners or spouses of such Owners; provided, however, no Person and his or her spouse may serve on the Board at the same time. Furthermore, a Director whose term shall end may not be succeeded in office by his or her spouse. Additionally, Directors may only serve for two consecutive terms for a

total of four continuous years. A Director having served two consecutive terms does not qualify for re-election until he or she has been out of office for at least two years from the last date of service on the Board of Directors.

Section 2. Number of Directors. The Board shall consist of five (5) members.

Section 3. Nomination of Directors. Elected Directors shall be nominated from the floor or may also be nominated by a Nominating Committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

Section 4. Election and Term of Office. At each annual meeting of the Association, Directors shall be elected to succeed those Directors whose terms are expiring. All eligible members of the Association may vote on all Directors to be elected, and the candidate(s) receiving the most votes shall be elected. The Association shall elect two (2) Directors at the annual meeting of members of the Association in even numbered years and three (3) Directors shall be elected at the annual meeting of members of the Association in odd numbered years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

Section 5. Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the members of the Board of Directors may be removed, with or without cause, by a Majority vote and a successor may then and there be elected to fill the vacancy thus created. A Director whose removal has been proposed by the Owners shall be given at least ten (10) day notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any Director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than twenty (20) days may be removed by a Majority vote of the Directors at a meeting, a quorum being present.

Section 6. Vacancies. Vacancies in the Board of Directors caused by any reason, excluding the removal of a Director by vote of the Association, shall be filled by a vote of the Majority of the remaining Directors, even though less than a quorum, at any meeting of the Board of Directors. Each Director so selected shall serve the unexpired portion of the term of his predecessor.

B. Meetings.

Section 7. Organization Meetings. The first meeting of the members of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

Section 8. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a Majority of the Directors, but at least two (2) such meetings shall be held during each fiscal year. Notice of the regular schedule shall constitute sufficient notice of such meetings.

Section 9. Special Meetings. Special meetings of the Board of Directors shall be held when requested by the President, Vice President or by any two (2) Directors. The notice shall specify

the time and place of the meeting and nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a Person at the Director's home or office who would reasonable be expected to communicate such notice promptly to the Director; or (d) by telegram, charges prepaid. All such notices shall be given or sent to the Director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph company shall be given at least forty-eight (48) hours before the time set for the meeting.

Section 10. Waiver of Notice. The transactions of any meeting of the Board of Directors, 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, and (b) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 11. Quorum of Board of Directors. At all meetings of the Board of Directors, 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 of Directors. 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 cannot be held because a quorum is not present, a Majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time that the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 12. Compensation. No Director shall receive any compensation from the Association for acting as such unless approved by a Majority of the Owners.

Section 13. Open Meetings. All meetings of the Board shall be open to all members, but members other than Directors may not participate in any discussion or deliberation unless expressly so authorized by the Board.

Section 14. Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 15. Action Without A Formal Meeting. 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 if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors.

Section 16. Telephonic Participation. One or more directors may participate in and vote during any regular or special meeting of the Board by telephone conference call or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time, and those directors so participating shall be present at such meeting. Any such meeting at which a quorum participates shall constitute a regular meeting of the Board.

C. Powers and Duties.

Section 17. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

(a) preparing and submitting a proposed annual budget to the Owners for review and approval by the Owners, which shall include: the annual assessment (dues) amount of each Owner to the common expenses; amounts for estimated fixed operation expenses; amounts for planned repairs and improvements; and cash reserves for emergency repairs and end of life items such as clubhouse roof, pool liners, etc.;

(b) establishing the means and methods of collecting budgeted assessments, and establishing the period of the installment payments of the annual assessment;

(c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties; provided any firm or individual hired by the Board of Directors on behalf of the Association shall be licensed and have appropriate insurance;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) making and amending use restrictions and rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the authorized signatories for such accounts (predicated upon a requirement that such signatories be Directors and all checks shall be signed by two signatories);

(h) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it, and bring any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(j) paying the costs of all services rendered to the Association or its members which are not directly chargeable to Owners;

(k) keeping books with detailed accounts of the receipts and expenditures affecting the association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred; and

(l) contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, condominiums, or other associations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity;

(m) retaining and instructing legal counsel as it proves necessary in the conduct of Association business;

(n) ensuring Association financial books, records, and accounts are reviewed by a professional bookkeeper or accountant whenever the Board of Directors deem necessary based on the prevailing circumstances;

(o) obtaining a minimum of three (3) bids for any contracted work or repairs greater than \$2000; except for emergency repairs such as water leaks, utility repairs, or other circumstances which might otherwise result in injury or preventable damage to property;

(p) making special assessments to cover costs associated with emergencies or disasters, and high cost items or improvements not included in the approved budget; provided, however, that prior to making any such special assessment the Board of Directors shall review the current budget and funds on-hand to see if prudent adjustments can be made to cover any costs resulting from any such emergencies or disaster; and further provided that any such assessments that exceed twenty percent (20%) of the current annual assessment must be approved by the Owners; and

(q) ensuring applicable tax filings are conducted on behalf of the Association by a professional tax preparer or accountant experienced with homeowners associations and non-profit tax filings.

Section 18. Management Agent. The Board of Directors may employ for the association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The term of any management agreement shall not exceed one (1) year and shall be subject to termination by either party, without cause and without penalty, upon ninety (90) days written notice.

Section 19. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of the Common Property and facilities without the approval of the members of the Association; provided, however, the board shall obtain membership approval in the same manner as for special assessments, in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed Ten Thousand Dollars (\$10,000.00) outstanding debt at any one time.

Section 20. Fining Procedure. The Board shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

(a) Notice. Written notice shall be served upon the violator specifying:

(i) The nature of the violation and the fine imposed;

(ii) that the violator may, within ten (10) days from the date of the notice, request a hearing

regarding the fine imposed;

(iii) the name, address, and telephone number of a person to contact to challenge the fine;

(iv) that any statements, evidence, and witnesses may be produced by the violator at the hearing; and

(v) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

(b) Hearing. If a hearing is requested, it shall be held before the board in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing.

Article IV **Officers**

Section 1. Officers. The officers of the Association shall be a President, First Vice-President, Second Vice-President, Secretary, and Treasurer. All officers shall be elected from among the members of the Board of Directors.

Section 2. Election, Term of Office and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by the Board of Directors whenever, in its judgment, the best interests of the Association will be served thereby.

Section 4. President. The President shall be the chief executive officer of the association and shall preside at all meetings of the Association and of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Alabama Nonprofit Corporation Act.

Section 5. First Vice-President. The First Vice-President shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting and such other duties and responsibilities as assigned by the Board of Directors.

Section 6. Second Vice-President. The Second Vice-President shall have the responsibility for managing any required committees to include initial formation, membership requirements, and close-out of tasks as determined by the Board of Directors, assisting in ensuring the restrictive covenants are observed and complied with by Owners and renters/lessees, along with other duties and responsibilities as determined by the President or Board of Directors.

Section 7. Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct and shall, in general, perform all duties incident to the office of the secretary

of a corporation organized in accordance with Alabama law.

Section 8. Treasurer. The Treasurer shall have the responsibility for the Association's funds and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors.

Section 9. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Article V **Committees**

Committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Article VI **Miscellaneous**

Section 1. Fiscal Year. The fiscal year of the Association shall be determined by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

Section 2. Parliamentary Rules and Roberts Rules of Order (current edition) shall govern the conduct of all Association proceedings, when not in conflict with Alabama law, the Articles of Incorporation, the Declaration, these By-Laws, or a ruling made by the Person presiding over the proceeding.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of Alabama law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Alabama law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 4. Amendment. These By-Laws may be amended, at a regular or special meeting of the members, by a simple majority vote of all members, either present or by proxy. The text of the proposed change must be sent to the membership with the meeting notice. Amendments to these By-Laws shall become effective immediately upon adoption by the members, unless a later effective date is specified therein.