

**SECOND AMENDMENT**

**TO**

**CONSTITUTION AND BY-LAWS**

**OF**

**SILVER CREEK COMMUNITY**

**PROPERTY OWNERS ASSOCIATION, INC.**

Pursuant to Article VIII (Amendment to By-Laws) of the Constitution and By-Laws of Silver Creek Community Property Owners Association, Inc., ("Association") which is recorded at Corporate Book 19, Page 42, Burke County Registry, and to the First Amendment to said Constitution and By-Laws, which is recorded at Deed Book 1049, Page 633 - 635, Burke County Registry, and to all applicable portions of the North Carolina Planned Community Act, NCGS § 47F, the Constitution and By-Laws and the First Amendment to said Constitution and By-Laws of the Association are hereby canceled and superseded as follows:

**PREAMBLE**

WHEREAS, the Silver Creek Community is an existing residential community, established prior to 1999, and consisting of more than 20 residential lots;

WHEREAS, the Association is a North Carolina domestic corporation in good standing;

WHEREAS, the Association is the owner of real property, in the form of common property and individual lots, at the Silver Creek Community, Burke County, North Carolina, (see public record on file at the Burke County Register of Deeds office and at the Burke County Tax office) and desires to maintain a residential community for the benefit of all property owners;

WHEREAS, the Association desires to provide for the preservation of value and for the maintenance of common facilities and services and for a vehicle for the administration and enforcement of covenants and restrictions;

WHEREAS, the Association desires to update its By-Laws to include the North Carolina Planned Community Act, ("Act") N.C.G.S. § 47F;

WHEREAS, the Association desires to update its By-Laws for the purpose of exercising the functions aforesaid which are hereinafter more fully set forth;

NOW, THEREFORE, the Association declares that the real property described in the Burke County Register of Deeds office as owned by the Association in the past, present, or future, being the same property as governed under and by the Constitution and By-Laws and the First Amendment to same of the Association unless later acquired, which is part of the Silver Creek Community, is and will be held, transferred, sold, conveyed, given, donated, leased, occupied, and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens (all hereinafter sometimes referred to as "the Covenants") hereinafter set forth in this Constitution and By-Laws.

## **Article I** **Purpose**

The purpose and objectives of this Association shall be to promote the health, safety, and welfare of its members and to maximize the value of all property owners' lots and to maximize the utilization of any and all amenities now constructed or constructed in the future at Silver Creek Community, Burke County, North Carolina.

Said purposes and objectives shall include, but are not limited to, maintenance of all streets and roads within the community as well as access roads leading from state highways to the community; the upkeep and maintenance of all recreation facilities, greenbelts, and other common areas; ~~security protection~~; security gates; and other services commonly provided to members by similar associations, but not including fire protection or water-system construction and maintenance.

## **Article II** **Definitions**

In this Constitution and By-Laws, unless specifically provided otherwise or the context otherwise requires, the following definitions apply:

- 1) “**Allocated interests**” means the common expense liability and votes in the association allocated to each lot.
- 2) “**Association**” or “**owners’ association**” means the Silver Creek Community Property Owners Association, Inc. which is organized as allowed under North Carolina law, including G.S. 47F-3101.
- 3) “**Common elements**” means any real estate within a planned community owned or leased by the association, other than a lot.
- 4) “**Common expenses**” means expenditures made by or financial liabilities of the association, together with any allocations to reserves.
- 5) “**Common expense liability**” means the liability for common expenses allocated to each lot as permitted by this Chapter, the declaration or otherwise by law.
- 6) “**Condominium**” means real estate, as deemed and created under Chapter 47C of the North Carolina General Statutes.
- 7) “**Declarant**” means any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of the person’s or group’s interest in a lot not previously disposed of, or (ii) reserves or succeeds to any special declarant right.
- 8) “**Declaration**” means any instruments, however denominated, that create a planned community and any amendments to those instruments.
- 9) “**Board of Directors**” means the body, regardless of name, designated in the declaration to act on behalf of the association.
- 10) “**Leasehold planned community**” means a planned community in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the planned community or reduce its size.
- 11) “**Lessee**” means the party entitled to present possession of a leased lot whether lessee, sublessee, or assignee.
- 12) “**Limited common element**” or “**Limited common area**” means a portion of the common elements or areas allocated by the declaration or by operation of law for the exclusive use of one or more but fewer than all of the lots.

- 13) “**Lot**” means a physical portion of the planned community designated on the plats recorded at the Burke County Registry for separate ownership or occupancy by a lot owner.
- 14) “**Lot or property owner**” means the Owner(s) as shown by the records in the Office of the Register of Deeds of Burke County, North Carolina, whether it be one (I) or more persons, firms, associations, corporations or other legal entities of fee simple title to any lot in the Silver Creek Community. Notwithstanding any applicable theory of a deed of trust, the term does not mean or refer to the mortgagee or holder of a deed of trust, its successors or assigns, unless and pursuant to foreclosure or a proceeding or deed in lieu of foreclosure or to any lessee or Tenant of an Owner. Any purchaser in possession of a lot under a recorded installment sale contract will be deemed the owner of the lot instead of the fee simple titleholder.
- 15) “**Master association**” means an organization described in G.S. 47F-2-120, whether or not it is also an association described in G.S. 47F-3-101.
- 16) “**Member**” means a lot owner.
- 17) “**Person**” means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.
- 18) “**Planned community**” means real estate with respect to which any person, by virtue of that person’s ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration. For purposes of this act, neither a cooperative nor a condominium is a planned community, but real estate comprising a condominium or cooperative may be part of a planned community. “Ownership of a lot” does not include holding a leasehold interest of less than 20 years in a lot, including renewal options.
- 19) “**Purchaser**” means any person, other than a declarant or a person in the business of selling real estate for the purchaser’s own account, who by means of a voluntary transfer acquires a legal or equitable interest in a lot, other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.
- 20) “**Real estate**” means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance, “Real estate” includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.
- 21) “**Reasonable attorneys’ fees**” means attorneys’ fees reasonably incurred without regard to any limitations on attorneys’ fees which otherwise may be allowed by law.
- 22) “**Special declarant rights**” means rights reserved for the benefit of a declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans filed with the declat3tion; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the planned community, and models; (iv) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (v) to make the planned community part of a larger planned community or group of planned communities; (vi) to make the planned community subject to a master association; or (vii) to appoint or remove any officer or Board of Directors member of the association or any master association during any period of declarant control.

### **Article III**

#### **Powers**

**EMERGENCY ASSESSMENTS:** The Association shall have the authority to assess its members for emergency repairs to roads, recreation facilities, and water system equipment. Said special assessments may not exceed One Hundred Dollars (\$100.00) per assessment and there may not be more than two (2) special assessments during anyone (I) calendar year without majority approval of all members present at a specially called meeting of the Association.

**SPECIAL ASSESSMENTS:** Any member of the Association's Board of Directors may, upon giving proper notice to the Association members, propose a special assessment for the construction of additional recreational facilities, utility, or other such facilities constructed for the benefit of its members. Said proposed special assessment shall be voted on at the next annual meeting of the Association by the members either in person or by proxy.

**RULES AND REGULATIONS:** The Board of Directors of the Association shall be authorized to promulgate rules and regulations governing the use and enjoyment of all facilities, such as the number of guests permitted to use the recreational facilities, The Board may fix possible fees for the use of the recreational facilities by members and guests.

### **Article IV**

#### **Membership**

**PROPERTY OWNERS:** Every property owner automatically becomes a member of the Association upon purchasing real property at Silver Creek Community. Said membership is mandatory rather than elective. Membership in the Association may not be transferred or pledged in any way except upon the sale of the Silver Creek Community property and then only to the new owner. The Silver Creek Community Limited Partnership, its successors and assigns, shall also be considered a member.

### **Article V**

#### **Voting and Proxies**

- 5.1. There will be one vote per lot, but no person will get more than one vote.
  - 1) If only one of the multiple owners of a lot is present at a meeting of the association the owner who is present is entitled to cast all the votes allocated to that lot. If more than one of the multiple owners are present, the votes allocated to that lot may be cast only in accordance with the agreement of a majority in interest of the multiple owners. Majority agreement is conclusively presumed if anyone of the multiple owners casts the votes allocated to that lot without protest being made promptly to the person presiding over the meeting by any of the other owners of the lot.
- 5.2. All dues and assessments must be current to be able to vote at the annual meeting.
- 5.3. Each member may vote either in person or by assignment of a proxy, Proxies may be general, covering all issues needing a vote, or specific to one issue or some issues.
  - (1) Votes allocated to a lot may be cast pursuant to a proxy duly executed by a lot owner. If a lot is owned by more than one person, each owner of the lot may vote or register protest to the casting of votes by the other owners of the lot through a duly executed

proxy, A lot owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association, A proxy is void if it is not dated. A proxy terminates 11 months after its date, unless it specifies a shorter term.

- 5.4. Lessees of lots may not vote.
- 5.5. No votes allocated to a lot owned by the association may be cast.
- 5.6. On specified issues only a defined subgroup of lot owners may vote provided:
  - (1) The issue being voted is of special interest solely to the members of the subgroup; and
  - (2) All except de minimis cost that will be incurred based on the vote taken will be assessed solely against those lot owners entitled to vote.
- 5.7. For purposes of subdivision 5.6 above, an issue to be voted on is not a special interest solely to a subgroup if it substantially affects the overall appearance of the planned community or substantially affects living conditions of lot owners not included in the voting subgroup.

## **Article VI** **Organization**

6.1. The affairs of the Association shall be managed by a Board of Directors consisting of five (5) directors to be elected by a vote of the members at each annual meeting of the Association. The Board of Directors shall consist of a President, Vice-President, Secretary, Treasurer and a Director. In the event a director shall resign or otherwise become incapable of completing his term of office, the President of the Association shall appoint another director to fill the office until the next annual meeting of the Association. In the event that the President shall resign or become incapable of completing his term of office, the remaining board members shall appoint a President to serve until the next annual meeting of the Association. All Directors on the Board, including the officers, shall serve a one-year term or from annual meeting to the next annual meeting, whichever is longer.

6.2. No two members of the Board of Directors will be related by blood or marriage closer than third cousins. Particularly, no one will be eligible for the Board of Directors if they have a second cousin, first cousin, parent, sibling, spouse or child currently serving on said board. Should a prohibited relationship of this type be discovered only after the election of the second board member has occurred, the most recently elected officer will be required to resign. They will only again be eligible to run for office at such time as their currently acting relative has resigned, dies or is otherwise voted out of office, Any vacancy created by a forced resignation of this type will be filled in accordance with Section 6.1 of this Article wherein the President of the Association shall appoint another director to fill the office until the next annual meeting of the Association.

6.3. The Board of Directors may act for the Association in the following ways, which list is not intended to be exclusive:

- 1) Propose that the members adopt and amend bylaws and rules and regulations;
- 2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from lot owners;

- 3) Hire and discharge managing agents and other employees, agents, and independent contractors;
  - 4) Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community;
  - 5) Make contracts and incur liabilities;
  - 6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
  - 7) Cause additional improvements to be made as a part of the common elements;
  - 8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47F-3-112;
  - 9) Grant easements, leases, licenses, and concessions through or over the common elements;
  - 10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than the limited common elements and for services provided to lot owners;
  - 11) Impose reasonable charges for late payment of assessments, not to exceed the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any assessment installment unpaid and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer;
  - 12) After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the association (except rights of access to lots) for reasonable periods for violations of the declaration, bylaws, and rules and regulations of the association;
  - 13) Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the declaration or statements of unpaid assessments;
  - 14) Provide for the indemnification of and maintain liability insurance for its officers, Board of Directors, directors, employees, and agents;
  - 15) Assign its right to future income, including the right to receive common expense assessments;
  - 16) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and
  - 17) Exercise any other powers necessary and proper for the governance and operation of the association.
- 6.4. Board of Directors members and officers.
- 1) Except as provided below in 6.4.2, the Board of Directors may act in all instances on behalf of the association. In the performance of their duties, officers and members of the Board of Directors shall discharge their duties in good faith. Officers shall act according to the standards for officers of a nonprofit corporation set forth in G.S. 55A-8-42, and members shall act according to the standards for directors of a nonprofit corporation set forth in G.S. 55A-8-30.
  - 2) The Board of Directors may not act unilaterally on behalf of the association to amend the declaration (G.S. 47F-2-117), to terminate the planned community (G.S. 47F-2-118), or to elect members of the Board of Directors or determine the qualifications, powers and duties, or terms of office of Board of Directors members (G.S. 47F-3-103(e)), but the Board of Directors may unilaterally fill vacancies in its membership for the unexpired

portion of any term. The lot owners, by a majority vote of all persons entitled to vote at any meeting of the lot owners at which a quorum is present, may remove any member of the Board of Directors with or without cause, other than a member appointed by the declarant.

- 3) Within 30 days after adoption of any proposed budget for the planned community, the Board of Directors may provide to all the lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board of Directors may set a date for a meeting of the lot owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice, There shall be no requirement that a quorum be present at the meeting, The budget is ratified unless at that meeting a majority of all the lot owners in the association or any larger vote specified in the declaration rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the lot owners shall be continued until such time as the lot owners ratify a subsequent budget proposed by the Board of Directors.
- 4) All members of the Board of Directors shall be property owners of Silver Creek. The Board of Directors shall elect the officers. The Board of Directors members and officers shall take office upon election.
- 5) The association may publish the names and addresses of all officers and board members of the association within 30 days of their election.

6.5. Board members to be in conformity with By-Laws and Restrictions.

As an example to all regular members of the Association, all members of the Board of Directors will be current on all dues and assessments at all times. All Board members shall be in conformity with these By-Laws and all Restrictions and Rules passed by the Board, Any member of the Board of Directors who is found to be delinquent on dues or assessments or in violation of the Restrictions shall be removed from the Board, unless that Director has either appealed his violation in accordance with these By-Laws or is in the process of bringing said violation of the Restrictions into conformity within a time frame that is satisfactory to the Board. While said appeal or violation is ongoing, the Board member in question shall have no vote on the Board.

## **Article VII**

### **Upkeep of Planned Community and Assessments for Damages**

- 1) Except as otherwise provided in the declaration, G.S. 47F-3-113(h) or subsection (2) of this section, the association is responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the lot owners as necessary to recover the costs of such maintenance, repair, or replacement except that the costs of maintenance, repair, or replacement of a limited common element shall be assessed as provided in G.S. 47F-3-115(c)(1). Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon. Each lot owner shall afford to the association access through the lot owner's lot reasonably necessary for any such maintenance, repair, or replacement activity.
- 2) If a lot owner is legally responsible for damage inflicted on any common element, the association may direct such lot owner to repair such damage, or the association may itself cause the repairs to be made and recover damages from the responsible lot owner.
- 3) If damage is inflicted on any lot by an agent of the association in the scope of the agent's activities as such agent, the association is liable to repair such damage or to reimburse the

lot owner for the cost of repairing such damages. The association shall also be liable for any losses to the lot owner.

- 4) When the claim under subsection (2) or (3) of this section is less than or equal to the jurisdictional amount established for small claims by G.S. 7A-210, any aggrieved party may request that a hearing be held before an adjudicatory panel appointed by the Board of Directors to determine if a lot owner is responsible for damages to any common element or the association is responsible for damages to any lot. If the Board of Directors fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the Board of Directors, 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. This panel may assess liability for each damage incident against each lot owner charged or against the association not in excess of the jurisdictional amount established for small claims by G.S. 7A-210. When the claim under subsection (2) or (3) of this section exceeds the jurisdictional amount established for small claims by G.S. 7A-210, liability of any lot owner charged or the association shall be determined as otherwise provided by law, Liabilities of lot owners determined by adjudicatory hearing or as otherwise provided by law shall be assessments secured by lien under G.S. 47F-3-116. Liabilities of the association determined by adjudicatory hearing or as otherwise provided by law may be offset by the lot owner against sums owing to the association and if so offset, shall reduce the amount of any lien of the association against the lot at issue.
- 5) The association shall not be liable for maintenance, repair, and all other expenses in connection with any real estate which has not been incorporated into the planned community.
- 6) For all new construction on a lot not owned by the association, a bond will be required to cover the potential cost of repair of roads and other common elements damaged by the construction or the construction workers. The Board will set the bond amount for the coming year for all new construction at the annual meeting, The Board may also set a bond for repair work and work that is other than new construction at its discretion. Said bond requirements for repair/other work will also be approved at the annual meeting.
- 7) The Association may assess some lot owners for the cost of the use and maintenance of limited common elements or areas in which only these lot owners benefit; e.g. the association's water system.

### **Article VIII**

#### **Procedures for Fines and Suspension of Privileges or Services**

- 1) A hearing shall be held before the Board of Directors or an adjudicatory panel appointed by the Board to determine if any lot owner should be fined or if planned community privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47F-3102(11) and (12). (See 6.3(11) and 6.3(12) above.)
- 2) Any adjudicatory panel appointed by the Board of Directors shall be composed of lot owners of the Silver Creek Community who are not officers or directors of the association's Board of Directors.
- 3) The lot owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision.
- 4) If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation. Without further hearing, another one hundred



dollars (\$100.00) fine may be imposed for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S, 47F-3-116.

5) If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

6) The lot owner may appeal the decision of an adjudicatory panel to the full Board of Directors by delivering written notice of appeal to the Board of Directors within 15 days after the date of the decision. The Board of Directors may affirm, vacate, or modify the prior decision of the adjudicatory body.

7) A lot owner who is delinquent on his annual dues or assessments shall be prohibited from using the Lodge and the pool. Notice of said delinquency shall be mailed to the lot owner. The notice shall state the amount due and that the lot owner or his or her family and guests may not use the pool or the Lodge until the lot owner's dues and assessments are paid in full. This paragraph does not apply to fines for violations of the By-Laws or other rules or regulations, which require both notice and a hearing.

## **Article IX** **Meetings**

### 1) ANNUAL MEETING:

- a. A meeting of the association shall be held at least once each year.
- b. Not less than 10 nor more than 60 days in advance of any meeting, the Secretary shall cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner.
- c. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.
- d. A simple majority of all eligible voters, either present or by proxy will pass any voting requirement except as stated elsewhere in these By-Laws.
- e. The meeting will be conducted using the following agenda as a guide:
  - i. President, call the meeting to order.
  - ii. Secretary, read previous minutes, announce number of eligible voters.
  - iii. Treasurer, financial report. iv. Old business.
  - v. New business. vi. Election of Officers.
  - vii. Adjournment.

### 2) BOARD OF DIRECTORS MEETING:

- a. Regular meetings of the Board of Directors will be held at the Lodge during the months of February, May through July, and October. The President will determine the dates at least thirty (30) days prior to the meeting day.
  - i. At regular intervals, the Board of Directors meeting shall provide lot owners an opportunity to attend a portion of an Board of Directors meeting and to speak to the Board of Directors about their issues or concerns. The Board of Directors may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.
- b. The meeting cannot be called to order unless a quorum of three (3) directors are present.
- c. The Secretary shall send a notice of each meeting to all members. d. The meeting will be conducted using the following agenda as a guide:

- i. Report by the President.
  - ii. Secretary, minutes of last meeting.
  - iii. Treasurer, financial report.
  - iv. Committee reports.
  - v. Old business.
  - vi. New business.
  - vii. Adjournment.
- 3) Except as otherwise provided in the bylaws, meetings of the association and the Board of Directors shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.

## **Article X**

### **Quorums**

- 1) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast ten percent (10%) of the votes which may be cast for election of the Board of Directors are present in person or by proxy at the beginning of the meeting.
- 2) A quorum is deemed present throughout any meeting of the Board of Directors if persons emailed to cast fifty percent (50%) of the votes on that board are present at the beginning of the meeting.
- 3) In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. The quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjusted for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

## **Article XI**

### **Board of Directors**

#### **POWERS AND DUTIES:**

- 1) The Powers of the Board of Directors shall include calling Special Meetings of the Association's members. See Section 6.3 herein for additional powers of the Board. Special meetings shall be held when ten (10) members duly petition in writing for same or whenever three (3) Directors make such a request.
  - a. Special meeting notices shall be mailed by the Secretary not later than fifteen (15) days after receipt of the request.
    - i. Meetings shall be held within four (4) weeks of the request.
  - b. The Board of Directors shall appoint all officers and employees of the Association and shall prescribe their duties (except where delineated elsewhere in the By-Laws), fix compensation and benefits, subject to the approval of the members voting at the next Business Meeting.
    - i. Bonding shall be required by the Association for the President, Treasurer, and any other officer or employee engaged in the financial affairs of the Association.

- c. The Board shall recommend any special assessments, initiation fees, dues, or other charges to the next Business Meeting of the membership for its approval, and in the event of same shall take the necessary steps to collect same.
  - d. The Board shall establish rules and enforce same for the use of common areas and ~~or~~ property held by the Association by members and their guests.
    - i. All rules and changes thereof shall be mailed by the Secretary of the Association to all existing members and any new members (upon receipt of notice of new ownership).
    - ii. Rules of the Association and any changes thereof must be approved by the membership during the next meeting after such promulgation.
  - e. The Board shall carry out all decisions arising from the annual Business Meeting and ~~or~~ special called meetings of Association members.
- 2) The Duties of the Board of Directors shall include, but not be limited to:
- a. Supervising all officers, employees and committees of the Association. The Board may require officers, employees and committees to submit monthly reports.
  - b. Causing all financial statements and budgets to be properly prepared and issued to the Association membership in advance of the Annual Meetings of the owners.
    - i. The Board shall have an annual financial report prepared and mailed to each member for the year ending showing detailed income and expenditures in advance of the Annual Meeting.
    - ii. The Board shall have a projected budget for the upcoming year ready for discussion and vote by the membership at same.
  - c. Causing to be properly maintained by members (and other parties), a complete record of all its acts and the corporate affairs of the Association. The above record shall be prepared by the Association Secretary in an annual business report to be mailed to each member prior to the Annual Meeting.
  - d. Authorizing any officer, officers, or agent to enter into a contract or other legal instrument in the name of the corporation.

## **Article XII**

### **Officers**

Section I. The officers of the Association shall be as outlined in Article VI, Section 1.

Section 2. The President shall preside over all meetings of the Association membership; shall see to it that orders and resolutions of membership and the Board of Directors are carried out; shall be a signatory to all bank accounts; and shall sign all legal documents of the Association.

Section 3. The Vice-President shall perform all the duties of the President in the President's absence.

Section 4. The Secretary shall record all votes during Director's meetings and meetings of the members; shall keep an accurate record of minutes of such meetings; shall maintain and attend to all correspondence addressed to the Association; shall cause to be kept and accurately maintain the membership mailing lists; shall be responsible for sending out notices of dues to the members of the association.

Section 5. The Treasurer shall be responsible for insuring that all monies of the Association are received and deposited in the necessary bank accounts; shall cause to be maintained an accurate record of all receipts and disbursements of the Association; shall be signatory on all bank accounts and see to it that funds are disbursed according to the direction of the Board of Directors; shall cause to be maintained an accurate list of delinquent members in payment of dues, assessments, and other charges set by the Board of Directors.

### **Article XIII** **Committees**

- 1) The following shall be considered permanent committees of the Association;
  - a. By-Laws
  - b. Finance
  - c. Roads and Maintenance
  - d. Architectural
  - e. Security
  - f. Annual Auditing Committee
- 2) Committees shall be composed of Association members.
- 3) The Board of Directors shall have the power to re-constitute any committee as well as establish new committees and accept volunteers or appoint members to serve on same.
- 4) FINANCE COMMITTEE shall be composed of at least one (1) Association member and the Treasurer. The Committee shall prepare the annual budget, make quarterly reports on income and disbursements, and prepare and issue the annual financial statement to all Association members.
  - a. The Committee shall also cause to have the records of the Association audited on an annual basis by the Annual Auditing Committee and such report shall be made a part of the Annual Financial Report.
- 5) ROADS AND MAINTENANCE COMMITTEE shall oversee all maintenance of the Association common areas including, but not limited to, the Lodge, swimming pool, and cabana.
  - a. The Committee shall cause the above 10 he maintained by Association staff or outside contractors with the approval of the Board of Directors.
  - b. The Committee shall cause all roads within Silver Creek Community to be constructed, improved, or maintained for the benefit of members and guests.
- 6) ARCHITECTURAL COMMITTEE shall receive and approve all plans for construction of new houses, renovation (or modification of existing houses) and landscaping. The Committee shall meet, as required by the Declaration of Restrictions, for the consideration of submitted plans.
  - a. All dues and assessments must be paid and up-to-date prior to the submission of plans.
  - b. After deliberation, the committee shall forward the copy of the plans with its recommendation(s) to the Board of Directors for approval by a simple majority vote.
  - c. The committee shall insure that all plans submitted conform to "THE DECLARATION OF RESTRICTIONS OF SILVER CREEK SPRINGS" as filed at Deed Book 679, at Page 578 in the Register of Deeds of Burke County, North Carolina, prior to submission to the Board for approval.
  - d. The members of the Committee shall not be members of the Board of Directors.
  - e. The Committee shall bring to tile attention of the Board any member who is not in compliance with any portion of the Declaration of Restrictions mentioned above.

- i. The Board, or an adjudicatory panel appointed by the Board, after appropriate notice and hearing as prescribed herein, may levy a fine pursuant to Article VIII, Procedures for Fines, etc., to any member for any condition, situation or use of their property not in conformity with the aforementioned Declaration of Restrictions that may exist on the member's lot.
  - ii. The Board may, at its option, give the member thirty (30) days to correct the nonconformity, prior to levying a fine.
  - iii. If the non-conformity continues for more than seven (7) days after notice is given by the committee, the Association may take all appropriate legal action to insure the non-conformity is corrected.
- 7) SECURITY COMMITTEE shall make recommendations to the Board regarding security and methods used thereof for the development of Silver Creek Community.

#### **Article XIV** **Dues and Maintenance Fees**

The Association shall each year, at the Annual Meeting, set the annual dues and/or maintenance fees and they shall be binding on all property owners. Non-payment shall constitute a lien against the property on which the assessment is made and possible foreclosure for default of payment. The Association shall have the right to vary the charges or dues between improved property (lots upon which a residence has been constructed) and unimproved property.

#### **Article XV** **Amendments to By-Laws**

Any proposed amendments to these By-Laws shall be brought to the floor at the Annual Meeting of the Association where a full discussion shall take place prior to a vote by the members. A three-quarter (3/4) majority of members present and voting or voting by proxy shall be necessary for the adoption of any amendments.

#### **Article XVI** **Conveyance or Encumbrance of Common Elements**

- 1) Portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least eighty percent (80%) of the votes in the association agree in writing to that action; provided that all the owners of lots to which any limited common element is allocated shall agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all the lots are restricted exclusively to nonresidential uses. Distribution of proceeds of the sale of a limited common element shall be as provided by agreement between the lot owners to which it is allocated and the association. Proceeds of the sale or financing of a common element (other than a limited common element) shall be an asset of the association.
- 2) The association, on behalf of the lot owners, may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsection (a) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, free and clear of any interest of any lot owner or the association in or to the

common element conveyed or encumbered, including the power to execute deeds or other instruments.

- 3) Any purported conveyance, encumbrance, or other voluntary transfer of common elements, unless made pursuant to this section is void.
- 4) No conveyance or encumbrance of common elements pursuant to this section may deprive any lot of its rights of access and support.

## **Article XVII**

### **Insurance**

- 1) The association shall maintain, to the extent reasonably available:
  - a. Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and
  - b. Liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.
- 2) If the insurance described in subsection (I) of this section is not reasonably available or becomes unavailable, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all lot owners. The association may carry any other insurance it deems appropriate to protect the association or the lot owners.
- 3) Insurance policies carried pursuant to subsection (I) of this section shall provide that:
  - a. Each lot owner is an insured person under the policy to the extent of the lot owner's insurable interest;
  - b. The insurer waives its right to subrogation under the policy against any lot owner or member of the lot owner's household;
  - c. No act or omission by any lot owner, unless acting within the scope of the owner's authority on behalf of the association, will preclude recovery under the policy; and
  - d. If, at the time of a loss under the policy, there is other insurance in the name of a lot owner covering the same risk covered by the policy, the association's policy provides primary insurance.
- 4) Any loss covered by the property policy under subdivision (1)(a) of this section shall be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for lot owners and lienholders as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged property, and lot owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the planned community is terminated.
- 5) An insurance policy issued to the association does not prevent a lot owner from obtaining insurance for the lot owner's own benefit.
- 6) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any lot owner,

mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each lot owner, and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

- 7) Any portion of the planned community for which insurance is required under subdivision (1)(a) of this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless (i) the planned community is terminated, (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (iii) the lot owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of owners assigned to the limited common elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If any portion of the planned community is not repaired or replaced, (i) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the planned community, (ii) the insurance proceeds attributable to limited common elements which are not rebuilt shall be distributed to the owners of the lots to which those limited common elements were allocated, or to lienholders, as their interests may appear, and (iii) the remainder of the proceeds shall be distributed to all the lot owners or lienholders, as their interests may appear, in proportion to the common expense liabilities of all the lots. Notwithstanding the provisions of this subsection, G.S. 47F-2-118 (termination of the planned community) governs the distribution of insurance proceeds if the planned community is terminated.

### **Article XVIII** **Surplus Funds**

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses, the funding of a reasonable operating expense surplus, and any prepayment of reserves may, at the Board of Directors' discretion, be paid to the lot owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

### **Article XIX** **Assessments for Common Expenses**

- 1) Assessments shall be made at least annually.
- 2) Except for assessments under subsections (3), (4), and (5) of this section, all common expenses shall be assessed against all the lots in accordance with the allocations set forth in the declaration. Any past-due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding eighteen percent (18 %) per year.
- 3) Limited common areas and elements:
  - a. Any common expense associated with the maintenance, repair, or replacement of a limited common element or area shall be assessed against the lots to which that limited common element or area is assigned, equally, or in any other proportion that the Board decides;
  - b. Any common expense or portion thereof benefiting fewer than all of the lots shall be assessed exclusively against the lots benefited; and

- c. The costs of insurance shall be assessed in proportion to risk and the costs of utilities shall be assessed in proportion to usage.
- 4) Assessments to pay a judgment against the association may be made only against the lots in the planned community at the time the judgment was entered, in proportion to their common expense liabilities.
- 5) If any common expense is caused by the negligence or misconduct of any lot owner or occupant, the association may assess that expense exclusively against that lot owner or occupant's lot.
- 6) Annual dues and/or maintenance fees are due on January 1st and are delinquent after March 31st of each calendar year, Payment of annual dues and/or maintenance fees can be paid annually or quarterly.

**Article XX**  
**Lien for Assessments**

- 1) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the Clerk of Superior Court of Burke County, North Carolina, in the manner provided herein. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. Except as provided in subsections (l)(a) and (l)(b) of this section, the association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.
  - a. The association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter I. of the General Statutes.
  - b. The association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration. Any lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter I of the General Statutes.
- 2) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.
- 3) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.
- 4) This section does not prohibit other actions to recover the sums for which subsection (l) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.
- 5) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period



following notice as required in subsection (5)(a) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars (\$1,200), not including costs or expenses incurred, The collection of debt and enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or to proceedings authorized under subsection (4) of this section or G.S. 47F-3-120.

- a. A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the lot owner in the association's records, The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (5)(b) of this section and shall provide the name and telephone number of the representative.
- b. The association, acting through its Board of Directors and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments, Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule, Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the lot owner has been given notice as required in subsection (5)(a) of this section.
- 6) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.
- 7) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed.

## **Article XXI**

### **Association Records**

- 1) The association shall keep sufficiently detailed financial records. All financial and other records, including records of meetings of the association and Board of Directors, shall be made reasonably available for examination by any lot owner and the lot owner's authorized agents as required in the bylaws and Chapter 55A of the General Statutes. The association shall keep accurate records of all cash receipts and expenditures and an assets and liabilities. In addition to any specific information that is required by the Board, the

association shall make an annual income and expense statement and balance sheet available to all lot owners at no charge and within 75 days after the close of the fiscal year to which the information relates. A more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the Board of Directors or by the affirmative vote of a majority of the lot owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

- 2) The association, upon written request, shall furnish to a lot owner or the lot owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a lot. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the Board of Directors, and every lot owner.
- 3) In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no financial payments, including payments made in the form of goods and services, may be made to any officer or member of the association's Board of Directors or to a business, business associate, or relative of an officer or member of the Board of Directors, except as expressly provided for in these By-Laws or in payments for services or expenses paid on behalf of the association which are approved in advance by the Board of Directors.

## **Article XII**

### **Applicability of the Planned Community Act**

Unless specifically indicated to the contrary in this declaration, all of the sections of the North Carolina Planned Community Act, Chapter 47F, shall apply to Silver Creek Community and the association and its members, and is incorporated herein by reference

## **Article XXIII**

### **Amendments to the By-Laws**

Any proposed amendments to these By-Laws shall be brought to the floor at the Annual Meeting of the Association where a full discussion shall take place prior to a vote by the members. A three-quarter majority of members present and voting or voting by proxy shall be necessary for the adoption of any amendments.

- 1) Except in cases of amendments that may be executed by certain lot owners under G.S. 47F-2-118(b) (Termination of planned community), the declaration may be amended only by affirmative vote or written agreement signed by lot owners of lots to which at least seventy-five percent (75%) of the votes in the association are allocated.
- 2) No action to challenge the validity of an amendment adopted pursuant to this section may be brought more than one year after the amendment is recorded.
- 3) Every amendment to the declaration shall be recorded in Burke County and is effective only upon recordation. An amendment shall be indexed in the Grantee index in the name of the planned community and the association and in the Grantor index in the name of each person executing the amendment.
- 4) Amendments to the By-Laws shall be prepared, executed, recorded, and certified in accordance with G.S. 47-41.

The above Constitution and By-Laws of this corporation are adopted at the General Membership meeting held on the 28<sup>th</sup> day of October, 2006. All earlier By-Laws and Amendments to the By-Laws of the corporation are hereby replaced, canceled, and superseded by these By-laws.

\_\_\_\_\_  
(Vice) President

\_\_\_\_\_  
Secretary

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, Notary Public for said County and State, certify that Juanita Lee personally came before me this day and acknowledged that she is the Secretary of Silver Creek Community Property Owners Association, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its (Vice) President, sealed with its corporate seal, and attested by her as its Secretary.

Witness my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

My commission expires: