

# HAWTHORN HILLS PROPERTY OWNERS ASSOCIATION BY-LAWS

Hendersonville, North Carolina April 6, 1999

The purpose and function of this Association is to promote cooperation among owners of property in Hawthorn Hills, to protect the interests of the Association and its members from adverse external interest or conditions, to deal with common problems, to maintain the quality of life in the subdivision, and to provide for maintenance of certain common facilities.

## ARTICLE I

### NAME

1.1. The name of this association is Hawthorn Hills Property Owners Association, Inc., hereafter referred to as the "Association."

## ARTICLE II

### DEFINITIONS

2.1. "Association" shall mean and refer to Hawthorn Hills Property Owners Association and its successors.

2.2. "Property" or "Properties" shall mean and refer to that real property shown on plots recorded from time to time in the Office of Register of deeds of Henderson County labeled or identified as Hawthorn Hills and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

2.3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and various easements (e.g. surface water drainage easement) existing for the common benefit of Owners, which easements are maintained by the Association.

2.4. "Developer" is Browning Enterprises, Inc., or any person or entity to which it may assign its development rights by written instrument.

2.5. "Excluded Lots" are those parcels established in accordance with provisions of the protective covenants of the subdivision.

2.6. "Lot" shall mean and refer to any lot, numbered or unnumbered, shown on any recorded subdivision map of the Properties with the exception of the Common Areas.

2.7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot which is a part of the subdivision, but excluding those parties having such interest merely as security for the performance of an obligation.

**2.8. “Protective Covenants”** shall refer to the Protective Covenants and Easements for Hawthorn Hills Subdivision recorded in the Office of Register of deeds of Henderson County in Book 824 at Page 629, as lawfully amended from time to time, including the restated and amended protective covenants dated April 23, 1999 and recorded in the Office of Register of deeds of Henderson County in Book 994 at Page No. 646.

**2.9. “Member”** shall mean and refer to those persons entitled to membership as provided in the By-Laws.

### **ARTICLE III MEMBERSHIP**

**3.1. Membership Defined** - The owner or joint owners of a lot in Hawthorn Hills Subdivision, whether an individual, partnership, corporation, or otherwise, shall automatically be members of the Association. No matter how any lot is owned, there shall be only one vote per lot in the Association.

**3.2. Duration of Membership** - A member shall continue to belong to the Association as long as he/she remains the owner of a lot(s) in Hawthorn Hills Subdivision. Divesting of the owner’s title shall constitute the consent and conveyance of membership in the Association by the owner without further compensation by the Association for any interest in the assets of the Association.

**3.3. Voting Privileges** - Each member of the Association in good standing shall be entitled to one (1) vote for each lot owned in the Hawthorn Hills Subdivision, except the Developer shall have no vote for an excluded lot.

**3.4. Responsibilities** - The members of the Association shall elect the members of the Board of Directors; shall give general lines of direction to the Board by receiving and acting on reports received from the Board; and shall have the sole power to amend the By-Laws.

### **ARTICLE IV MEETINGS**

**4.1. Annual Meeting** - An annual meeting of members shall be held for the purpose of electing directors, reviewing the annual report, approving the annual budget, establishing the annual dues, and for the transaction of other business as may come before the meeting.

**4.2. Special Meetings** - Special meetings of the members for any purpose may be called by the President or the Board of Directors or by the written request of one-half (1/2) of the members entitled to vote at the meeting. A special meeting shall be held in the place designated in the notice of such meeting. Only business mentioned in the call of a special meeting may be transacted.

**4.3. Notice of Meetings** - Written notice stating the date, place and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) days before the date of the meeting either personally or by mail by or at the direction of the President, Secretary or other officer or person calling the meeting, to each member entitled to vote at such meeting. If mailed, notice shall be deemed to be delivered when deposited in the United States Mail addressed to a member at his/her address last listed with the Association as official address of the owner with postage thereon prepaid.

**4.4. Quorum** - A Quorum shall consist of at least one-half (1/2) of the membership in good standing at the time of the meeting. The presence of a member by approved written proxy shall be considered in determining if a quorum exists.

**4.5. Proxies** - When a member's presence at meetings is prevented because of unavoidable circumstances, e.g. illness or travel distance, written proxies may be submitted to the Secretary of the Association. The Secretary's discretion shall prevail for acceptance of such proxies. The Board of Directors shall approve a proxy form, which shall be used exclusively.

**4.6. Procedure of Meeting** - Robert's Rules of Order, latest edition, shall be the governing parliamentary law of the Association except as otherwise provided in the By-Laws.

**4.7. Meeting Place** - Meetings of members and/or directors may be held at such places within Henderson County as may be designated by the Board of Directors.

## **ARTICLE V**

### **POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

**5.1. Powers** - The Board of Directors shall have power to:

5.1.1. Adopt and publish rules and regulations governing the use of the Common Area and facilities.

5.1.2. Suspend the voting rights of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association.

5.1.3. Exercise for the Association all powers, duties and authority vested in or delegated to this Association.

5.1.4. Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.

**5.2. Duties** - It shall be the duty of the Board of Directors to:

5.2.1. Cause to be kept a complete record of all its acts and Association affairs.

5.2.2. Supervise all officers, agents and employees of the Association.

5.2.3. As more fully provided in the By-Laws of the Association to:

5.2.3.1. Fix the amount of the annual assessment against each lot.

5.2.3.2. Send written notice of each assessment to every owner.

5.2.3.3. Take appropriate action (including the institution and pursuit of legal remedies) to collect assessments.

5.2.4. Issue upon demand by any person, a certificate setting forth whether or not any assessment has been paid. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

5.2.5. Procure and maintain adequate liability insurance on behalf of the Association, its members, the Board of Directors, and the officers.

5.2.6. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.

5.2.7. Cause the Common Area to be maintained.

5.2.8. Notify property owners when Article IV, Item 12 of the Covenants (grass and weed control), has been violated and allow the property owner fourteen (14) days to correct the situation.

## **ARTICLE VI DIRECTORS**

**6.1. Description of the Board** - There shall be a Board of Directors consisting of five (5) members of the Association, no one of whom may be related by blood or marriage to another member. The terms of the Directors shall be for three (3) years, except that they shall be elected in such a way that the terms of no more than three (3) Directors expire in any one year. Directors will be elected at the annual meeting each year for candidates nominated by a nominating committee appointed by the President and/or by nominations from the floor. All Directors must be, and remain, members in good standing of the Association whose primary residence is in Hawthorn Hills.

**6.2. Directors' Liability** - No Director shall have any personal liability arising out of an action whether by or in the right of the Association or otherwise for monetary damages for breach of his or her duty as a Director; provided, however, that the foregoing shall not limit or eliminate the personal liability of a Director with respect to acts or omissions not made in good faith that such Director at the time of such breach knew or believed were in conflict with the best interests of the Corporation or were for improper personal benefit.

- 6.3. Committees** - The Board of Directors may from time to time establish committees to assist in the carrying out of the purposes of the Association.
- 6.4. Meetings** - The Board of Directors shall meet no less than two (2) times during the year. Special meetings may be called by or at the request of the President or any two Directors.
- 6.5. Notice of Meetings** - Notice of any meeting shall be given by oral or written notice delivered personally, by telephone or mailed to each Director at his/her business or home addresses at least seventy-two (72) hours prior to the meeting. The required notice for a meeting of the Board of Directors may be waived by the unanimous consent of the Directors given verbally or in writing.
- 6.6. Quorum** - A majority of the number of Directors shall constitute a quorum of the transaction of business at any meeting of the Board of Directors.
- 6.7. Conduct of Meeting** - The President, or in his/her absence, the Vice-President, or in their absence, any Director chosen by the Directors present shall call a meeting of the Board of Directors to order and shall act as chair of the meeting. The Secretary of the Association shall act as secretary of all meetings of the Board of Directors. In the absence of the Secretary, the Presiding Officer may appoint any other person present to act as Secretary of the meeting.
- 6.8. Vacancies** - Any vacancy occurring in the Board of Directors may be filled until the next annual meeting by the Directors then in office. All vacancies shall be filled in a manner consistent with North Carolina General Statute 55-A-21.
- 6.9. Removal** - Any Director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a Director, his successor shall be selected by the remaining members of the Board and shall serve until the next annual meeting.
- 6.10. Compensation** - No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for pre-authorized expenses incurred in the performance of his duties.
- 6.11. Action Taken Without a Meeting** - The Directors shall have the right to take any action in the absence of a meeting, which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.
- 6.12. Election** - Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the By-Laws of the Association. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## **ARTICLE VII OFFICERS**

**7.1. Selection** - Officers of the Association will be selected by and from the Board of Directors within ten (10) days after the election of Directors has been held. Officers shall serve during the ensuing year. The officers shall consist of President, Vice-President, Secretary, and Treasurer.

### **7.2. Duties**

7.2.1. The **President** shall be the Chief Executive Officer and preside at all meetings, appoint committees, represent the Association in matters with the community, and sign documents on behalf of the Association.

7.2.2. The **Vice-President** shall assist the President in his/her duties and preside in the President's absence.

7.2.3. The **Secretary** shall keep minutes of all meetings of the Association and of the Board of Directors, and shall keep in a safe and orderly manner all documents and correspondence of the Association and make distribution of minutes within thirty (30) days to all members in good standing.

7.2.4. The **Treasurer** shall collect all dues and other income of the Association, make disbursements as authorized by the Board of Directors and be accountable for the funds of the Association. The Treasurer shall keep up-to-date records of the Association's finances as well as a record of the membership in good standing and the votes each may exercise. All disbursement of the Association funds shall be by bank check, signed by the Treasurer or Assistant Treasurer and co-signed by the President or Vice-President of the Association

**7.3. Requirements** - All officers must be members of the Association, in good standing, and whose primary residences are in Hawthorn Hills.

**7.4. Officers' Liability** - No officer shall have personal liability arising out of an action whether by or in the right of the Association or otherwise for monetary damages for breach of his or her duty as an officer: provided, however, that the foregoing shall not limit or eliminate the personal liability of an officer with respect to acts or omissions not made in good faith that such officer at the time of such breach knew or believed were in conflict with the best interests of the Association or any transaction from which such Director derived an improper personal benefit.

**7.5. Removal** - Any officer may be removed by a majority vote of the Board of Directors whenever in its judgment the best interest of the Association shall be served.

**7.6. Vacancies** - A vacancy in any office shall be filled by the Board of Directors for the unexpired portion of the term.

## **ARTICLE VIII**

### **FINANCIAL MATTERS**

**8.1. Fiscal Year** - The fiscal year of the Association shall be January 1st through December 31st of each year.

**8.2. Budget Selection** - The Board of Directors shall prepare a budget for presentation at the annual meeting of the Association. This budget shall reflect the entire range of costs incurred by the Association to carry out its obligations. These costs shall include, but not be limited to, establishment of a contingency fund, payment of taxes; insurance, maintenance of roads and rights of way (if applicable), repair, replacement and additions to the improvements made upon the land held in common, and organizational expenses. Copies of the proposed subsequent year's budget shall be mailed or delivered to members with notice of the annual meeting.

**8.3. Annual Assessment Selection** - Upon adoption of the budget, each member shall be assessed on the basis of one share per lot, of the entire budget, except as modified by the Protective Covenants. A statement indicating the amount of the assessment shall be mailed to each member within thirty (30) days after the annual meeting. The assessment will be due and payable in full within 30 days of the statement date.

**8.4. Special Assessment Selection** - A special assessment may be levied by the Association for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement upon the common area if consented to by a two-thirds (2/3) majority of the members of the Association. Special assessments shall be due and payable 90 days after the required affirmative vote of the members of the Association. Special assessments shall be approved at a meeting of the Association.

**8.5. Unpaid Assessments Selection** - If assessments are not paid within thirty (30) days of the due date, such assessment shall become delinquent and shall, together with interest thereon and cost of collection thereof as hereinafter provided, become a continuing charge on the property which shall bind such property in the hands of the then owner, his/her heirs, devisees, personal representatives and assignees. Such assessment shall also be the personal obligation of the owner of the lot at the time said assessment becomes delinquent, and shall remain his/her personal obligation for the statutory period.

**8.6.** If the assessment is not paid within the 30 days after the due date, the assessment shall bear interest from the date of delinquency at a rate of eight percent per annum. The Association may bring an action at law against the owner personally obligated to pay the same and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment, the cost of preparing and filing the complaint in such action and a reasonable Attorney's fee to be fixed by the court together with the costs of the action.

**8.7. Loss of Voting Privileges** - Failure to pay assessments within thirty (30) days after due date shall automatically suspend the voting privilege until such assessments are paid.

**8.8. Review of Records** - The books and records of the Treasurer shall be reviewed by a committee appointed by the President prior to the annual meeting and the review results shall be presented at the meeting.