

**BY-LAWS OF
FERNBROOK HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I
NAME AND LOCATION**

The name of the Corporation is FERNBROOK HOMEOWNERS ASSOCIATION, INC. (hereinafter referred to as the “Association”). The mailing address of the corporation shall be Post Office Box 5212, Williamsburg, VA 23188. The meetings of members and the Board of Directors may be held at such places within the Commonwealth of Virginia as may designated by the Board of Directors.

**ARTICLE II
DEFINITIONS**

Section 1. “Association” shall mean and refer to the FERNBROOK HOMEOWNERS ASSOCIATION, INC., its successors and assignees.

Section 2. “Owner” shall mean and refer to the record owner, whether one (1) or more persons or entities, of a fee simple title to any lot that is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. “Properties” shall mean and refer to all of the land within the Fernbrook Subdivision, shown on the plats of the Fernbrook Subdivision, Phases I, II and III, Williamsburg, Virginia, and all other property, which may be annexed pursuant to the Annexation provisions, set forth hereafter.

Section 4. “Common Area” shall mean the area identified as common area, open space and conservation areas of the subdivision plats of Fernbrook Subdivision, Phases I, II and III, and also shall mean and refer to the onsite Best Management Practices (“BMP”) acres and the runoff control facilities and vegetation located therein, together with any easements for access.

Section 5. “Lot” shall mean and refer to all of the lots in Phases I, II and III of the Fernbrook Subdivision intended for the purpose of constructing residential homes thereon, as shown in the subdivision plats I and II; “Lot,” as used herein, is intended to refer to residential lots and not any Common Area.

Section 6. “Mortgage” as used herein shall mean a mortgage or deed of trust, said terms having the same meaning and may be used interchangeably.

Section 7. “Board of Directors” shall mean the members duly elected.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot in the Fernbrook Subdivision, Phases I, II and III, Williamsburg, Virginia, shall be a member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of any obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

Section 2 Suspension of Membership. During any period in which a member shall be in default in payment of an annual or special assessment levied by the Association, the Board of Directors may suspend the voting rights of such member until such assessment has been paid.

Section 3. Voting Membership. The Association shall have one (1) class of voting membership. Members shall be all Owners of Lots and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot(s) shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

ARTICLE IV
PROPERTY RIGHTS, RIGHTS OF ENJOYMENT

All members shall be entitled to the use of the Common Area.

ARTICLE V
BOARD OF DIRECTORS, SELECTION, TERM OF OFFICE

Section 1 Number. The affairs of this Association shall be managed by a Board of Directors of three (3) to five (5) persons, who must be members of the Association. The number of Directors may be changed by amendment of the By-Laws of the Association, but may not be enlarged to more than five (5) directors. The names and addresses of the persons who are members of the Board of Directors are published annually in the Neighborhood Directory and on the web site (www.fernbrook.net).

Section 2. Election At each annual meeting, the members shall elect a designated member to fill any vacancy on the Board of Directors. New directors shall serve for a term of three (3) years.

Section 3. 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 of Directors and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties upon submission of a bona fide receipt.

Section 5. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting that 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.

ARTICLE VI MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at such time and place as may be fixed from time to time by resolution of the Board.

Section 2. Special Meetings. Special meetings of the Board of Directors may be held when called by the President or any director of the Association or at a time and place to be announced.

Section 3. Quorum. A majority of the Directors shall constitute a quorum for the transaction of business. Each act or decision made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII ELECTION OF DIRECTORS

Section 1. Nominations. Names of potential Board Members are to be submitted to the Board of Directors prior to the annual Board Meeting. The Board will present the slate to the members of the Association at the annual meeting. Nominations from the floor shall be presented with the slate to be voted upon by the members.

Section 2. Elections. Election to the Board of Directors shall be by "show of hands". If a secret written ballot is requested by a majority of those present at the annual meeting, the secretary shall arrange for such ballot. At the election the member or his proxy may cast, with respect to each vacancy, as many votes as he is entitled to exercise under the provisions of the Declaration. The Persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VIII
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have the power to:

(a) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the Membership by other provisions of these By-Laws, the Articles of Incorporation or the Declaration;

(b) 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; and

(c) employ a manager, independent contractor or such other employees as they deem necessary and to outline their duties and compensation.

Section. 2. Duties. It shall be the duties of the Board of Directors to:

(a) cause to be kept a complete record of all its actions and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting when such statement is requested in writing by one-fourth (1/4) of those members who are entitled to vote;

(b) supervise all officers, agents and employees of this Association and to see that their duties are properly performed;

(c) as more fully provided herein and in the Declaration, to:

(1) fix the amount of the annual assessment against each improved lot at least thirty (30) days in advance of each annual assessment period. "Improved" is defined as having a home built upon the lot. The Board of Directors is to ensure that an adequate reserve fund for replacement of the Association's property is established and funded as provided for in Article XII (Assessments) of these By Laws, and to:

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period;

(d) issue, or cause an appropriate officer to issue upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states that an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance coverage on insurable Association property on a current replacement cost basis in an amount not less than one hundred percent (100%) of any insurable value (based on current replacement costs). Hazard insurance proceeds for loss to any Association property shall be used only for repair, replacement or reconstruction of such improvements;

(f) cause all officers or employees having fiscal responsibility to be bonded, as it may deem appropriate;

(g) cause the Common Area, except as otherwise stated in the Declaration, to be maintained; and

ARTICLE IX COMMITTEES

Section 1. The Board of Directors may appoint other committees as deemed appropriate in carry out its purposes, such as;

(a.) a Maintenance Committee, that shall advise the Board of Directors on all matters pertaining to the maintenance, repair of improvement of the Properties and shall perform such other functions as the Board, in its discretion, determines; and

(b) an Architectural Review Committee, that shall review all member requests for structural changes contemplated for their lot, or for any satellite dish, pools, fence, appurtenance, or any other modifications to the existing building or property.

Section 2. It shall be the duty of each Committee to receive complaints from Members on any matter involving Association functions, duties and activities within its field of responsibility. Each Committee shall dispose of such complaints, as it deems appropriate or refer them to such other Committee, Director or officer of the Association as its further concerned with the matter presented.

ARTICLE X MEETINGS OF MEMBERS

Section 1. Annual Meetings. A formal meeting open to all members of the Association shall be held annually on a date designated by the Board of Directors.

Section 2 Special Meetings. Special meetings open to all members may be called at any time by the President of the Board of Directors or upon written request by a minimum of twenty-five (25%) of the members who are entitled to vote.

Section 3. Notice of Meeting

(a) Notice of each annual meeting of the members shall be given by, or at the direction of the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least thirty (30) days before such meeting to each member entitled to vote and addressed to the member's address last appearing on the books of the Association or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting.

(b) In the case of a special meeting, notice of the meeting shall be given by, or At the direction of the secretary or person authorized to call the meeting, by mailing a copy of such notice, posted prepaid, at least fifteen (15) days before such meeting to each member entitled to vote and addressed to the member's address last appearing on the books of the Association or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, as well as the purpose of the special meeting.

Section 4 Quorum The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one tenth (1/10) of the votes of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or represented.

Section 5. Proxies At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

ARTICLE XI
OFFICERS AND THEIR DUTIES

Section 1 Enumeration of Offices. The officers of this Association shall be a President, Vice President, Secretary, and Treasurer. who shall at all times be members of the Board of Directors. Other officers of the Board may be created by resolution.

Section 2 Election of Officers The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3 Term The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner die, resign or shall be removed or be otherwise disqualified to serve. No officer may serve for a period of more than three (3) consecutive terms in any one capacity.

Section 4. Special Appointments The Board may appoint an ad hoc committee such other officers as the affairs of the Association may require, each of whom shall hold office for a period of time and have such authority to perform such duties as the Board may from time to time determine..

Section 5. Resignation and Removal Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time, giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies A vacancy in any office may be filled in the manner prescribed for regular election. The officer selected to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7 Multiple Offices The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8 Duties The duties of the officers are as follows:

(a) President The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall co-sign with the treasurer all leases, mortgages, deeds and other written legal instruments of the Association. Either the president or the treasurer is authorized to sign all checks. A person other than himself or herself shall sign any reimbursement check to either the president or the treasurer. No mortgage or debt of the Association shall be undertaken without a vote of twenty-five (25) percent of the membership at either a regular annual meeting or a specially called meeting of the membership. Routine maintenance contracts may be entered into by a majority vote of the Board and without a vote of membership.

(b) Vice President The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall discharge such other duties as may be required of him by the Board.

(c) Secretary The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members, shall serve notice of meetings of the Board to the members, shall keep appropriate current records showing the members of the Association together with their addresses, and shall provide written notification to the first mortgagee of any default by the mortgagor member in the performance of such mortgagor's obligations under the Declaration of Covenants, Conditions and Restrictions governing the properties, the Articles of Incorporation of the Association or these By-Laws, that is not cured within thirty (30) days. The secretary also shall provide to the mortgagee status of a member's obligations upon receipt of a request for such information by such first mortgagees.

(d) Treasurer The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors shall co-sign with the president all leases, mortgages, deeds or other written instruments of the Association with the exception of checks, which may be signed by either the president or the treasurer. The treasurer shall keep proper books of accounts, and shall cause a periodic audit of the Association books as called for by the Board of Directors. Said audit is to be made by a qualified accountant at the completion of the fiscal year in which the audit is called. The results of the completed audit shall be published for the membership. The treasurer also shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and delivers a copy of each to the members. Certain duties, as determined by the Board, may be delegated to a hired bookkeeper, who is engaged for such purpose.

ARTICLE XII ASSESSMENTS

Section 1 Creation of the Lien and Personal Obligation of General Assessments. An Owner for each improved Lot owned within the properties, hereby covenants and accepts a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association as general assessments the following:

- (a) general annual assessment or charges; and
- (b) general special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The general annual and general special assessments, together with interest, costs and reasonable attorneys' fees, shall be charged on the land and shall be a continuing lien upon the property against which each such assessment is made in accordance with the Virginia Property Owner's Association Act, being Sections 55-508, *et seq.*, of the Code of Virginia, 1950, as amended (the "Act"). Each such assessment, together with interest, costs and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them.

Section 2 Purpose of General Assessments. The general assessments levied by the Association shall be used exclusively for the improvements and maintenance of the Common Area and to provide for such adequate reserve funds for the repair and replacement of improvements in the Common Area as the Board of Directors may deem appropriate from time to time.

Section 3 Maximum General Annual Assessment. The annual assessment shall be fixed at the annual meeting for the following calendar year. The Board of Directors may

increase the assessment by no more than ten (10) percent from the prior year without a majority vote of members who are voting in person or by proxy.

Section 4. Working Capital Fund The Association may establish for the Association a Working Capital Fund by collecting from each Owner up to six (6) months of the annual general assessment for each Lot at the time the Lot is purchased to serve as a reserve fund. Said funds shall be kept as a segregated fund, separate and apart from other funds of the Association.

Section 5. General Special Assessments for Capital Improvements. In addition to the general annual assessments authorized above, the Association may levy, in any assessment year, a general special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement in the Common Area, including fixtures and personal property related thereto, *provided that* any such assessment shall have the assent of a majority of the members who are voting in person or by proxy and a special meeting duly called for this purpose.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3. and
Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than five (5) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast thirty percent (30%) of all the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7 Uniform Rate of Assessment. Both general annual and general special assessments must be fixed at a uniform rate for all Lots and may be collected on a quarterly, semi-annual, or annual bases as deemed reasonable by the Board of Directors.

Section 8 Effect of Nonpayment of General Assessments; Remedies of the Association. Any general assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a maximum rate permitted by the Act. The Association may record a memorandum of lien, bringing an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property pursuant to the Act. No Owner may waive or otherwise escape liability for the general assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9 Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of the first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or

transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof. Such subordination shall not release the Owner from personal liability for such assessment.

Section 9. Exempt Property. The following property subject to the Declaration shall be exempt from the assessments created therein:

- (a) all properties dedicated to and accepted by the local public authority;
- (b) the Common Area; and
- (c) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the Commonwealth of Virginia.
- (d) unimproved Lots on which no house has been built.

However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE XIII BOOKS AND RECORDS

The books, records and papers of the Association shall be available for inspection by any member of the Association by appointment. The Declaration, Articles of Incorporation and By-Laws of the Association shall be available for inspection by appointment by any member at the principal office of the Association, where copies may be purchased at a reasonable cost.

ARTICLE XIV AMENDMENTS

Section 1. These By-Laws may be amended at a regular or special meeting of the Members by a vote of a majority of a quorum of Members present in person or by proxy.

Section 2. In case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control and, in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

These Restated By-Laws were approved on this 15th day of May, 2007 and ratified by the membership at the annual meeting, the 16th of October, 2007.

