

**BYLAWS
OF
SMITHWICK CROSSING HOME OWNERS ASSOCIATION, INC.**

Article I

Name, Membership and Definitions

Section 1.1 Name: The name of the Association shall be Smithwick Crossing Home Owners Association, Inc. (“Association”)

Section 1.2 Membership: The Association shall have two classes of membership, Class A and Class B, as more fully set forth in that Declaration of Covenants, Restrictions and Easements for Smithwick Crossing Home Owners Association, Inc. (such Declaration, as amended, renewed, restated or extended from time to time, is hereinafter sometimes referred to as the “Declaration”), the terms of which pertaining to membership are specifically incorporated by reference herein.

Section 1.3 Definitions: The words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

Article II

Association: Meetings, Quorum, and Voting Proxies

Section 2.1 Place of Meetings: Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the Board of Directors, either in the Community or as convenient thereto as possible and practical.

Section 2.2 First Meeting and Annual Meetings: An annual or special meeting shall be held within one year from the date the Declaration is recorded. Annual meetings shall be set by the Board so as to occur no later than sixty (60) days after the close of the Association’s fiscal year.

Section 2.3 Special Meetings: The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so desired by resolution of the Board of Directors or upon a petition signed by at least twenty-five (25%) percent of the Total Association Vote (the consent of Declarant shall not be required). The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice.

Section 2.4 Notice of Meetings: It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of each Lot (as shown in the Association’s records) a notice of each annual or special meeting of the Association stating the purpose of the special

meeting, as well as the time and place where it is to be held, and in the notice of a special meeting, the purpose thereof. If an Owner wishes notice to be given at an address other than his or her Lot, such Owner shall designate by notice in writing to the Secretary such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice. Notices shall be served not less than ten (10) or more than sixty (60) days before a meeting.

Section 2.5 Waiver of Notice: Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of notice of the time, date, and place thereat, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

Section 2.6 Adjournment of Meetings: If any meetings of the Association cannot be held because a quorum is not present, a majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting originally called may be transacted without further notice.

Section 2.7 Voting: The voting rights of the members shall be as set forth herein and in the Articles of Incorporation of the Association and the Declaration, and such voting rights are specifically incorporated herein.

Section 2.8 Proxies: At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of such member's Lot, or upon receipt of notice by the Secretary of death or judicially declared incompetence of a member, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

Section 2.9 Quorum: The presence, in person or by proxy, of twenty-five (25%) percent of the total eligible Association vote shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Section 2.10 Action without a Formal Meeting: Any action to be taken at a meeting of the members or any action that may be taken at a meeting of the members may be taken without a meeting if one or more consents, in writing, setting forth the action so taken. Action shall be signed by members holding the voting power required to pass such action at a meeting held on the date that the last consent is executed and such action is consented to by Declarant if required. Such action shall be effective upon receipt by the Association of a sufficient number of such consents executed by current members unless a later effective date is specified therein. Each signed Consent shall be delivered to the

Association and shall be included in the minutes of meetings of members filed in the permanent records of the Association.

Section 2.11 Action by Written Ballot: Any action to be taken at any annual, regular or special meeting of members may be taken without a meeting if approved by written ballot as provided herein. The Association shall deliver a written ballot to each member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot of an action shall only be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve such matter other than the election of directors; and specify the time by which a ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked without the consent of the Board of Directors. The results of each action by written ballot shall be certified by the Secretary and shall be included in the minutes of meetings of members filed in the permanent records of the Association.

Article III

Board of Directors: Number, Powers, Meetings

Section 3.1 Composition and Selection

Section 3.1.1 Governing Body: Composition: The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 2 of this Article, the directors must reside in the Community and shall be members or spouses of such members; provided, however, no person and his or her spouse may serve on the Board at the same time.

Section 3.1.2 Directors Appointed by Declarant: Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association for as long as the Declarant owns property for development and/or sale in the Community or until Declarant surrenders in writing the authority to appoint and remove directors and officers of the Association. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association. The directors selected by Declarant need not be Owners or residents in the Community.

Section 3.1.3 Number of Directors: The Board shall consist of no less than three (3) members. The Board may at any time after the initial meeting at which the Owners elect directors pursuant to Article III, Section 5(a) increase or decrease the number of Board members and provide for a method of filling vacancies or termination positions, as

necessary; provided, however, there shall always be an odd number of Board members. The initial Board shall consist of three (3) members.

Section 3.1.4 Nomination of Directors: Elected directors shall be nominated from the floor and may also be nominated by a nominating committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

Section 3.1.5 Election and Term of Office: Owner-elected directors shall be elected and hold office as follows:

- (a) At the first annual meeting after Declarant's right to appoint directors and officers terminates (or at a special meeting if one is called for such purpose), Owners shall elect three (3) directors.
- (b) At annual meetings of the membership thereafter, directors shall be elected. All eligible members of the Association shall vote on all directors to be elected, and the candidate(s) receiving the most votes shall be elected. The term of one (1) director shall be fixed at one (1) year, the term of one (1) director shall be fixed at two (2) years, and the term of one (1) director shall be fixed at three (3) years. At the expiration of the initial term of office of each respective Owner-elected member of the Board of Directors, a successor shall be elected to serve for a term of two (2) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

Section 3.1.6 Removal of Directors: At any regular or special meeting of the Association duly called, anyone or more of the members of the Board of Directors may be removed, with or without due cause, by a majority of the Board of Directors and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed by the Board shall be given at least ten (10) days notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than thirty (30) days may be removed by a majority vote of the directors at a meeting, a quorum being present. This Section shall not apply to directors appointed by the Declarant.

Section 3.1.7 Vacancies: Vacancies in the Board of Directors caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the majority of the remaining directors, even though less than a quorum, at any meeting of the Board of Directors. Each person so selected shall serve the unexpired portion of the term.

Section 3.2 Meetings

Section 3.2.1 Organization of Meetings: The first meeting of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

Section 3.2.2 Regular Meetings: Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by majority of the directors, but at least four (4) such meetings shall be held during each fiscal year with at least one per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings.

Section 3.2.3 Special Meetings: Special meetings of the Board of Directors shall be held when requested by the President, Vice President or by any two (2) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either by directly to the director or to a person at the director's home or office who would reasonably be expected to communicate such notice promptly to the director; (d) by telegram, charges prepaid; or (e) by commercial delivery service to such director's home or office. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph company shall be given at least forty-eight (48) hours before the time set for the meeting.

Section 3.2.4 Waiver of Notice: The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 3.2.5 Quorum of Board of Directors: At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors.

Section 3.2.6 Compensation: Officers/Directors shall receive compensation for time served. Each Director shall be paid \$305.00 per year or \$25.42 per month. Any director may also be reimbursed for his or her expenses incurred in the performance of his or her duties. Directors are defined as President, Treasurer and Secretary, unless otherwise amended by a vote of the Association.

Section 3.2.7 Open Meetings: All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board.

Section 3.2.8 Executive Session: The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 3.2.9 Action without A Formal Meeting: Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed by a majority of the directors and delivered to the Association for inclusion in the minutes for filing in the corporate records.

Section 3.2.10 Telephonic Participation: One or more directors may participate in any vote during any regular or special meeting of the Board by telephone conference call or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time, and those directors so participating shall be present at such meeting. Any such meeting at which a quorum participates shall constitute a regular meeting of the Board.

Section 3.3 Powers and Duties

Section 3.3.1 Powers: The Board of Directors shall be responsible for the affairs of the Association, and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things unless prohibited by the Declaration, the Articles of Incorporation of the Association, or these Bylaws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

- (a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the common expenses;
- (b) making assessments to defray the common expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment;
- (c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibilities of the Association;
- (d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

- (e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;
- (f) making and amending use restrictions and rules and regulations;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bring any proceedings which may be instituted on behalf of or against the Owners concerning the Association;
- (i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
- (j) paying the cost of all services rendered to the Association or its members which are not directly chargeable to Owners;
- (k) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administrators, and specifying the maintenance and repair expenses and any other expenses incurred; and
- (l) contracting with any Person for the performance of various duties and functions.

Section 3.4 Management Agent: The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. Declarant or an affiliate of Declarant may be employed as managing agent or manager. The term of any management agreement shall not exceed one year and shall be subject to termination by either party, without cause and without penalty, upon thirty (30) days written notice.

Section 3.5 Borrowing: The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of the Common Property and facilities without the approval of the members of the Association; provided, however, the Board shall obtain membership approval in the same manner as for special assessments, in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed Ten Thousand (\$10,000.00) Dollars outstanding debt at anyone time.

Section 3.6 Fining Procedure: The Board shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

Section 3.6.1 Notice: Written notice shall be served upon the violator by first class or certified mail sent to the last address of the member shown on the Association's records, specifying:

- (a) the nature of the violation, the fine to be imposed and the date, not less than fifteen (15) days from the date of the notice, that the fine will take effect;
- (b) that the violator may, within ten (10) days from the date of the notice, request a hearing regarding the fine imposed;

- (c) the name, address and telephone numbers of a person to contact to challenge the fine;
- (d) that any statements, evidence, and witnesses may be produced by the violator at the hearing; and;
- (e) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

Section 3.6.2 **Hearing:** If a hearing is requested, it shall be held before the Board in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. No fine shall be imposed prior to the date that is five (5) days after the date of the hearing.

Article IV

Officers

Section 4.1 **Officers:** The officers of the Association shall be President, Secretary, and Treasurer. The same person, except the offices of President and Secretary, may hold two (2) or more offices. The President and Treasurer shall be elected from among the members of the Board of Directors. The Board may also elect a Vice President to act in the President's absence and any such Vice President shall have all powers, duties, and responsibilities provided for the President when so acting.

Section 4.2 **Election, Term of Office, and Vacancies:** Except during the period in which Declarant has the right to appoint the officers of the Association under Article III, Section 2 of these Bylaws, the officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the members. The Board of Directors for the unexpired portion of the term may fill a vacancy in any office arising because of death, resignation, removal, or otherwise.

Section 4.3 **Removal:** Any officer may be removed by the Board of Directors whenever, in its judgment, the best interests of the Association will be served thereby.

Section 4.4 **President:** The President shall be the Chief Executive Officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. The President shall have all the general powers and duties, which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code.

Section 4.5 **Secretary:** The Secretary shall keep the minutes of all the meetings of the Association and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with Georgia law.

Section 4.6 Treasurer: The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors.

Section 4.7 Resignation: Any officer may resign at any time by giving written notice to the Board of Directors. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Article V

Committees

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

Article VI

Miscellaneous

Section 6.1 Fiscal Year: The fiscal year of the Association shall be the same as the calendar year unless changed by a resolution from the Board of Directors.

Section 6.2 Parliamentary Rules. *Roberts Rules of Order (Current Edition)*: *Roberts Rules of Order* shall govern the conduct of all Association proceedings, when not in conflict with Georgia law, the Articles of Incorporation of the Association, the Declaration, these Bylaws, or a ruling made by the person presiding over the proceeding.

Section 6.3 Conflicts: If there are conflicts or inconsistencies between the provisions of Georgia law, the Articles of Incorporation of the Association, and these Bylaws, the provisions of the Georgia law, the Declaration, the Articles of Incorporation of the Association, and the Bylaws (in that order) shall prevail.

Section 6.4 Amendment: These Bylaws may be amended by the Board of Directors (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any title insurance company coverage with respect to the Lots subject to the Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or

purchase mortgage loans on the Lots subject to the Declaration; or (d) if such amendment is necessary to enable any governmental agency or insurance company to insure or guarantee mortgage loans on the Lots subject to the Declaration. In addition, these Bylaws may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) of the Total Association Vote; provided, however, that the U.S. Department of Veterans Affairs ("VA") (if it is then guaranteeing any mortgage in the Community of has issued a project approval for the guaranteeing of such mortgages) and/or the U.S. Department of Housing and Urban Development ("HUD") (if it is then insuring any mortgage in the Community or has issued a project approval for the insuring of such mortgages) shall have the right to veto material amendments to these Bylaws for as long as the Declarant has the right to appoint and remove the directors and officers of the Association.