

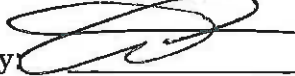
STATE OF NORTH CAROLINA      BYLAWS OF SMITHVILLE TOWNES  
COUNTY OF ~~NEW HANOVER~~      HOMEOWNERS' ASSOCIATION, INC.

*Brunswick Pamela French Frandano, Notary for Brunswick Co, NC*

NOW COMES the undersigned and hereby certifies that the attached are the Bylaws of Smithville Townes Homeowners' Association, Inc.

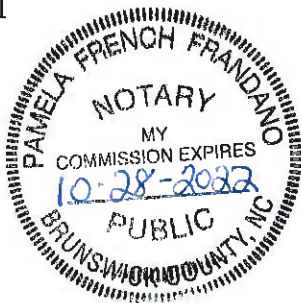
This the 19<sup>th</sup> day of May 2021

Smithville Townes Homeowners' Association, Inc.

By   
President

*Pamela French Frandano*, a Notary Public in and for the State and County aforesaid, do hereby certify that *Cameron Smith, Jr* personally came before me this day and acknowledged that s/he is President of Smithville Townes Homeowners' Association, Inc., a North Carolina nonprofit corporation, and that s/he as President, being authorized to do so, executed the foregoing on behalf of the Association.

Notary seal



# BYLAWS OF SMITHVILLE TOWNES HOMEOWNERS' ASSOCIATION, INC.

A North Carolina nonprofit corporation  
under the laws of the State of North Carolina

## ARTICLE I Identity

1.1. These are the Bylaws of Smithville Townes Homeowners' Association, Inc., a North Carolina nonprofit corporation ("Association"), the Articles of Incorporation ("Articles") of which have been filed in the Office of the Secretary of State of North Carolina on March 23, 2021.

1.2. For purposes of these Bylaws, terms specifically defined in the Declaration of Conditions, Reservations, Restrictions, Easements, Charges, and Liens for Smithville Townes, recorded in Book 4573, Page 83 et seq., Brunswick County Register of Deeds, shall have the same meaning herein.

## ARTICLE II Membership

2.1 **Members.** The Declarant and each Lot Owner shall be a Member of the Association, and shall remain a Member until he or she ceases to be a Lot Owner.

2.2 **Multiple Owners.** When there is more than one Lot Owner of a Lot, all such persons shall be Members of the Association.

2.3 **Registration.** It shall be the duty of each Lot Owner to register his or her name and the number of his or her Lot with the Secretary of the Association. If a Lot Owner does not so register, the Association shall be under no obligation to recognize his or her Membership.

2.4 **Indivisibility.** The interest of a Member in the Association cannot be assigned, transferred, or encumbered except as an appurtenance to his or her Lot.

## ARTICLE III Members' Meetings and Voting

3.1 **Place.** Meetings of the Members shall be held at the registered office of the Association, or such other place within Brunswick County, North Carolina, as may be designated from time to time by the Association Board of Directors.

3.2 **Annual Meeting.** The Members shall meet at least once each year as specified in the notice of such meeting given pursuant to Section 3.4. At each annual meeting, the Members shall elect Members of the Board ("Directors") and may

transact any other business properly coming before them, subject to the Declarant's rights to appoint and remove the Directors during the Declarant Control Period.

**3.3. Special Meetings.** Special meetings of the Members may be called at any time by the President or by the Board, and shall be called within thirty (30) days after written request therefor signed by Members of the Association entitled to cast at least ten percent (10%) of the total votes in the Association is delivered to any Director or Officer of the Association. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

**3.4. Notices.** Notice of all meetings of the Members, stating the time and place, and accompanied by a complete agenda thereof, shall be given to each Member by the President or Secretary. Such notice shall be in writing and delivered or sent by United States mail, facsimile, or e-mail to the Members at the addresses of their respective Lots or such other notification address as they may have designated to the President or Secretary, at least ten (10) days in advance of any annual or regularly scheduled meeting and at least ten (10) days in advance of any other meeting.

**3.5. Quorum.** A quorum necessary to transact business at a meeting of the Members shall consist of Members present, in person or by proxy, entitled to cast at least 40 percent of (40%) the total votes in the Association. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present. 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 adjourned 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.

**3.6. Vote Allocations.** The total votes in the Association are allocated to Lots in accordance with the Declaration and the classes of votes established by the Declaration. The votes allocated to a Lot may be cast by the Lot Owner. When a Lot is owned by multiple Owners, the vote for that Lot shall be cast as they shall determine. The vote allocated to a Lot shall not be split but shall be voted as a single whole. If multiple Owners of a Lot cannot agree how the vote for that Lot shall be cast, the dispute shall be resolved by arbitration. The Association shall not be entitled to cast the vote that would otherwise be allocated to any Lot owned by it. No Owner may vote at any meeting of the Association, be elected to serve on the Board of Directors, or be appointed to serve as an officer or on any committee if such Owner is delinquent on his or her assessments by thirty (30) days or more.

**3.7. Manner of Voting.** Votes may be cast in person or by proxy. A proxy must be in writing, dated, signed by all Owners of the Lot which is subject to the

proxy, and filed with the Secretary before the meeting. A proxy shall be valid until revoked in writing by all Owners of such Lot.

**3.8. Required Votes.** All questions shall be decided by a majority of the eligible votes cast on the question, unless the provisions of applicable law, the Declaration, or these Bylaws require a greater number of votes.

**3.9. Action by Members Without Meeting.** Any action that may be taken at a meeting of the Members, may be taken without a meeting if such action is authorized in a writing signed by all Members and setting forth the action to be taken, or if such action is taken in any other manner permitted by law. Action may also be taken by ballot in accordance with N.C.G.S. § 55A-7-08, except for the election of directors at the annual meeting.

**3.10. No Cumulative Voting.** There shall be no cumulative voting.

#### **ARTICLE IV Directors**

**4.1. Initial Board; Declarant Control Period.** The first Board shall be appointed by the Declarant and shall serve until such time that the Members elect a Board or sooner, as required by the Declaration or statute, and the remainder of the provisions within this Article IV are subject to the Declarant's rights during the Declarant Control Period as such rights are established in the Declaration.

**4.2. Number and Qualifications of Directors.** The Board shall consist of no fewer than three (3) but no more than five (5) natural persons, as determined by the Declarant during the Declaration Control Period and thereafter by the Members at the annual meetings of the Members. Each Director shall be a Lot Owner or the individual nominee of a non-individual Lot Owner.

**4.3. Election of Directors.** At the first annual meeting of the Members following the end of the Declarant Control Period, and at each subsequent annual meeting, the Members shall elect the Directors by a majority of the votes cast in the election.

**4.4. Term.** The terms of the Directors shall be staggered so that at least one (1) but not more than three (3) Directors are elected at any one meeting and so that no Director's term is less than one (1) year nor more than three (3) years. Successive terms of Directors are permissible. The Directors shall establish rules to implement the provisions of this section. Once elected, a Director shall hold office until the successor is duly elected and qualified.

**4.5. Removal.** Subject to the Declarant's rights to appoint and remove the Directors during the Declarant Control Period, any Director may be removed, with or without cause, by a majority vote of the Members entitled to vote in the Association, at a special meeting called for such purpose, and a successor may then be elected by the Members to serve for the balance of the removed Director's term. In addition, the Directors may remove any Director who fails to attend three consecutive meetings.

**4.6. Vacancies.** Any vacancy in the Board arising by death or resignation of a Director shall be filled by act of the remaining Directors, whether or not constituting a quorum, and a Director so elected shall serve for the unexpired term of his or her predecessor in office.

**4.7. Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone, facsimile or e-mail, at least seventy-two (72) hours prior to the meeting.

**4.8. Special Meetings.** A special meeting of the Board may be called by the President or by at least two Directors upon written notice of the same, and such a meeting shall be held within no more than ten (10) days, but no sooner than three (3) days, of the date that all Directors have received such notice; provided, however, should President or any Director determine an emergency exists, a special meeting may be called by giving such notice as soon as is practicable under the circumstances. All notices of a special meeting shall state the time, place and purpose thereof. No business shall be transacted at the except that which is stated in the notice thereof.

**4.9. Quorum.** A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, the meet shall be adjourned from time to time until a quorum is present. The signing by a Director of the minutes of a meeting shall constitute the presence of such Director at that meeting for the purpose of determining a quorum.

**4.10. Manner of Acting.** Each Director shall be entitled to one (1) vote. The act of a majority of the Directors present at a meeting shall constitute the act of the Board unless the act of a greater number is required by the provisions of applicable law, the Declaration, or these Bylaws.

**4.11. Board Action Without Meeting.** Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized in a writing, setting forth the action taken, signed by all Directors.

**4.12. Compensation of Directors Restricted.** Directors shall receive no compensation for their services, but may be reimbursed for out-of-pocket expenses incurred in the performance of their duties as Directors.

**4.13. Powers and Duties of Board.** All the powers and duties of the Association shall be exercised by the Board, including those existing under the common law and applicable statutes, the Declaration, the Articles, and these Bylaws, as any thereof may from time to time be amended. Such powers and duties shall be exercised in accordance with the provisions of applicable law, the Declaration, the Articles, and these Bylaws, and shall include, but not be limited to, the following:

(a) To prepare and provide to Members annually, a report containing at least the following:

(i) A statement of any capital expenditures in excess of five (5%) percent of the current budget or ten thousand dollars (\$10,000.00), whichever is greater, anticipated by the Association during the current year or succeeding two (2) fiscal years.

(ii) A statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board.

(iii) An annual income and expense statement and balance sheet, made available to all Lot Owners at no charge and within seventy-five (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 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.

(iv) A statement of the insurance coverage provided by the Association.

(b) To adopt and amend budgets, and to determine and collect assessments to pay the Common Expenses.

(c) To regulate the use of, and to maintain repair, replace modify and improve the Properties, Common Areas, Limited Common Areas, and related easements consistent with the Declaration and applicable law.

(d) To adopt and amend rules and regulations and to establish reasonable penalties for infraction thereof.

(e) To enforce the provisions of the Declaration, the Articles, these Bylaws, and rules and regulations by all available legal means, including injunction and recovery of monetary penalties.

(f) To hire and terminate managing agents and to delegate to such agents such powers and duties as the Board shall determine, except such as may be specifically required by the Declaration, the Articles, or these Bylaws to be done by the Board or the Members. Notwithstanding the foregoing, the Common Areas shall at all times be managed by a single managing agent or agency.

(g) To hire and terminate agents and independent contractors.

(h) To institute, defend, intervene in, or settle any litigation or administrative proceedings in the Association's own name on behalf of itself on matters affecting the Property, Common Areas, and Limited Common Areas, and related easement rights and interests.

(i) To establish and dissolve and liquidate, from time to time, reserve accounts for any purpose.

(j) To borrow money for the maintenance, repair, replacement, modification or improvement of the Property, Common Areas, and Limited Common Areas, and related easements, and to pledge and pay assessments, and any and all other revenue and income, for such purposes.

(k) To impose and receive payments, fees and charges for the use, rental or operation of the Common Areas other than the Limited Common Areas.

(l) To grant leases, licenses, concessions and easements through and over the Property, Common Areas, and Limited Common Areas.

(m) To impose and collect reasonable charges, including reasonable costs and attorney fees, for the evaluation, preparation, and recordation of amendments to the Declaration and Bylaws.

(n) To provide for indemnification of the Association's Officers and Directors and maintain Officers' and Directors' liability insurance.

(o) To impose reasonable charges for late payment of assessments, reasonable service, collection, and administrative fees in connection with the attempt to collect assessments (including, but not limited to, fees charged by a management company) and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, these Bylaws, or the rules and regulations.

(p) To implement and maintain storm water management programs and any and all other environmental programs.

(q) To exercise all powers as set forth in N.C.G.S. § 47F-3-102, as may be

amended from time to time.

## **ARTICLE V Officers**

**5.1. Designation of Officers.** The Officers of this Association shall include, at a minimum, a President, a Secretary, and a Treasurer. All Officers shall be Lot Owners or the individual nominee of a Lot Owner which is other than an individual. A person may hold one or more of such offices at one time except that the President shall not at the same time hold another office in the Association. The Board may elect also elect a Vice President, an assistant treasurer, an assistant secretary, and such other Officers as in its judgment may from time to time be necessary.

**5.2. Election of Officers.** Subject to the Declarant's rights during the Declarant Control Period as set forth in the Declaration, Officers of the Association shall be elected by the Board. The initial Board shall elect its Officers as soon as practicable after filing of the Declaration, and thereafter elections shall be held annually after the annual meeting of the Members, subject to the Declarant's rights during the Declarant Control Period as such rights are established in the Declaration.

**5.3. Term.** Each Officer shall serve until the successor has been duly elected and has qualified.

**5.4. Removal.** Any Officer may be removed, with or out without cause, and without notice, by a majority vote of the Board, subject to the Declarant's rights during the Declarant Control Period as set forth in the Declaration.

**5.5. Vacancy.** Any vacancy in any office shall be filled by the Board, and an Officer elected to fill a vacancy shall serve for the unexpired term of his or her predecessor in office.

### **5.6. Powers and Duties of Officers.**

(a) **President.** The President shall be the chief executive officer of the Association; shall have all of the powers and duties incident to the office of a president of a corporation, including, but not limited to, the duty to preside at all meetings of the Board and of the Members, and the general supervision of Officers in the management of the business and affairs of the Association; and shall see that all actions and resolutions of the Board are carried into effect.

(b) **Vice President.** The Vice President shall perform such duties of the President as shall be assigned by the President, and in the absence of the President shall perform all the duties and functions of the President.

(c) **Secretary.** The Secretary shall keep the minutes of all meetings and actions of the Board and of the Members; shall give all required notices to the Directors and Members; shall keep the records of the Association, except those kept by the Treasurer; shall perform all other duties incident to the office of a secretary of a corporation; and shall perform such other duties required by the Board or the President.

(d) **Treasurer.** The Treasurer shall have custody of all intangible property including funds, securities, and evidences of indebtedness; shall keep the books of the Association in accordance with good accounting practices and principals, and, upon request, shall submit them together with all vouchers, receipts, records, and other papers to the Board for examination and approval; shall deposit all moneys and other valuable effects in depositories designated by the Board, shall disburse funds of the Association as directed by the Board; and shall perform all other duties incident to the office of a treasurer of a corporation.

**5.7. Execution of Agreements.** All agreements, deeds, mortgages, amendments to the Declaration or Bylaws or other instruments shall be executed by any officer, or by such other person or persons as may be designated by the Board.

**5.8. Compensation of Officers Restricted.** No officer shall be compensated for his or her services in such capacity, but may be reimbursed for out-of-pocket expenses incurred in performing his duties.

## **ARTICLE VI Indemnification of Directors and Officers**

The Association shall indemnify to the fullest extent permitted by law such persons, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as permitted by N.C.G.S. §§ 55A-8-50 et seq. as the same from time to time may be amended, supplemented, or renumbered.

## **ARTICLE VII Fiscal Management**

**7.1. Depository.** The Board shall designate a depository for the funds of the Association and may change such depository as it deems necessary or advisable. Withdrawal of funds from such depository shall be only by checks signed by any Officer of the Association or other persons authorized by the Board.

**7.2. Fidelity Bonds.** Fidelity bonds shall be maintained by the Association, in an amount determined by the Board, covering each Director and Officer of the Association, any employee or agent of the Association and any other person, handling or responsible for handling funds of the Association; provided however, if funds are

handled by a management company that has a blanket fidelity bond, a fidelity bond shall not be required.

**7.3. Payment Vouchers.** Payment vouchers shall be approved by the Board, provided that the Board may delegate such authority to any Officer or managing agent of the Association.

**7.4. Statement of Accounts.** The Association, upon written request, shall furnish to a Lot owner or the Lot Owner's authorized agent a statement setting forth the amount of unpaid assessments and other charges against a Lot. The statement shall be furnished within ten (10) business days after receipt of the request and is binding on the Association, the executive Board, and every Lot Owner. If the request is in connection with the sale or transfer of a Lot, the Association or its management agent may charge the seller or buyer a reasonable fee to provide the statement and to update the Association's records concerning the Lot.

**7.5. Fiscal Year.** The fiscal year of the Association shall be the calendar year, provided that the Board, from time to time, by resolution, may change the fiscal year to some other designated period.

## **ARTICLE VIII Assessments**

**8.1. General Obligation of Members to Pay Assessments.** Each Lot Owner is personally and severally liable for all assessments, including all Regular, Special, and Limited assessments, and any other assessments properly levied in accordance with the Declaration and applicable law while a Lot Owner.

**8.2. Levying of Regular Assessment.** Each Lot Owner shall be assessed Regular Assessments for such purposes and in such amounts as provided in the Declaration, as may be amended from time to time.

**8.3. Allocation of Common Surplus.** Any common surplus, including funds in reserve accounts, may be allocated to each Lot in accordance with its percentage of Common Expenses, and, if allocated, may be paid to the Lot owner or credited against that Unit's share of Common Expenses subsequently assessed.

**8.4. Preparation of Budget.** The Board shall adopt a budget for the Association at least annually. Within thirty (30) days after the adoption of the proposed budget, the Board shall send a copy of the proposed budget to the Members and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, with such meeting to be held at least ten (10) days before and no later than sixty (60) days after the mailing of such notice. This meeting may, but need not be, combined with the annual meeting of the Members. There shall be

no requirement that a quorum be present to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership affirmatively vote to reject the budget; provided, however, if the budget provides for a Regular Assessment per Lot not in excess of the maximum Regular Assessment in effect for that fiscal year of the Association, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire membership vote to reject the budget. If any proposed budget is rejected by the Members, the budget last ratified by the Members shall be continued until such time as the Members ratify (or the requisite percentage does not vote to affirmatively reject) a subsequent budget proposed by the Board.

**8.5. Assessment As a Lien.** Every assessment levied in accordance with the Declaration and applicable law shall constitute a lien upon each Lot, from the date such assessment is so levied, prior to all other liens except only (i) real estate taxes and other superior governmental assessments or charges against the Lot and (ii) liens and encumbrances recorded before the recordation of the Declaration.

**8.6. Payment of Assessments.** Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the times and in the amounts specified by the Board in the notice of assessment. Payments shall be made to the Association, or as the Board may from time to time otherwise direct. If any assessment is past due by thirty (30) days or more, the Board may declare the remaining assessments for that year immediately due and payable.

**8.7. Lien as Against First Mortgagees or First Deeds of Trust.** The lien of assessments shall not be superior to the lien of a first mortgage, first deed of trust, and other such liens or charges deemed superior under applicable law. The lien shall be superior to a junior mortgage or deed of trust.

**8.8. Funds and Reserves.** All sums collected by the Association from assessments shall be accounted for as follows:

(a) Reserve fund for Repairs and Replacements. To this fund shall be credited all sums collected for the purpose of effecting repairs and replacements of structural elements and mechanical equipment, and other Property, Common Areas, and Limited Common Areas of the Association.

(b) General Operating Reserve Fund. To this fund shall be credited all sums collected to provide a reserve for purposes of providing a measure of financial stability during period of any special financial stress, and may be used to meet deficiencies from time to time as a result of delinquent payments of assessments and other contingencies.

(c) **Maintenance Fund.** To this fund shall be credited collections of assessments for all Common Expenses for the current year as well as common profits and surplus from the previous year, and not to be credited to either of the above reserve funds.

(d) **Working Capital Fund.** All funds received and collected by the Association in accordance with the Declaration for the initial working capital fund of the Association, to defray unforeseen expenses and/or the cost of additional equipment or services deemed necessary or advisable by the Board, shall be maintained in and segregated in this fund for the use and benefit of the Association.

The reserve fund for repairs and replacements shall be established by the Board beginning with the fiscal year starting January 1st of the year that is two (2) years after the year in which the first assessment was levied and shall be funded thereafter by regular installments rather than by extraordinary special assessments. The reserve funds described above shall be maintained only in such amounts as deemed necessary or advisable by the Board, subject, however, to the preceding sentence. To the extent maintained, funds therein shall be held in such accounts, and with such depositories as the Board, in its discretion, selects.

**8.9. Other Assessments.** In addition to Regular Assessments, the Association may levy Special Assessments, Limited Assessments, and any other assessments for such purposes and in such amounts as are permissible under the Declaration and applicable law.

**8.10. Common Expenses Benefiting Fewer Than All Lots.** The Association may assess any item of Common Expenses benefiting fewer than all of the Lots against the Lot(s) benefited in proportion to the Common Expense liability of the Lot(s), classifying the same as a Limited Common Expense or as otherwise may be permissibly classified under the Declaration and applicable law.

**8.11. Failure to Prepare Budget and New Annual Assessment.** The failure of the Board or delay of the Board in preparing any budget or in levying assessments shall not constitute a waiver or release of the Members' obligation to pay assessments whenever the same shall be determined and levied by the Board. Until a new assessment is levied by the Board pursuant to Section 8.2, each Member shall continue to pay the assessment then previously levied pursuant to Section 8.2 in the same amount and at the same periodic times as levied, or as the Board may otherwise advise in writing. Also, any deficiencies or inadequacies in the procedure followed by the Board in levying an assessment shall not in any way affect the assessment's validity or the obligation of Members to pay such assessment.

**8.12. Assessment Roll; Certificate.** All assessments shall be set forth upon a roll of the Lots, which shall be available in the office of the Association for inspection at all reasonable times by Members and holders of a security interests in a Lot, and their duly authorized representatives. Such roll shall include, for each Lot, the name and address of the Member or Members, all assessments levied, and the amount of all assessments unpaid. The Association, upon written request, shall furnish to a Lot Owner, or his or her authorized agent, a recordable certificate setting forth the amount of unpaid assessments currently levied against his or her Lot. The certificate shall be furnished within seven (7) business days after receipt of the request and shall be binding upon the Association and all Lot Owners. The Board may charge a reasonable fee for preparing and providing such certificate.

**8.13. Default and Enforcement.**

(a) If any assessment, or installment thereof, remains delinquent for thirty (30) days, then that assessment, and all other assessments and charges then a lien or subject to a lien against that Lot in accordance with the Declaration, may be declared by the Board immediately due and payable in full, with interest, without further notice. Should any such assessment remain delinquent for ninety (90) days or more, the Association may foreclose upon any claim of lien for the same as provided by law. The Association, or its designee, may bid at the foreclosure sale and take title to the Lot. All fees, late charges, service, collection, administrative, attorney fees, fines, or interest levied or collected by the Association in connection with unpaid assessments shall have the same priority as the assessment to which they relate.

(b) No Lot Owner may exempt himself or herself from the obligation to pay any assessment by waiver of the use or enjoyment of the Common Areas, Limited Common Areas, easements, or facilities or by abandonment of his or her Lot, nor may any Lot Owner refuse to pay any assessment on the grounds his or her Lot does not benefit from any assessment. A Lot Owner may not setoff amounts due to the Association on the grounds he or she has a claim against the Association, and any such claim must be pursued separately.

(c) When the holder of a first mortgage or a first deed of trust, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure, such purchaser shall not be liable for the assessments against the Lot which became due prior to the end of the redemption or upset bid period applicable to such foreclosure and shall only be liable for assessments that became due (on a prorated basis, if applicable) after the redemption or upset bid period expires; provided, however, that a foreclosure does not extinguish the personal liability of a Lot Owner for assessments that were due up to the time the redemption or upset bid period has ended.

(d) In addition to the foregoing, and without waiving its lien, the Association may sue to obtain money judgment for the amount of any delinquent assessment, or installment thereof, together with interest and other charges recoverable under the Declaration and applicable law, and the Members so sued and liable for such assessment shall pay all costs of collection, including reasonable attorney fees, with interest thereon at the same rate as charged on the assessments being collected from the dates incurred until paid.

**8.14. Interest on Delinquent Assessments, Late Fees.** Assessments, or installments thereof, paid before they become delinquent, shall not bear interest, but all delinquent sums shall bear interest at the rate set forth in the notice levying the assessment, not exceeding eighteen percent (18%) per annum from the date delinquent until paid. If no interest rate is set forth in such notice, such interest rate shall be the maximum allowed by law. All payments upon account shall be applied first to interest and then to the assessment, or installment thereof, longest delinquent. All such interest shall have the same priority as the assessment on which such interest accrues. In addition to, and not in lieu of interest, late fees in the amount of twenty dollars (\$20.00) per month, or in such greater amounts as allowed by law, may be assessed on delinquent accounts.

## **ARTICLE IX**

### **Compliance, Enforcement, Fines, and Penalties**

**9.1. Default and Remedies.** A default in or failure to comply with any of the terms, conditions, obligations, or provisions of the Declaration, these Bylaws, the Articles, or the rules and regulations, as the same may be amended from time to time, by any Lot Owner, occupant (or lessee / tenant of the Owner), shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and penalties as determined by the Board, sums due for damages, an injunction, or any combination thereof, and which relief may be sought by the Association, an aggrieved Lot Owner, or by any person or class of persons adversely affected. If any Member fails to perform any obligation under the Declaration, these Bylaws, the Articles, or such rules and regulations, then, consistent with the rights of entry charging of maintenance costs established in the Declaration, the Association may, but is not obligated to, perform the same for the Member's account, and for such purpose may enter upon the Member's Lot and may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may levy a special assessment against the Lot. The Association also shall be entitled to suspend the right of a defaulting Lot Owner to vote as a Member of the Association until the default is cured.

## **9.2. Notice of Default and Failure to Cure.**

(a) In the event of any such default or failure, the Board shall serve upon or mail to the defaulting Member, a written notice specifying the nature of the default, the cure thereof, and the time within which the cure shall be effected. Within the time limit specified in the notice, the defaulting Member may cure the default specified, or serve upon or mail a written notice to the Board requesting a hearing before the Board. If a hearing is so requested, the Board shall thereafter serve upon or mail to the defaulting Member, a notice specifying the time and place for such hearing. At the hearing, the Board shall take such evidence and hear such testimony as it deems necessary or desirable. The Board shall not exercise any remedies to obtain relief from the default until the hearing is over, the Board has made its determination, and it has mailed to or otherwise served the same upon the defaulting Member. The hearing may be continued from time to time as determined by the Board.

(b) Upon taking such evidence and hearing such testimony, the Board, at the hearing or at such later time, shall determine, in writing, and at its sole option, to waive the default in whole or in part, to extend the time within which the default may be cured, or to proceed immediately to levy a fine not to exceed one hundred dollars (\$100.00) for the violation and without further hearing, for each day more than five (5) days after the decision that the violation occurs, impose a continuing fine of not more than one hundred dollars (\$100.00) per day, or to exercise any one or more of the remedies available to the Board due to such default. Such other remedies include suspension of the Member's voting rights and/or rights of access to and use of Common Areas, Limited Common Areas, facilities, and amenities consistent with Article III(F)(4) of the Declaration. The Board shall mail to or otherwise serve upon the defaulting Member a copy of its written determination.

(c) If the defaulting Member (i) does not cure the default or request a hearing within the time limit specified in the original notice of default given pursuant to this Section, or (ii) if the Member requests a hearing but fails to cure the default (to the extent not waived by the Board) within the extended time, if any, granted by the Board after hearing, then the Board shall mail to or otherwise serve upon the defaulting Member a written notice of such Member's failure to effect a cure, and the Board may then proceed to take such action as it deems necessary to obtain relief, including, but not limited to, the imposition of fines as provided above.

**9.3. Remedy of Abatement in Addition to Other Remedies.** In the event a Member fails to effect the cure specified by the Board within the time period set out in (i) or (ii) of Section 9.2. hereof, whichever is applicable, where the default involves a violative structure, thing, or condition existing in or on the premises of the

Member's Lot, the Board, or its duly authorized representative, shall have the right (though not the obligation) to enter upon the premises of the Member's Lot in which, on which, or as to which, such violative condition exists, and to summarily abate and remove, at the defaulting Member's expense (and levy an assessment therefor as provided in Section 9.1. hereof), the structure, thing, or condition constituting the default, and the Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of any manner of trespass.

**9.4. Injunction.** Any person or class of persons entitled to seek relief for any default or failure addressed in this Article of the Bylaws may obtain a temporary restraining order, injunction, or similar relief, without first using the procedure established by Section 9.2 hereof, if such default or failure creates an emergency or a situation dangerous to persons or property.

**9.5. Recovery of Attorney Fees and Costs.** In any proceeding arising from default or failure addressed in this Article, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorney fees as may be allowed by the court, with interest thereon at the highest rate allowed by law at the time the costs are incurred, from the dates such costs are incurred until paid.

**9.6. Non-Waiver of Covenants.** The failure of the Association or of any Member thereof to enforce any term, provision, right, covenant, or condition that may be granted by the Declaration, these Bylaws, the Articles, or the rules and regulations as the same may from time to time be supplemented or amended, shall not constitute a waiver or abrogation of the right of the Association or a Member to enforce such term, provision, right, covenant, or condition in the future, regardless of the number of violations or breaches thereof that may have occurred.

**9.7. Assessment Liens.** Assessments liens shall be enforced pursuant to Article VIII hereof and not pursuant to this Article IX.

## **ARTICLE X Amendment**

Subject to the rights of the Declarant and Association to unilaterally amend these Bylaws as provided in Article III(F)(7) of the Declaration, during to the first 25-year period after the Declaration is recorded, any amendment to these Bylaws shall be made and approved by eighty percent (80%) of the Owners of Lots at a meeting called for that purpose and thereafter with the approval of at least seventy-five percent (75%) of the same. Once so made, the amendment shall become effective when recorded in the same manner and place as an amendment to the Declaration.

**ARTICLE XI**  
**Insurance**

**11.1 Scope of Insurance.** The Association shall acquire and maintain property, liability, and other insurance as required by the Declaration and applicable law. The Association may acquire such additional insurance as may be permitted and as the Board may from time to time determine is necessary or appropriate in carrying out the responsibilities and purposes of the planned community.

**11.2. Premiums, Deductibles, and Distributions.** The premiums shall be charged, the deductibles shall be applied, and the proceeds of claims under the Association's insurance policies shall be distributed in accordance with the Declaration and applicable law.

**11.3. Owners' Insurance.** Owners shall acquire and maintain insurance coverage for their Lots as required by the Declaration and applicable law, and they may obtain such other insurance coverage as permitted by the same. The effect of any such coverage in relation to the coverage carried by the Association shall be determined in accordance with the Declaration and applicable law.

**11.4. Contents of Insurance Policies.** Insurance policies carried pursuant to the Declaration and this Article shall provide, to the extent reasonably available and to the extent consistent with the Declaration and applicable law, 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 covered 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.

## ARTICLE XII General Provisions

### 12.1. Rules and Regulations.

(a) By the Board. The Board, including the first Board, may promulgate from time to time such rules and regulations as it deems reasonable and necessary governing the administration, management, operation, and use of the Property so as to promote the common use and enjoyment by Lot Owner and occupants and for the protection and preservation thereof and to establish fines and penalties for their violation. In addition, the Board may adopt such rules and regulations as it deems reasonable and necessary with respect to Lots to provide for the common good and enjoyment of all Lot Owners and Occupants, including, without limitation, the right to adopt such rules and regulations with reference to tenants and leases and to establish fines and penalties for their violation. In no event shall any rules or regulations be inconsistent with or materially more restrictive than the provisions in the Declaration and these Bylaws with respect to the Lots.

(b) By the Association. Any such rule or regulation adopted by the Board may be amended, modified, or revoked, and new and additional rules and regulations may be adopted, by Members at an annual or special meeting of the Members. Any such act of the Members shall control over any contrary rule or regulation then or thereafter adopted by the Board.

(c) Uniform Application. All rules and regulations shall be equally and uniformly applicable to all Lot Owners.

(d) Copies Furnished. Copies of all such rules and regulations and any amendments thereto shall be furnished to all Members, and a copy shall be posted or otherwise made available to Members at the office of the Association. However, failure to furnish, or post, make available, or record such rules or regulations shall not affect in any way their validity or enforceability.

**12.2. Parliamentary Authority.** The current version of Robert's Rules of Order shall govern conduct of Board and Association proceedings when not in conflict with the Declaration, these Bylaws, the Articles, or any statutes of the State of North Carolina applicable thereto. The chairman of the meeting shall have the authority to appoint a parliamentarian.

**12.3. Conflict: Severability.** Should any of the terms, conditions, provisions, paragraphs, or clauses of these Bylaws conflict with any of the provisions of the law of the State of North Carolina, the provisions of said law shall control unless the law permits these Bylaws to override the law, in which event these Bylaws shall control.

In the case of any conflict between the provisions of these Bylaws and the Declaration, the Declaration shall control. In the case of any conflict between the provision sof these Bylaws and the Articles of Incorporation, the Articles of Incorporation shall control. If any term, provision, limitation, paragraph, or clause of these Bylaws, or the application thereof to any person or circumstance, is judicially held to be invalid, such determination shall not affect the enforceability, validity, effect of remainder of these Bylaws, or the application thereof to any other person or circumstance.

**12.4. Forms of Delivery.** Except as may otherwise be specifically required by these Bylaws, the Declaration, or applicable law, all references herein to providing delivery of required notices, documentation, or other communications by mail (regular mail, certified mail, or other form of postal or courier service) shall include providing the same via commonly-used electronic means, including email, such that electronic service shall satisfy the delivery requirement, provided that the electronically-delivered notice, documentation, or communication is sent by such means and directed to such email address or other electronic portal associated with the intended recipient so as to reasonably ensure that the recipient will receive the same at the approximate date and time it is sent to the recipient.

This the 17<sup>th</sup> day of May 2021

Smithville Townes Homeowners' Association, Inc.

By: Sarah C. Smith  
Secretary

Pamela French Frandano, a Notary Public in and for the State and County aforesaid, do hereby certify that Sarah C. Smith personally came before me this day and acknowledged that s/he is Secretary of Smithville Townes Homeowners' Association, Inc., a North Carolina nonprofit corporation, and that s/he as Secretary, being authorized to do so, executed the foregoing on behalf of the Association.

Notary seal

