

BY-LAWS
OF
RUSSELEN FARMS
HOMEOWNERS ASSOCIATION, INC.

Roanoke County
Virginia

ARTICLE 1
IDENTITY

These are the By-Laws of RUSSELEN FARMS HOMEOWNERS ASSOCIATION, INC., a non-stock corporation organized under the laws of the Commonwealth of Virginia, the Articles of Incorporation of which were filed with the Virginia State Corporation Commission on May 14, 2003 RUSSELEN FARMS HOMEOWNERS ASSOCIATION, INC. (the "Association") has been organized for the purpose of operating and managing the RUSSELEN FARMS Community situate in the County of Roanoke, Virginia.

- 1.1 Provisions of Declarations and Articles of Incorporation to Control. The provisions of these By-Laws are applicable to 111.339 acres defined as the Property in the Articles of Incorporation, and the terms and provisions hereof are expressly subject to those terms, definitions, provisions, conditions and authorizations contained in the Articles of Incorporation of the Association ("Articles") and the Declarations of Covenants, Conditions, and Restrictions of the various subdivisions and parcels of land created out of the Property ("Declarations") which have been recorded in the Clerk's Office, Circuit Court, County of Roanoke, Virginia. The terms and provisions of the Articles of Incorporation and Declarations shall control wherever the same may be in conflict herewith.
- 1.2 Defined Terms. Unless otherwise specifically defined in these By-Laws or the Declarations, the applicable terms herein shall be defined as follows:
- 1.2.1 "Affiliate" shall mean a person or entity related to or affiliated with the Developer and includes, but is not limited to, a joint venture, partnership or corporation in which the Developer or any of its members have an interest.
- 1.2.2 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association.
- 1.2.3 "Assessment" shall mean and refer to a Member's share of the

Common Expenses from time to time assessed against a Member by the Association in the manner herein provided.

- 1.2.4 "Association" shall mean and refer to RUSSELEN FARMS HOMEOWNERS ASSOCIATION, INC., its successors and assigns.
- 1.2.5 "Association Property" shall mean and refer to the real property owned by or acquired in the future by the Association.
- 1.2.6 "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.
- 1.2.7 "Common Areas" shall mean all portions of the Property designed for the use, enjoyment, and access of all Members.
- 1.2.8 "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of the Declarations.
- 1.2.9 "Common Maintenance Area" shall mean the areas, if existing, to be maintained by the Association which shall include:
- (A) Land identified as Common Areas on the subdivision plat of land within the Property
 - (B) Any Storm Water Detention Area on land within the Property
 - (C) Access easements and drainage easements as shown on any subdivision plat of any land within the Property, of record in the Clerk's Office of the Circuit Court of the County of Roanoke, Virginia
 - (D) Entrance areas to the Property
 - (E) Private roads, alleys, sidewalks, parks, and community center
 - (F) Swimming Pool
 - (G) Walking Trail
 - (H) Parking Lot
 - (I) Playground
- 1.2.10 "Declaration" shall mean and refer to the Declarations of Covenants, Conditions and Restrictions relating to any portion of the Property, as now exist or may be hereafter recorded or amended.

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- 1.2.11 "Developer" or "Declarant" shall mean and refer to RUSLEN FARMS DEVELOPMENT, L.L.C., a Virginia limited liability company, and any successors or assigns.
- 1.2.12 "Lot" or "Lots" shall mean any or all of the subdivided real property parcels for residential dwelling purposes created from the Property, including the dwellings and other improvements located thereon.
- 1.2.13 "Member" shall mean and refer to all those Members who are members of the Association as provided in the Declarations.
- 1.2.14 "Mortgage" shall mean and refer to any mortgage, deed of trust or similar instrument encumbering a Lot as security for the performance of any obligation.
- 1.2.15 "Occupant" shall mean and refer to any person, including, without limitation, any guest, invitee, tenant, lessee or family member of a Member, occupying or otherwise using or visiting a Lot.
- 1.2.16 "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure.
- 1.2.17 "Property" shall mean and refer to the real property described in the attached Exhibit "A" and all subsequent additions thereto brought under the regime of this Declaration less any deletions therefrom.

1.3 Subject Parties. All present or future owners, present or future tenants, the employees of tenants or owners, or any other person who might use the Association property or any of the facilities thereof in any manner, are subject to all the terms and provisions of these By-Laws.

1.4 Office. The office of the Association shall be at 494 Glenmore Drive, Salem, Virginia 24153, or such other place as the Board of Directors shall designate from time to time.

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ARTICLE 2
THE ASSOCIATION

- 2.1 Qualification of Members. Membership shall be as set out in the Articles of Incorporation.
- 2.2 Powers of the Association. The Association shall have, in addition to those powers listed in the Articles of Incorporation, all of the powers reasonably necessary to implement and effectuate the rules and objectives set forth in the Declarations, these By-Laws and all other documents pertaining to the Association.
- 2.3 Annual Meetings. The annual meetings of the Association shall be held on February 1 of each year. At such annual meetings, the Directors of the Association shall be elected by ballot of the members in accordance with the requirements of Section 2.10 of this Article. Meetings of the Association shall be held on the premises of the Association, 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.
- 2.4 Special Meetings. The President of the Association shall call a special meeting of the Association if so directed by resolution of the Board of Directors or upon a petition signed and presented to the Secretary by Members of not less than one-third of the aggregate voting interest. The notice of any Special Meeting shall state the time, place and purpose thereof. No business shall be transacted at a Special Meeting except as stated in the notice.
- 2.5 Notice of Meetings. The Secretary shall mail to each Member a notice of each annual or regularly scheduled meeting of the Members at least twenty-one, but not more than thirty days, and of each special meeting of the Members, at least seven but not more than thirty days, prior to such meeting, stating the time, place and purpose thereof. The mailing of a notice of meeting in the manner provided in this Section and in Section 11.1 of Article 11 of these By-Laws shall be considered proper service of notice.
- 2.6 Adjournment of Meetings. If at any meeting of the Association a quorum or the required percentage of attendance is not present, Members representing a majority of the total voting interest present at such meeting in person or by proxy may adjourn the meeting to a time when a quorum of the required percentage of attendance is present.

2.7 Order of Business. The order of business at all meetings of the Association shall be as follows:

Roll Call and certifying of proxies.
Proof of Notice of Meeting.
Reading of minutes of preceding meeting.
Report of Board of Directors and Officers.
Reports of committees, if any.
Election or appointment of inspectors of election
(when so required).
Election of Directors (when so required).
Unfinished business.
New Business.
Adjournment.

2.8 Title to Lots. The Association may acquire, hold and transfer full legal title to one or more Lots or Common Areas in the Property in its own name.

2.9 Proxies and Multiple Owner Voting. Votes may be cast in person or by proxy. No proxy shall be revocable except by actual notice to the person presiding over the meeting by any one or more of the Lot Owners that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice aforesaid, or if the signatures of any of those executing the same has not been witnessed by a person who shall sign his full name and address. The proxy of any person shall be void if not signed by a person having authority at the time of execution thereof to execute deeds on behalf of that person. Any proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy.

In the instance where a Lot is owned by more than one person, if one of the co-owners of the Lot is present at an Association meeting, that person shall be entitled to cast the vote for that Lot. If more than one of such persons is present, the vote appertaining to the subject Lot shall be cast only in accordance with their unanimous agreement and such consent shall be conclusively presumed if any one of them purports to cast the vote appertaining to the subject Lot without protest being made forthwith by any of the other co-owners to the person presiding at the meeting.

2.10 Voting. Voting at all meetings of the Association shall be on a one equal vote per Lot; provided that as long as Declarant owns any Lot within the Property, it shall have a number of votes equal to the number of Lots it has sold plus one. The Members representing at least fifty-one percent (51%) of the total voting interest voting in person or by proxy at one time at a duly convened meeting at which a quorum is present are required to adopt decisions made at any meeting of the Association. No Member

may vote at any meeting of the Association or be elected to serve as an Officer of the Association if said Member is delinquent in the payment of any assessment.

- 2.11 Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of Members representing twenty-five percent or more of all votes shall constitute a quorum at all meetings of the Association.
- 2.12 Conduct of Meetings. The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted and all transactions occurring at the meeting. The then current edition of *Robert's Rules of Order* shall govern the conduct of all meetings of the Association when not in conflict with the Declarations or the Articles. All votes shall be tallied by inspectors appointed by the President or other Officer presiding over the meeting.

ARTICLE 3 **BOARD OF DIRECTORS**

- 3.1 Number and Qualification. The affairs of the Association shall be governed by a Board of Directors. The Board of Directors shall be composed of three persons, who shall be appointed by the Developer so long as the Developer owns any Lot within any of the Property and, thereafter, the membership shall be elected by the members of the Association. During the times when it has the right to designate who the Directors will be, the Developer shall have the right in its sole discretion to replace any Director or Directors and to designate their successors.
- 3.2 Powers and Duties. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things not prohibited by the Declarations or Articles. The Board of Directors shall have the power from time to time to adopt any rules and regulations ("Rules and Regulations") deemed necessary for the benefit and enjoyment of the Property; provided, however, that such Rules and Regulations shall not be in conflict with the Declarations or the Articles. The Board of Directors shall delegate to one of its members or to a person employed for such purpose the authority to act on behalf of the Board of Directors on such matters relating to the duties of the Managing Agent (as defined in Section 3.15.2 of this Article), which may arise between meetings of the Board of Directors as the Board of Directors deems appropriate. In addition to the duties imposed by these By-Laws or by any resolution of

the Association that may hereafter be adopted, the Board of Directors, shall, on behalf of the Association:

- 3.2.1 Prepare an annual budget, in which there shall be established the assessments of each Member for the Common Expenses.
- 3.2.2 Make assessments against Members to defray the costs and expenses of the Association, establish the means and methods of collecting such assessments from the Lot Owners and establish the period of the installment payment of the annual assessment for Common Expenses. Unless otherwise determined by the Board of Directors, the annual assessment against each Member for his proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for such month.
- 3.2.3 Provide for the operation, care, upkeep and maintenance of all of the Property and services of the Association.
- 3.2.4 Designate, hire and dismiss the professional management necessary for the maintenance, operation, repair and replacement of the Association Property and Common Maintenance Areas and provide services for the Association and, where appropriate, provide for the compensation of such personnel and for the purpose of equipment, supplies and material to be used by such personnel in the performance of their duties, which supplies and equipment shall be deemed part of the property owned by the Association.
- 3.2.5 Collect the assessments against the Members, deposit the proceeds thereof in bank depositories designated by the Board of Directors and use the proceeds to carry out the administration and purposes of the Association.
- 3.2.6 Pay all taxes, charges and assessments which are or may become liens against any part of the Association, other than individual Lots and the appurtenances thereto, and assess the same against the members and their respective Lots subject to such liens.
- 3.2.7 Make, or contract for the making of, repairs, and improvements to the Association Property and Common Maintenance areas and repairs to and restoration of the Association Property and Common Maintenance areas, in accordance with these By-Laws, after damage or destruction

by fire or other casualty or as a result of condemnation or eminent domain proceedings.

- 3.2.8 Enforce by legal means the provisions of the Declarations, the Articles of Incorporation, these By-Laws, the Rules and Regulations, and act on behalf of the Members with respect to all matters arising out of any eminent domain proceedings.
- 3.2.9 Obtain and carry insurance against casualties and liabilities, as provided in Article 6 of these By-Laws, pay the premiums therefor and adjust and settle any claims thereunder.
- 3.2.10 Pay the cost of all authorized services rendered to the Association and not billed to Members of individual Lots.
- 3.2.11 Keep books with detailed accounts in chronological order of the receipts and expenditures affecting the Property and the administration of the Association, specifying the expenses of maintenance and repair of the Association Property and any other expenses incurred. Such books and vouchers accrediting the entries thereupon shall be available for examination by the Members, or their duly authorized agents or attorneys during general business hours on working days at the times and in the manner set and announced by the Board of Directors for the general knowledge of the Members. All books and records shall be kept in accordance with good and accepted accounting practices, and the same shall be reviewed at least once each year by an independent accountant retained by the Board of Directors who shall not be a resident of a Lot or a Member. The cost of such review shall be a Common Expense.
- 3.2.12 Notify all Mortgagees of all or any Lots in the Property (the "Mortgagees") of any default hereunder by any Member subject to such mortgage, in the event such default continues for a period exceeding thirty days.
- 3.2.13 Acquire, lease, manage, hold and dispose of Lots and mortgage the same if such expenditures and hypothecations are included in the budget adopted by the Association.
- 3.2.14 Do such other things and acts not inconsistent with the Declarations or the Articles which the Board of Directors may be authorized to do by its own resolution.

- 3.3 Organizational Meeting. Within 30 days after the election of Directors in accordance with Article 2, Section 2.4 of these By-Laws, a meeting of the Board of Directors shall be held to elect Officers of the Association.
- 3.4 Regular Meetings. Regular meetings of the Board of Directors shall be held at such time and place as shall be determined from time to time by a majority of the members of the Board. Notice of regular meetings of the Board shall be given to each member of the Board by mail or telegraph or actual delivery at least five business days prior to the day named for such meeting.
- 3.5 Special Meetings. Special meetings of the Board of Directors may be called by the President on three business days notice to each member, given by mail or telegraph, or actual delivery, which shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or in like manner and on like notice on the written request of at least two members of the Board.
- 3.6 Waiver of Notice. Any member may at any time, in writing, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Board of Directors shall constitute a waiver of notice by him of the time, place and purpose of such meeting, unless such member attends for the specific purpose of challenging such notice. If all members are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.
- 3.7 Quorum of Board of Directors. At all meetings of the Board of Directors a majority of the Board shall constitute a quorum for the transaction of business, and the votes of a majority of the Board present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, the meeting may be adjourned to a new time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.
- 3.8 Compensation. Directors' compensation, if any, shall be determined by the members of the Association.
- 3.9 Conduct of Meetings. The President who shall be a Director shall preside over all meetings of the Board of Directors and the Secretary who may be but does not have to be a Director shall keep a minute book of the Board of Directors recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. The then current edition of Robert's Rules of Order shall

govern the conduct of the meetings of the Board of Directors when not in conflict with the Declarations or the Articles.

3.10 Action Without Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Board of Directors.

3.11 Vacancies. Vacancies in the Board of Directors may be filled by the remaining Directors selecting someone to serve until the next Annual Meeting. In the event of three or more vacancies on the Board, a special meeting of the Association shall be called by the President and the vacancies filled by an election for such purpose except that should any vacancy in the Board of Directors be created in any Directorship previously filled by any person designated and selected by the Developer, such vacancy shall be filled by the Developer designating and selecting, by written instrument delivered to any Officer of the Association, the successor Director to fill the vacated directorship for the unexpired term thereof.

3.12 Liability of the Board of Directors, Officers, Members and Association.

3.12.1 The Officers and members of the Board of Directors of the Association shall not be liable to the Association for any mistake of judgment caused by negligence or otherwise, except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless each member of the Association (including Officers and Directors who are not Members) from and against all contractual liability to others arising out of contracts made by the Officers or the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declarations, Articles of Incorporation, or these By-Laws, in which case those persons dealing in bad faith or dealing knowingly in a contrary manner to the aforesaid provisions shall not be indemnified. Other than has previously been stated in this Section, Officers and members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association and shall be considered as only acting as agents for the Association. The liability, if any, of any Member arising out of any contract made by the Officers or Board of Directors or out of the aforesaid indemnity in favor of the members of the Board of Directors or Officers, or for damages as a result of injuries arising in connection with the Association or its

property, or for liabilities incurred by the Association, shall result solely by virtue of his ownership of a Lot and shall be limited to the total liability per Lot multiplied by a fraction created by one as the numerator and the total number of Lots as the denominator. Every agreement made by the Officers, the Board of Directors or the Managing Agent on behalf of the Association shall, if obtainable, provide that the Officers, the members of the Board of Directors, or the Managing Agent, as the case may be, are acting only as agents of the association and that they shall have no personal liability thereunder (except as Members), and that each Member's liability thereunder shall be limited to the liability thereunder, if any, multiplied by said fraction.

3.12.2 The Association shall not be liable for any failure of any services to be obtained by the Association or paid for as a Common Expense, or for injury or damage to any person or property caused by the elements or by any Member, or any other person, or resulting from electricity or water, snow or ice which may leak or flow from any portion of the Association's Property or from any pipe, drain, conduit, appliance or equipment. The Association shall not be liable to any Member for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Association's Property. No diminution or abatement of any assessments, as elsewhere provided herein, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Association Property, or from any action taken by the Association to comply with any law, ordinance, or with the order or directive of any municipal or other governmental authority.

3.13 Common or Interested Members. Each Officer of the Association shall exercise his powers and duties in good faith and with a view to the best interests of the Association. No contract or other transaction between the Association and any of its members, or between the Association and any corporation, firm or association (including the Developer) in which any of the members of the Association are members or officers or are pecuniarily or otherwise interested, is either void or voidable because any such member is present at the meeting of the Board of Directors or any committee thereof which authorizes or approves the contract or transaction, or because his vote is counted for such purpose, if any of the conditions specified in any of the following subparagraphs exists:

3.13.1 The fact of the common membership or interest is disclosed or known to the majority of the Board of Directors or noted in the

minutes, and the Board of Directors authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or

- 3.13.2 The fact of the common membership or interest is disclosed or known to at least a majority of the Members, and the Members approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or
- 3.13.3 The contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Any common or interested members may be counted in determining the presence of a quorum of any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction, and may vote thereat to authorize or disallow any contract or transaction with like force and effect as if such member were not such member or officer of the Association or not so interested.

- 3.14 Execution of Documents. All agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures or obligations in excess of Two Thousand Dollars shall be executed by any two persons designated by the Board of Directors. All such instruments for expenditures or obligations of Two Thousand Dollars or less may be executed by any one person designated by the Board of Directors.

- 3.15 Managing Agent.

The Board of Directors may employ for the Property a "Professional Managing Agent" at a compensation to be established by it.

- 3.15.1 Requirements. The Managing Agent shall employ persons possessing a high level of competence in the technical skills necessary for proper management of the Property. The Managing Agent must be able to advise the Board of Directors regarding the administrative operations of the Property and may with the consent of the Board of Directors employ personnel expert in the areas of insurance, accounting and Property regulations.

- 3.15.2 Duties. The Managing Agent shall perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the Managing Agent all of the powers granted to the Board of Directors by these By-Laws other than the powers set forth in paragraphs 3.2.2, 3.2.13,

and 3.2.14 of Section 3.2 of this Article 3 and other than its power to make and amend any Rules and Regulations issued by the Board of Directors. The Managing Agent shall perform the obligations, duties and services relating to management of the Association, relating to the rights of Mortgagees and relating to the maintenance of reserve funds in compliance with the provisions of these By-Laws.

3.15.3 Standards. The Board of Directors shall impose appropriate standards of performance upon the Managing Agent. Unless the Managing Agent is instructed otherwise by the Board of Directors:

3.15.3.1 Cash accounts of the Association shall not be commingled with any other accounts except with the express permission of the Board of Directors.

3.15.3.2 No remuneration shall be accepted by the Managing Agent from vendors, independent contractors or others providing goods or services to the Association whether in the form of commissions, finders fees, service fees or otherwise.

3.15.3.3 Any discounts received shall benefit the Association.

3.15.3.4 Any financial or other interest which the Managing Agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors.

3.16 Removal. Any one or more of the members of the Board of Directors may be removed, either with or without cause, at any time by an affirmative vote of the majority of the number of votes eligible to be cast at any special meeting called for such purpose, or at an annual meeting; provided, however, that only the Developer shall have the right to remove a Director appointed by it.

ARTICLE 4 **OFFICERS**

4.1 Number of Officers. The Officers of the Association shall be a President, who shall be a Director, a Vice-President, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board of Directors and who

may be peremptorily removed, with or without cause, by a vote of the Directors at any meeting. Any person may hold two or more offices except that the President shall not also be Vice-President, Secretary or an Assistant Secretary. The Board of Directors shall, from time to time, elect such other Officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

- 4.2 President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of the president of any association, including, but not limited to, the power to appoint committees from among the members from time to time, as he may, in his discretion, determine appropriate to assist in the conduct of the affairs of the Association.
- 4.3 Vice-President. The Vice-President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.
- 4.4 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the giving and serving of all notices to the members and Directors, and such other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of secretary of an association and as may be required by the Directors or the President.
- 4.5 Treasurer. The Treasurer shall have custody of all of the property of the Association, including funds, securities and evidences of indebtedness. He shall keep, or supervise the keeping of, the assessment rolls and accounts of the members; he shall keep the books of the Association in accordance with good accounting practices; and he shall perform all other duties incident to the office of Treasurer.
- 4.6 Compensation. The compensation, if any, of all Officers and employees of the Association shall be fixed by the Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee of the Association.
- 4.7 Vacancies. Vacancies in any office of the Association shall be filled by a vote of the majority of the Board of Directors at a special meeting held for such purpose promptly after the occurrence of such vacancy. Each person so elected shall be an Officer of the Association for the remainder of the term of the Officer being replaced and until a successor shall be

elected at the next Annual Meeting of the Board of Directors.

ARTICLE 5
OPERATION OF THE ASSOCIATION

5.1 Determination of Common Expenses and Assessments Against Owners.

5.1.1 Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise determined by the Board of Directors, except that in the initial year of the Property's operation, the fiscal year shall commence with the recordation of the Declarations.

5.1.2 Preparation and Approval of Budget.

5.1.2.1 The Board of Directors shall adopt a budget for the Association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the various portions of the Association Property, and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be Common Expenses as provided by the Declarations, these By-Laws or a resolution of the Association and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Association Property and Common Maintenance Areas and the rendering to the Members of all proper related services.

5.1.2.2 Such budget shall also include such reasonable amounts as the Board of Directors considers necessary to provide working capital, a general operating reserve and reserves for contingencies and replacements. On or before the date of the Association's Annual Meeting, the Board of Directors shall deliver to each Member a copy of the budget in a reasonably itemized form which sets forth the amount of the Common Expenses and any special assessment payable by each Member. Such budget shall constitute the basis for determining each Member's assessment for the Common Expenses of the Association.

5.1.3 Assessment and Payment of Common Expenses. Subject to the provisions of Section 9.1 of Article 9 hereof pertaining to expense caused by carelessness, conscious act or neglect of a Member and certain other persons, the total amount of the estimated funds required for the operation of the Association set forth in the budget adopted by the Board of Directors shall be assessed against each Member Lot. The total estimated funds required for operation of the Association (including a capital maintenance amount) shall then be divided among the various residences according to the following formula: The total estimated funds required for the operation of the Association (including a capital maintenance account) divided by the total number of lots conveyed. There shall be a lien against each Member's Lot as provided in Article 9, Section 9.2 of these By-Laws. On or before the first day of each fiscal year, and the first day of each of the succeeding eleven months in such fiscal year, each Member shall be obligated to pay to the Board of Directors or the Managing Agent (as determined by the Board of Directors), one-twelfth of such assessment. Within ninety days after the end of each fiscal year, the Board of Directors shall supply to all Members an itemized accounting of Common Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Board of Directors for such fiscal year, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall, if the Board of Directors deems it advisable, be credited according to each Member's account to the next monthly installments due from Members under the current fiscal year's budget, until exhausted. Any net shortage shall be assessed promptly against the Members in accordance with their obligations and shall be payable either: (i) in full with payment of the next monthly assessment due; or (ii) in not more than six equal monthly installments, as the Board of Directors may determine.

5.1.4 Reserves. The Association through the Board of Directors shall build up and maintain reasonable reserves for working capital, operations, contingencies and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. If the reserves are inadequate for any reasons, including non-paying of any

Member's assessment, the Board of Directors may at any time levy a further assessment, which shall be assessed against the Members, which may be payable in a lump sum or in installments as the Board of Directors may determine. The Board of Directors shall serve notice of any such further assessment on all Members by a statement in writing giving the amount and reasons therefor, and such further assessment shall, unless otherwise specified in the notice, become effective with the next monthly payment which is due more than ten days after the delivery of such notice of further assessment. All Members shall be obligated to pay the adjusted monthly amount or, if such further assessment is not payable in installments, the amount of such assessment. Such assessment shall be a lien as of the effective date as set forth in the preceding paragraph (5.1.3).

5.1.5 Initial Capital Payment and Initial Payment of Assessments.

5.1.5.1 Upon taking office, the first Board of Directors elected or designated pursuant to these By-Laws shall determine the budget, as defined in this Section, for the period commencing thirty days after such election or designation, and ending on the last day of the fiscal year in which such election or designation occurs. Assessments shall be levied and become a lien against the Members during such period as provided in paragraph (5.1.3) of this Section.

5.1.5.2 The Developer and/or the closing attorney, as the agents of the Board of Directors, will collect from each initial purchaser of a lot at the time of settlement an "initial capital payment" in the amount of \$250.00 for Common Expenses for the Association. The Developer and/or the closing attorney will additionally collect at closing the initial estimated annual assessment for Common Expenses prorated based on the number of months left in the year at the time of closing. In the event a swimming pool is constructed, the annual assessment will be \$480.00 per year for each Lot. In the event a swimming pool is not constructed, the annual assessment will be \$144.00 per year for each Lot. The Developer and/or the closing attorney will deliver these funds to the Board of Directors to provide the necessary

working capital for the Association. The Developer shall not be required to pay assessments on Lots owned by it unless an occupied residence is situate on said Lot.

5.1.5.3 Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Member's obligation to pay his allocable share of the Common Expenses as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Member shall continue to pay each monthly installment at the monthly rate established for the previous fiscal year until notice of the monthly payment is received that is based on the new annual or adjusted budget.

5.1.6 Accounts. All sums collected by the Board of Directors with respect to assessments against the Members or from any other source may be commingled into a single fund, but shall be held for each Member in accordance with his assessment obligation.

5.2 Further Provisions Concerning Payment of Common Expenses.

5.2.1 Liability to Association upon Resale. Each Member shall pay the Common Expenses assessed by the Board of Directors pursuant to the provisions of Section 5.1 of this Article. No Member may exempt himself from liability for his contribution toward Common Expenses by waiver of the use or enjoyment of any part of the Association Property or Common Maintenance Areas or by abandonment of his Lot. No Member shall be liable for the payment of any part of the Common Expenses assessed against his Lot subsequent to the date of recordation of a conveyance by him in fee of such Lot. Prior to or at the time of any such conveyance all liens, unpaid charges and assessments shall be paid in full and discharged. The purchaser of a Lot shall be jointly and severally liable with the seller of such Lot for all unpaid assessments against the latter for his proportionate share of the Common Expenses up to the time of such recordation, without prejudice to the purchaser's right to recover from said Seller amounts paid by the purchaser therefor. Any such purchaser shall be entitled to a statement setting forth, among

other things, the amount of the unpaid assessments against the said Seller within five days following a written request therefor to the Board of Directors or Managing Agent and such purchaser shall not be liable for, nor shall the Lot conveyed be subject to a lien for any unpaid assessments in excess of the amount therein set forth.

5.2.2 Rights to Association Assets upon Resale. When an Owner ceases to be a Member of the Association by reason of his divestment of ownership of a Lot(s), by whatever means, the Association shall not be required to account to that Member for any share of the fund or assets of the Association since all monies which any Member has paid to the Association shall be an asset of the Association to be used in the operation and management of the Association.

5.3 Collection of Assessments. The Board of Directors or the Managing Agent at the request of the Board of Directors, shall take prompt action to collect any assessments for Common Expenses due from any Member which remain unpaid for more than thirty days from the due date for payment thereof. Any assessment or portion thereof, together with authorized late charges, not paid when due, can, at the option of the Board of Directors, bear interest from the date of delinquency until paid at twelve percent (12%) per annum, or the maximum rate allowed by law, whichever is greater. The Board of Directors will suspend the voting rights of the Member or may suspend the rights of the Member and his Occupants to use the Association Property or Common Maintenance Areas of the Association during the period in which any assessment or portion thereof remains unpaid and after at least ten (10) days written notice is given to the Member as aforesaid, and the Association may bring an action at law against the Member personally obligated to pay the same or foreclose its lien against such Member's Lot, in which event late charges, interest and costs of collection shall include court costs, the expenses of sale, any expenses required for the protection and preservation of the Lot, and reasonable attorneys' fees in the amount of 25% of the total claimed.

5.4 Statement of Common Expenses. The Board of Directors shall promptly provide any Member, contract purchaser, or mortgagee of any Lot so requesting the same in writing with a written statement of all unpaid assessments for Common Expenses due from such Member. The Board of Directors may impose a reasonable charge for the preparation of such statement to cover the cost of preparation to the extent permitted by law. Such statement may be signed by any officer or the Managing Agent of the Association.

5.5 Maintenance, Repair, Replacement and Other Common Expenses.

5.5.1 By the Association. The Association shall be responsible for all maintenance, repair and replacement, whether structural or otherwise, of the Association Property and Common Maintenance Areas as described in the Declarations, or as may be determined by the Association. However, any expense incurred by the negligence, misuse or neglect of a Member or occupant of the Association Property or Common Maintenance Areas shall be charged to the responsible Member or occupant.

5.5.2 By the Member. No Member shall be responsible for the operation and maintenance of Association Property or Common Maintenance Areas except for expenses incurred by the Association due to the negligence or misuse of such areas by a Member or his guest.

5.5.3 Manner of Repair and Replacement. All repairs and replacements to Association Property and Common Maintenance Areas shall be of quality workmanship and shall meet all provisions of the building codes used by the applicable jurisdiction. The method of approving payment vouchers for all repairs and replacements shall be determined by the Board of Directors. To preserve architectural appearance of the Lots, no construction, paint or other changes whatsoever shall be commenced or maintained with respect to the exterior of any structure on any Lot except as originally constructed by Developer. No alteration on original landscaping (which term shall be defined in its broadest sense as including grass, fences, hedges, vines, trees and the like, except the developer or the Association after the developer no longer owns any property should have the authority to approve additional plantings requested by a homeowner at the rear of their residence), or changes in the exterior of any structure on any Lot, including color, except as made by Developer, even after a Lot is sold, will be permitted.

5.6 Additions, Alterations or Improvements by Developer. So long as **Developer owns any Property as defined herein or any Lot, Developer reserves the right to make architectural, engineering, landscaping** (which term shall be defined in its broadest sense as including grass, fences, hedges, vines, trees and the like) and decorative changes of any nature, before or after the conveyance of any Lots, to any portion of the Association Property or Common Maintenance Areas including Common Maintenance Areas belonging to a Lot Owner other

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than Developer. Under this provision, Developer shall have the right to make changes to structure on Lots that have been conveyed to other persons during the time Developer owns any property within the Property. No other Member or the Association shall have such right to alter the structure, design, landscaping or decoration of the Association Property or Common Maintenance Areas.

- 5.7 Additions, Alterations or Improvements By Member or the Association. No Member or Association shall have the right at any time to make architectural, engineering, landscaping or decorative changes of any nature to any portion of the Association Property or Common Maintenance Areas and the same shall be maintained in such a fashion to preserve the original architectural, engineering and decorative design in every aspect.

The provisions of this Section shall not apply to the Developer. The Developer shall have the right to make such alterations without consent of the Board of Directors and the Board of Directors shall execute any application required by any Governmental Body. The Developer shall pay the costs of filing such applications.

ARTICLE 6 **INSURANCE**

- 6.1 Authority to Purchase. All insurance policies relating to the Association Property shall be purchased by the Board of Directors. Neither the Board of Directors nor the Managing Agent nor the Developer shall be liable for failure to obtain any coverage required by this Article 6 or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from an insurance company having the qualifications set forth in subsection 6.4 of this Section or if, in the opinion of the Board of Directors, such coverage is prohibitively expensive.

- 6.2 Standard Provisions. Each such policy shall provide that:

- 6.2.1 The insurer waives any right to claim by way of subrogation against the Developer, the Association, the Board of Directors, the County of Roanoke, the Managing Agent or the Lot Owners, and their respective agents, employees, guests and, in the case of the Lot Owners, the members of their households.
- 6.2.2 Such policy shall not be cancelled, invalidated or suspended due to the conduct of any Lot Owner (including his invitees, agents and employees) or of any member, officer or employee

of the Board of Directors, the County of Roanoke or the Managing Agent without a prior demand in writing that the Board of Directors or the Managing Agent cure the defect and without sixty days having elapsed after such a demand without a cure of the defect.

6.2.3 Such policy may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least sixty days prior written notice to the Board of Directors and the Managing Agent and, in the case of physical damage insurance, to all Mortgagees.

6.3 Developer Protected. The Developer, so long as it shall own any Lot, shall be protected by all such policies as a Lot owner.

6.4 Qualifications of Insurer. All policies of insurance shall be written by reputable companies licensed to do business in the Commonwealth of Virginia and holding a rating of "AAA", or better, by Best's Insurance Reports and a policyholder's rating of "A" or better. Physical damage policies shall be in form and substance acceptable to the Mortgagees of the Property.

6.5 Fire and Extended Coverage.

6.5.1 All Lot Owners shall be responsible for securing policies for fire and extended coverage, vandalism, malicious mischief, windstorm, debris removal, and water damage endorsements, for the structures on each individual Lot, in an amount equal to 100% of the then current replacement cost of the Property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation (such amount to be redetermined annually by the Board of Directors with the assistance of the insurance company affording such coverage). All such policies shall be approved by the Board of Directors of this Association and the Board of Directors shall be a named party as their interests may appear.

6.5.2 Copies of all policies and any renewals shall be filed with the Board of Directors of this Association.

6.6 Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability in the amount of \$1,000,000.00 (including libel, slander, false arrest and invasion of privacy coverage for Officers) and property damage insurance in such limits as the Board of Directors may from time to time determine, insuring each member of the Board of

Directors, the Officers, the Managing Agent, the County of Roanoke, each Lot Owner and the Developer against any liability to the public or to the Lot Owners (and their invitees, agents and employees) arising out of, or incident to, the ownership and/or use of the Association Property and Common Maintenance Areas including any storm water detention areas. Such insurance shall be issued on a comprehensive liability basis and shall contain: (a) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to his action against another named insured; (b) hired and non-owned vehicle coverage; (c) host liquor liability coverage with respect to events sponsored by the Association; (d) deletion of the normal products exclusion with respect to events sponsored by the Association; and (e) a "severability of interest" endorsement which shall preclude the insurer from denying liability to a Lot Owner because of negligent acts of the Association or of another Lot Owner. The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than One Million Dollars covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained.

6.7 Other Insurance. The Board of Directors shall obtain and maintain:

6.7.1 Workmen's compensation insurance if and to the extent necessary to meet the requirements of law;

6.7.2 Such other insurance as the Board of Directors may determine or as may be requested from time to time by a majority of the Lot Owners.

6.8 Board of Directors as Agent. The Board of Directors is hereby irrevocably appointed the agent for each Lot Owner, each Mortgagee, other named insured and their beneficiaries and any other holder of a lien or other interest in the Property to adjust and settle all claims arising under insurance policies purchased by the Board of Directors and to execute and deliver releases upon the payment of claims.

ARTICLE 7

REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY

7.1 When Repair and Reconstruction are Required. Except as otherwise provided in Section 7.4 of this Article, in the event of damage to or destruction of the Association Property as a result of fire or other casualty in excess of Twenty-Five Thousand Dollars as set forth in Article 6,

Section 6.5, the Board of Directors under the direction of the Insurance Trustee shall arrange for and supervise the prompt repair and restoration of the Association Property. In the event of damage to or destruction of any Lot improvement, the Owner thereof shall immediately proceed to repair and restore such property under the supervision of the Board of Directors. Any such reconstruction or repair shall be substantially in accordance with the original construction of the dwelling or other improvement to include the same materials, fixtures, paint colors, landscaping, etc., as the original construction.

7.2 Procedure for Reconstruction and Repair.

7.2.1 Cost Estimates. Immediately after a fire or other casualty causing damage in excess of Twenty-Five Thousand Dollars, the Board of Directors under the direction of the Insurance Trustee shall obtain reliable and detailed estimates of the cost of repairing and restoring the Association Property to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Insurance Trustee determines to be necessary.

7.2.2 Assessments. If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve for replacement and/or shall be deemed a Common Expense and a special assessment therefor shall be levied.

7.2.3 Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the original construction of the Association Property to include same materials, fixtures, paint colors, landscaping, etc. as original construction.

7.3 Disbursements of Construction Funds.

7.3.1 Construction Fund and Disbursement. The proceeds of insurance collected on account of casualty, and the sums received by the Board of Directors or Insurance Trustee from collections of assessments against Members on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

7.3.1.1 If the estimated cost of reconstruction and repair is less than Twenty-Five Thousand Dollars, then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors.

7.3.1.2 If the estimated cost of reconstruction and repair is Twenty-Five Thousand Dollars or more, then the construction fund shall be disbursed in payment of such costs upon approval of an architect or engineer qualified to practice in Virginia and employed by the Insurance Trustee to supervise such work, with payment to be made from time to time as the work progresses. The architect or engineer shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other persons who have rendered services or furnished materials in connection with the work and stating that (aa) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and material furnished; (bb) there is no other outstanding indebtedness known to such architect or engineer for the services and materials described and (cc) the cost as estimated by such architect or engineer for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.

7.3.2 Surplus. It shall be presumed that the first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds and, if there is a balance in the

construction fund after the payment of all of the costs of the reconstruction and repair for which the funds is established, such balance shall be divided among all Members in proportion to their assessment obligations.

7.3.3 Certificate. The Insurance Trustee shall be entitled to rely upon a certificate executed by the President and the Secretary, certifying: (i) the name of the payee and the amount to be paid with respect to disbursement from any construction fund or whether surplus funds to be distributed are less than the assessments paid by the Members; and (ii) all other matters concerning the holding and disbursing of any construction fund. Any such certificate shall be delivered to the Insurance Trustee promptly after request.

7.4 Construction Required. In event of fire or other casualty, regardless of the extent of same, the Members and Association shall cause all portions of the Association Property to be rebuilt, including all landscaping and decorating in the same manner as originally constructed and designed by the Developer.

ARTICLE 8 MORTGAGES

8.1 Notice to Board of Directors. A Member who mortgages his Lot shall notify the Board of Directors of the name and address of his Mortgagee and shall file a conformed copy of the note and mortgage with the Board of Directors. In the event of a sale or transfer of a lot in to a third party, the purchaser or transferee shall notify the Association in writing of his interest in the Lot purchased or received.

8.2 Notice of Default, Casualty or Condemnation. The Board of Directors when giving notice to any Member of a default in paying an assessment for Association Expenses or any other default, shall simultaneously send a copy of such notice to the Mortgagee of such Lot. Each Mortgagee shall also be promptly notified of any casualty giving rise to a possible claim under any insurance purchased under Article 6, of all actions taken under Article 7 and of any taking in condemnation or by eminent domain and actions of the Association with respect thereto. For purposes of this Section only, when notice is to be given to a Mortgagee, the Board of Directors shall also give such notice to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity participating in purchasing or guaranteeing

Mortgages of Lots if the Board of Directors has notice of such participation.

- 8.3 Notice of Amendment of Declarations or By-Laws. The Board of Directors shall give notice to all Mortgagees, seven days prior to the date on which the Members meet in accordance with the provisions of these By-Laws, **when the purpose of the meeting is to make material changes to the Declarations or By-Laws which would affect a mortgagee's security position.**
- 8.4 Mortgagees' Approvals. Unless all Mortgagees shall have given their prior written approval, neither the Association nor any Member shall change the obligations and rights of any Member other than the obligation to **pay** assessments which may be changed without Mortgagee approval.
- 8.5 Other Rights of Mortgagees. All Mortgagees or their representatives shall be entitled to attend meetings of the Association and shall have the right to speak. All such Mortgagees shall have the right to examine the books and records of the Association and, **upon written request**, to receive the annual report filed by the Developer and copies of the annual financial reports and other budgetary information.

ARTICLE 9

COMPLIANCE AND DEFAULT

- 9.1 Relief. Each Member shall be governed by, and shall comply with, all of the terms of the Declarations, Articles of Incorporation, these By-Laws, and any Rules and Regulations set forth by the Board of Directors. Default by a Member shall entitle the Association, acting through its Board of Directors or through the Managing Agent, to the relief as set forth in the following paragraphs:
- 9.1.1 Additional Liability. Each Member shall be liable for the expense of all maintenance, repair or replacement rendered necessary by his conscious act, neglect or carelessness or that of any member of his family or his employees, tenants, agents or licensees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Board of Directors. Such liability shall include any increase in casualty insurance rates occasioned by use, or misuse, of any Association Property or Common Maintenance Areas. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation.

9.1.2 Costs and Attorney's Fees.

In the event any party files a suit against the Developer and/or a Contractor employed by the Developer, pursuant to any terms and conditions of this Agreement, or pursuant to the construction of a residence on any Lot, the party filing such legal action shall be responsible for all court costs and attorney's fees incurred by Developer and/or Contractor employed by Developer, if such legal action is dismissed or decided in favor of Developer or if said legal action is decided in favor of said lot owner but the decision is consistent with a previous settlement offer made by the Developer and/or Contractor employed by Developer.

9.1.3 No Waiver of Rights. The failure of the Developer, the Association, the Board of Directors or of a Member to enforce any right, provisions, covenant or condition which may be granted by the Declarations or By-Laws shall not constitute a waiver of the right of the Developer, the Association, the Board of Directors or the Member to enforce such right, provisions, covenant or condition in the future. All rights, remedies and privileges granted to the Association, the Board of Directors or any Member pursuant to any term, provision, covenant or condition of the Declarations or By-Laws shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the aforesaid documents or at law or in equity.

9.1.4 Interest. In the event of a default by any Member in paying any sum assessed against him for Association Expenses which continues for a period in excess of five days, the principal amount unpaid, in addition to a late charge, shall at the option of the Association, bear interest at the rate of twelve percent per annum, or at the highest rate allowed by law whichever is greater, from the date due until paid.

9.1.5 Abating and Enjoining Violations by Members. The violations of any of the Rules and Regulations adopted by the Board of Directors, the breach of any By-Laws contained herein or the breach of any provision of the Declarations, By-Laws, Articles of Incorporation shall give the Board of Directors or its Managing Agent the right, in addition to any other rights set forth in these By-Laws to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity the

continuance of any such breach.

- 9.1.6 Legal Proceedings. Failure to comply with any of the terms of the Declarations, the Articles, these By-Laws and the Rules and Regulations shall be grounds for relief, including without limitation, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for nonpayment of all assessments, any other relief provided for in these By-Laws or any combination thereof including reasonable attorneys fees, and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Association, the Board of Directors, the Managing Agent and, if appropriate, any aggrieved member and shall not constitute an election of remedies.

9.2 Lien for Assessments.

- 9.2.1 The total annual assessment of each Member for Common Expenses or any special assessment made pursuant to these By-Laws is hereby declared to be a lien filed against the Lot of such Member, which lien shall, with respect to annual assessments, be effective on the first day of each fiscal year of the Association, and, as to special assessments, on the first day of the next month which begins more than ten days after delivery to the Member of notice of such special assessment. The Board of Directors or the Managing Agent may file or record such other or further notice of any such lien, or such other or further document, as may be desirable.

- 9.2.2 In any case where an assessment against a Member is payable in installments, upon a default by such Member in the timely payment of any two consecutive installments, the maturity of the remaining total of the unpaid installments of such assessments may be accelerated, at the option of the Board of Directors, and the entire balance of the annual assessment may be declared due and payable in full by the service of notice to such effect upon the defaulting Member and his Mortgagee of this Lot by the Board of Directors or the Managing Agent.

- 9.2.3 The lien for assessments may be enforced and foreclosed in the manner provided by the laws of the Commonwealth of Virginia by action in the name of the Board of Directors or the Managing Agent, acting on behalf of the Association. During the pendency of such suit the Member shall be required to pay a reasonable rental for the Lot for any period prior to sale

pursuant to any judgment or order of any court having jurisdiction over such sale. The plaintiff in such proceeding shall have the right to the appointment of a receiver, if available under the laws of the Commonwealth of Virginia.

9.2.4 A suit to recover a money judgment for unpaid contributions may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

9.3 Supplemental Enforcement of the Lien. In addition to the proceedings at law or in equity for the enforcement of the lien established by the Declarations or By-Laws, all of the Members may be required by the Developer or the Board of Directors to execute bonds conditioned upon the faithful performance and payment of the installments of the lien established thereby and may likewise be required to secure the payment of such obligations by a declaration of trust recorded among the land records of the Property's jurisdiction granting unto a trustee or trustees appropriate powers to the end that, upon default in the performance of such bond the aforesaid declaration of trust may be foreclosed by the trustee or trustees acting at the direction of the Board of Directors. In the event any such bonds have been executed and the declaration of trust is recorded, then any subsequent purchaser of a Lot shall take title subject to the declaration of trust and shall assume the obligations provided for therein.

9.4 Subordination and Mortgage Protection. Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to these By-Laws upon any Lot (and any penalties, interest on assessments, late charges, attorneys fees, or the like) shall be subordinate to, and shall in no way affect the rights of a First Mortgagee so long as such mortgage or deed of trust was made in good faith for value received; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such lot pursuant to a decree of foreclosure, or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the purchaser of the Lot at such sale from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments, which lien shall have the same effect and be enforced in the same manner as provided herein.

ARTICLE 10
AMENDMENT TO DECLARATIONS AND BY-LAWS

- 10.1 Amendments and Termination. These By-Laws may not be terminated unless eighty percent (80%) of the total voting interest in the Association and the Declarant consent.
- 10.2 Method of Amending. These By-Laws may be amended in the following manner:
- 10.2.1 Developer, as long as it owns any part of the Property, shall retain the exclusive right to amend, modify, revoke, alter, expand and update the contents of these By-Laws, or amendments thereto, without the permission of any party.
- 10.2.2 An Amendment or Amendments may be proposed by the Board of Directors of the Association acting upon a vote of more than two-thirds of the Directors, or by more than three-quarters of the Members, whether meeting as members or by instrument in writing signed by them. Upon any Amendment or Amendments being proposed by the Board of Directors or members, such proposed Amendment or Amendments shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon call a special meeting of the members of the Association. It shall be the duty of the Secretary to give to each member written or printed notice of the special meeting, stating the time and place thereof, and reciting the proposed Amendment or Amendments in reasonably detailed form. **NO AMENDMENT NOT WITHSTANDING ANY OTHER PROVISION HEREIN CONTAINED AND REGARDLESS OF THE VOTE SHALL CHANGE ARCHITECTURAL, ENGINEERING, LANDSCAPING, OR DECORATIVE DESIGN OF THE PROPERTY AS FINALLY CONSTRUCTED.** Any member may, by written waiver of notice signed by such member, waive such notice and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such member. At the meeting, the Amendment or Amendments proposed must be approved by an affirmative vote of more than seventy-five percent (75%) of the Members in order for such Amendment or Amendments to become effective. Thereupon such Amendment or Amendments shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted. Thereafter, a copy of the Amendment or

Amendments in the form in which the same were placed of record by the Officers of the Association shall be delivered to all the Members, but delivery of a copy thereof shall not be a condition precedent to the effectiveness of the Amendment of Amendments. At any meeting held to consider the Amendment or Amendments the written vote of any members of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association prior to such meeting or at such meeting.

10.2.3 No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of a Mortgagee shall be made without prior written consent of all Mortgagees being first had and obtained.

10.2.4 No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of the Developer shall be made without the written consent of the Developer being first had and obtained.

10.3 Termination.

10.3.1 Termination of the Association may be effected only as set forth in the Articles of Incorporation. In addition to the foregoing, termination shall not be allowed unless two-thirds of the holders of all mortgages or deeds of trust that are liens on the Lots consent in the aforesaid termination agreement.

10.3.2 In the event of termination, the Property may be disposed of as set out in the Articles of Incorporation. All funds held by the Association including insurance proceeds, if any, shall be held for the Members in the same proportion as their former fractional interests. Any Costs incurred by the Association in connection with the termination shall be considered an Association expense.

10.3.3 The members of the Board of Directors acting collectively as agent for all Members, shall continue to have such powers as are granted in this Article notwithstanding the fact that the Association itself may be dissolved upon termination.

ARTICLE 11
MISCELLANEOUS

- 11.1 Notices. All notices, demands, statements or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally (a) if to a Member, at the address which Member shall designate in writing and file with the Secretary or, if no such address is designated, at the address of the Lot of such Member; or (b) if to the Association, the Board of Directors or to the Managing Agent, at the principal office of the Managing Agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section. If a Lot is owned by more than one person, each person who so designates an address in writing to the Secretary shall be entitled to receive all notice hereunder.
- 11.2 Captions. The captions used herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these By-Laws or the intent of any provision thereof.
- 11.3 Gender, Singular/Plural. The use of the masculine gender in these By-Laws shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

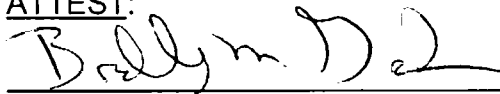
IN WITNESS WHEREOF, the foregoing By-Laws have been adopted as the By-Laws of RUSLEN FARMS HOMEOWNERS ASSOCIATION, INC., at the organizational meeting of its Board of Directors held May 14, 2003.

**RUSLEN FARMS HOMEOWNERS
ASSOCIATION, INC.**

BY _____


Joe Thomas, Jr., Its President

ATTEST:



Bradley G. Graham, Secretary

OSTERHOUDT, PRILLAMAN,
NATT, HELSCHER, YOET,
MAXWELL & FERGUSON, PLC
ATTORNEYS-AT-LAW
ROANOKE, VIRGINIA
40-8-0049

STATE OF VIRGINIA)
)
CITY OF SALEM)

The foregoing instrument was acknowledged before me on
May 14, 2003, by Joe Thomas, Jr. and Bradley G. Graham,
President and Secretary, respectively of **RUSLEN FARMS HOMEOWNERS
ASSOCIATION, INC.**, a Virginia corporation, on behalf of the corporation.

My commission expires: August 31, 2003.

Edward A. Pitt
Notary Public

OSTERHOUDT, PRILLAMAN,
NATT, HELSCHER, YOST,
MAXWELL & FERGUSON, PLC
ATTORNEYS-AT-LAW
ROANOKE, VIRGINIA
4018-0049

EXHIBIT "A"

111.339 Acres, situate in the County of Roanoke, Virginia, acquired by RUSSELEN FARMS DEVELOPMENT, L.L.C. by deed dated January 11, 2002, of record in the Clerk's Office of the Circuit Court of Roanoke County, Virginia, as Instrument No. 200200757, together with such additions to or deletions from said property as RUSSELEN FARMS DEVELOPMENT, L.L.C. may direct (the "Property").

OSTERHOUDT, PRILLAMAN,
NATT, HELSCHER, YOET,
MAXWELL & FERGUSON, P.L.C.
ATTORNEYS-AT-LAW
ROANOKE, VIRGINIA
5:5-0049