

BY-LAWS
OF
FOUNTAINGROVE HOMEOWNERS ASSOCIATION
OF MECKLENBURG, INC.

ARTICLE I

NAME AND LOCATION

The name of the corporation is Fountaingrove Homeowners Association of Mecklenburg, Inc., hereinafter referred to as the "Association." The principal office of the corporation shall be located at Charlotte, North Carolina, but meetings of members and directors may be held at such places within Mecklenburg County or Mecklenburg County, North Carolina, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

The Definitions set out in Article I of the Declaration of Covenants, Conditions and Restrictions for Fountaingrove filed in Book 10147 at page 352 in the Mecklenburg County Public Registry as the same may be amended from time to time, are adopted as part of the By-Laws of the Association and are incorporated herein by reference.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The voting rights of the membership shall be appurtenant to the ownership of the Lots. The Association shall have three (3) classes of voting membership.

(a) Class A. Except as provided below, Class A members shall be all Lot Owners except the Declarant and Approved Builders; and Class A members shall be entitled to one (1) vote for each such Lot owned. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be members and the vote appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class B. Class B member shall be the Declarant (as defined in the Declaration); and such member shall be entitled to such number of votes as will constitute seventy-five (75%) of the total voting power of the Association, so long as the Class B membership continues to exist.

The Class B membership shall cease to exist and shall be converted to Class A membership with one vote for each Lot owned, on the happening of either of the following events, whichever occurs earlier:

(1) When the total number of votes appurtenant to the Class A Lots equals the total number of votes appurtenant to the Class B Lots; provided, that the Class B Lots shall be reinstated with all rights, privileges and responsibilities of such Class, if, after conversion of the Class B Lots to Class A Lots hereunder, additional land containing Lots is annexed to the existing property pursuant to Article II above, thus making the Declarant the owner, by virtue of the newly created Lots and of other Lots owned by Declarant, of a sufficient number of Class B Lots to cast a majority of votes (it being hereby stipulated that the conversion and re-conversion shall occur automatically as often as the foregoing facts shall occur); or

(2) On December 31, 2005.

When the Class B Lots cease to exist and are converted to Class A Lots, Declarant shall have the same voting rights as other owners of Class A Lots.

Provided, further, that nothing herein shall be construed to prohibit Declarant from converting all or part of the Class B membership to Class A membership with the results set forth above at any time earlier than the alternative events referred to above, by written statement executed by the Declarant and delivered to the Association.

(c) Class C. Class C members shall be Approved Builders; and Class C members shall be entitled to one (1) vote for each such Lot owned.

The Class C membership shall cease to exist and shall be converted to Class A membership whenever the Class B membership converts to Class A membership as set forth in Section 2(b) hereinabove.

ARTICLE IV

MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held within one year from the date of incorporation of the Association but no later than the

third Wednesday in January, 1999, and each subsequent regular annual meeting of the members shall be held on the third Wednesday in February of each year thereafter.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the President, Secretary or majority of the members of the Board of Directors, or upon written request of the members entitled to one-fourth (1/4) of the votes.

Section 3. Substitute Annual Meeting. If the annual meeting shall not be held on the day designated by these Bylaws, a Substitute Annual Meeting may be called in accordance with Section 2 of this Article. A meeting so called shall be designated and treated for all purposes as the Annual Meeting.

Section 4. Place of Meetings. All meetings of the members shall be held at such place, within Mecklenburg County or Mecklenburg County, North Carolina, as shall be determined by the Board of Directors of the Association.

Section 5. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, or by hand delivery, not less than 15 days nor more than 50 days before the date of the meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the exact purposes of the meeting, including the text of any proposals to be voted on at such special meeting. Waiver by a member in writing of the notice required herein, signed by him before or after such meeting, shall be equivalent to the giving of such notice.

Section 6. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, ten percent (10%) of the votes appurtenant to the Lots shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 7. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

Section 8. Action by Written Ballot. Any action that may be taken at any annual, regular or special meeting of members, may be taken without a meeting if the corporation

delivers a written ballot to every members entitled to vote on the action. The ballot must set forth each proposed action, provide a place for the member to vote for or against each proposed action and indicate the time a ballot must be received by the corporation in order to be counted. An action taken by written ballot shall be valid when the number of votes cast by ballot equals or exceeds the number of persons required to be present at a meeting authorizing such action and the number of approvals equals or exceeds the number of votes that would be required to approve the action at a meeting.

Section 9. Parliamentary Procedures. At all meetings, "Roberts Rules of Order, Revised" shall govern for any question of procedure not covered by the Bylaws.

ARTICLE V

BOARD OF DIRECTORS

Section 1. General Powers. The business and affairs of the Association shall be managed by a Board of Directors.

Section 2. Number, Term and Qualification. The number of directors of the Association shall be three until the first annual meeting of the Association following conversion of Class B Lots to Class A Lots at which time the number of Directions shall be increased to five (5). At the first annual meeting following conversion of Class B Lots to Class A Lots the members shall elect one director to serve for a term of one year, two directors to serve for a term of two years and two directors to serve for a term of three years. At each annual meeting thereafter the members shall elect the number of directors needed to fill the space or spaces left by the director or directors whose term is due to expire for a term of three years. Each director shall hold office until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies. Directors need not be members of the Association.

Section 3. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee in following manner: The Nominating Committee will send notices to all Owners which will include the following information: (1) that the Committee is soliciting names of persons to serve on the Board of Directors; (2) that the Committee is requesting members to volunteer to serve or to nominate other qualified persons and (3) that all nominations must be returned to the Committee by a certain date. After the stated response date, the Nominating Committee may interview nominees at its discretion. The names of all persons nominated will be placed on the ballot, but the Nominating Committee is authorized to make recommendations at its discretion.

Section 4. Election. Except as provided in Section 6 of this Article, the directors shall be elected either at the annual meeting of the members, by secret written ballot or as provided in Article IV, Section 8. At any election, the members or their proxies may vote

in accordance with the provisions of Article III for persons to fill each vacancy. The person receiving the highest number of votes shall be elected. Cumulative voting is not permitted.

Section 5. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association.

Section 6. Vacancies. A vacancy occurring in the Board of Directors may be filled by the selection by the remaining directors of a successor who shall serve for the unexpired term of his predecessor. The members may elect a director at any time to fill any vacancy not filled by the directors.

Section 7. Compensation. No director shall receive compensation for any service he may render to the Association in the capacity of director. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 8. Bonds. The Board of Directors may by resolution require any or all officers, agents and employees of the Association to give a bond to the Association with sufficient sureties conditioned on the faithful performance of the duties of their respective offices or positions and to comply with such other conditions as may from time to time be required by the Board of Directors.

Section 9. Declarant Control of Board of Directors. Until the first annual meeting of the Association following conversion of Class B Lots to Class A Lots as provided in Section 2. of Article III of the Declaration, all directors shall be appointed by the Declarant and shall serve at the will of the Declarant.

ARTICLE VI

MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at least quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days' notice to each director.

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

Section 4. Informal Action by Directors. Action taken by a majority of the directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all the directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5. Chairman. A Chairman of the Board of Directors shall be elected by the directors and shall preside over all Board meetings until the President of the Association is elected. Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the office of the Presidency, a Chairman shall be elected by the Board of Directors to serve until a new President is elected.

Section 6. Parliamentary Procedures. At all meetings "Roberts Rules of Order, Revised" shall govern for any question of procedure not covered by the Bylaws.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

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

- (a) suspend the voting rights of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association pursuant to the provisions of the Declaration;
- (b) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;
- (c) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors without good cause;
- (d) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties; and contract with a management company to manage the operation of the Association, and in the event a contract is entered into with a management company, such contract must be terminable by the Board of Directors without cause or penalty on thirty (30) days or less notice;
- (e) employ attorneys to represent Association when deemed necessary;
- (f) appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient.

(g) employ an architect, planner, engineer, developer or other members of a profession engaged in the construction or development industry to serve as a member or advisor to the Architectural Control Committee established under Article X of the Declaration.

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

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by members entitled to at least one-fourth (1/4) of the votes appurtenant to Class A Lots.

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

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

(i) fix the amount of the annual assessment against each Unit at least thirty (30) days before January 1 of each year.

(ii) send written notice of each assessment to every Owner subject thereto at least fifteen (15) days and before January 1 of each year;

(iii) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.

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

(e) procure and maintain adequate liability insurance covering the Association and errors and omissions insurance for its officers and directors in such amounts as determined by the Board and adequate hazard insurance on any real and personal property owned by the Association;

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

(g) cause the Common Areas and Landscape and Easement Areas and all improvements constructed thereon to be maintained to a level deemed appropriate by the Board.

(h) cause the Sign Easements and the landscaping in the medians located throughout Fountaingrove to be maintained to a level deemed appropriate by the Board.

ARTICLE VIII

OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

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

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or be otherwise disqualified to serve.

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

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

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

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

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

President

(a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall sign all promissory notes and in the absence of the Treasurer shall sign all checks.

Vice-President

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

Secretary

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks of the Association; keep proper books of account; cause an annual audit or report of the Association books to be made at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be represented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE IX

COMMITTEES

The Association shall appoint a Nominating Committee as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose. The Board of Directors making the appointment of a committee shall designate a chairman of said committee.

ARTICLE X

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI

ASSESSMENTS

As more fully provided in Article V of the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight (8%) percent per annum, or at the rate established by the Board of Directors at the beginning of the fiscal year of the Association, whichever is less, plus such late charge as may be established by the Board of Directors, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorneys fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Unit.

ARTICLE XII

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: Fountaingrove Homeowners Association of Mecklenburg, Inc., Mecklenburg County, North Carolina, ~~1998~~ 1999

ARTICLE XIII

AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present at a meeting duly called for such purpose in person or by proxy.

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

ARTICLE XIV

VIOLATION OF RULES AND REGULATIONS

Failure to abide by any Rules or Regulations published by the Association shall be grounds for an action, brought by the Association or any aggrieved Owner, to recover damages, or obtain injunctive and equitable relief, or both. In addition to these remedies, in the event of violation by an Owner of any rules or regulations, such Owner's voting rights and rights to use the recreational facilities may be suspended by the Board after a hearing at which the general requirements of due process shall be observed. The duration of such suspension shall be set by the Board and shall not exceed sixty days for each violation. Such hearing shall only be held by the Board after giving the Owner ten (10) days' prior written notice which specifies each alleged violation and sets the time, place and date of the hearing. A determination of the violation and the time of suspension or other sanction shall be made by a majority vote of the Board. The Owner shall have the right to appeal any adverse ruling of the Board and shall be entitled to a hearing de novo before the membership of the Association, at which the general requirements of due process shall be observed. Upon an appeal by an Owner of a decision by the Board, a special meeting shall be held within sixty (60) days from the decision by the Board, but the decision of the Board shall remain in effect unless overruled by a majority vote of the members present at the special meeting.

ARTICLE XV

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Neither Declarant, nor any Member, nor the Board, nor the Association, nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof.

The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Association shall indemnify any director or officer or former director or officer of the Association or any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not for profit, against expenses (including attorneys' fees) or liabilities actually and reasonably incurred by him in connection with the defense of or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he is made a party or was (or is threatened to be made) a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnifications provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, bylaw, agreement, vote of members or any disinterested directors or otherwise and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association shall make efforts to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability.

The Association's indemnity of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article XV, of the Bylaws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

ARTICLE XVI

MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting secretary of the Fountaingrove Homeowners Association of Mecklenburg Inc., a North Carolina non-profit corporation, and,

THAT the foregoing By-Laws constitute the original By-Laws of said Fountaingrove Homeowners Association of Mecklenburg, Inc., as duly adopted at a meeting of the Board of Directors thereof, held on the 14th day of JANUARY, 1999.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 14th day of JANUARY, 1999.

Manu M. Hod
Secretary