

**SECOND AMENDED AND RESTATED BYLAWS  
OF  
CRESTON PROPERTY OWNERS' ASSOCIATION, INC.  
(May 26, 2020)**

**ARTICLE I - MEMBERS**

1. **Membership.** The Members (capitalized terms used and not defined herein shall have the meanings given to such terms in the Declaration defined below) of the Creston Property Owners' Association, Inc. (the "Association"), a corporation not for profit organized under North Carolina law, shall consist of the Owners of Sites in Creston in McDowell County, North Carolina, as described in the Amended and Restated Declaration of Covenants, Conditions and Restrictions dated January 31, 2019, and recorded in Book 1269, Page 339 of the Deed Registry of McDowell County, North Carolina, as may be further amended and restated from time to time (the "Declaration"). The Membership of each Owner shall terminate when he ceases to be an Owner of a Site. Upon the sale, transfer or other disposition of his ownership interest in a Site, Membership in the Association shall be transferred automatically to the new Site Owner. The Association may issue certificates evidencing Membership.
2. **Shares; Votes.** Each Member shall have an interest in the funds and assets of the Association equal to the number of Sites owned by that Member. Members shall be entitled to vote as described in the Declaration and these Bylaws.
3. **Quorum.** A quorum at Association meetings shall consist of attendance in person, by proxy, or by electronic means to allow for participation, if and when adopted by the Board, of Members holding a majority of the votes of the Association having the right to vote at such time. Any such Member may join in the action of a meeting by signing and concurring in the minutes evidencing such action and the signing by such a Member will constitute the presence of the Member at that meeting for the purpose of determining a quorum.
4. **Proxies.** Votes by Members may be cast in person, by proxy, by electronic means, if and when adopted by the Board, or in accordance with Article II, Section 6 of these Bylaws. Proxies cast by Members shall be in writing, shall be valid only for a particular meeting designated thereon and must be filed with the Secretary (as defined below) before the appointed time of the meeting.

**ARTICLE II - MEETINGS OF MEMBERSHIP**

1. **Rules.** The meeting of the Membership shall be held in accordance with the provisions of the Declaration and, subject to the Declaration, in accordance with these Bylaws. Except where in conflict with the Declaration or these Bylaws, *Robert's Rules of Order Newly Revised*, 11th ed. (Da Capo Press, 2011) (as amended) shall govern the conduct of all meetings.

2. **Annual Meetings.** Except in the case of an annual meeting conducted by electronic means, if and when adopted by the Board, the annual meeting of the Association Membership shall be held at such place in Creston (or in the case of an emergency in such other place in the State of North Carolina) as shall be designated by the Board or the President (as defined below) of the Association. The annual meeting shall be held in June of each year unless otherwise determined by the Board.
3. **Special Meetings.** Unless specifically provided otherwise herein or in the Declaration, meetings of the Membership shall be held when directed by the President or the Board or when requested in writing by Members holding a majority of the votes having the right to vote at such time. The call for the meeting shall be issued by the Secretary.
4. **Notice.** Notice of all Members' meetings, regular and special, shall be given by the President, Vice President (as defined below) or Secretary of the Association to each Member unless waived in writing. Such notices shall be written or printed, and shall be mailed personally deliverable or sent via electronic communication with retentive capability to each Member as follows:
  - (a) For annual meetings, not less than thirty (30) nor more than sixty (60) days prior to the date set for the meeting;
  - (b) For any meetings, annual or special, at which the budget of Common Expenses will be considered, not less than thirty (30) nor more than sixty (60) days prior to the date of the meeting;
  - (c) For special meetings called by the Membership pursuant to Article II, Section 3 above, not less than ten (10) nor more than sixty (60) days prior to the meeting; and
  - (d) For any other special meetings, not less than forty-eight (48) hours prior to the date of the meeting, unless the Board determines that an emergency exists, in which case the Board shall give such notice as is reasonable under the circumstances.
5. **Waiver.** Any Owner may waive notice of a meeting or consent to the holding of a meeting without notice or consent to take action without a meeting, by execution of a waiver or consent in writing. Such waiver or consent may be executed prior to, at, or subsequent to the meeting or Association action to which the waiver or consent relates.
6. **Action Without Meeting.** Any action required to be taken by vote or assent of the Members having the right to vote at such time may be taken in the absence of a meeting (or in the absence of a quorum at a meeting) by obtaining the written approval of the requisite percentage of the Membership having the right to vote at such time. Any action so approved shall have the same effect as though taken at a meeting of such Members, and such approval shall be duly filed in the minute book of the Association.

## **ARTICLE III - BOARD OF DIRECTORS**

- 1. Election; Staggered Terms.** Subject to the provisions of the Articles and the Declaration, Members holding a majority of the votes of the Association having the right to vote at such time voting in person or by proxy at each annual meeting of the Association shall determine and elect the number of directors (each a “Director” and collectively, the “Directors”) for the Board of Directors. In the event of any tie vote, those candidates having the tie vote shall determine between/among themselves (or if no such agreement is reached, by the President) the manner and method for breaking the tie vote during such annual meeting. No cumulative voting shall be permitted. In no event shall there be less than three (3) nor more than seven (7) Directors. No Director shall be removed from office, or have his/her term of office shortened, because of a reduction in the prescribed number of directorships. There shall be three (3) classes of Directors: Class A, Class B and Class C (each is a “Class”), and an effort shall be made to keep each Class of Directors of approximately equal size. The terms of office of the Directors shall be staggered by Class. Each Class of Directors shall hold office for a term of three (3) years and until his/her successor shall be elected and qualified:

  - (i) Directors in Class A shall have their term expire in 2011 (and every three years thereafter);
  - (ii) Directors in Class B shall have their term expire in 2012 (and every three years thereafter); and
  - (iii) Directors in Class C shall have their term expire in 2013 (and every three years thereafter).

At each election for a Class of Directors, each Member having the right to vote at such time may vote for as many persons as there are Directors in a Class to be elected. The candidates receiving the highest number of votes for Director shall be declared elected to such Class of Directors.

- 2. Qualifications.** Each Director shall be a Site Owner having the right to vote at such time (and, if a Site Owner is a corporation, partnership, trust or other legal entity, a Director may be an officer, partner, or beneficiary of such Owner). If a Director shall cease to meet such qualifications during his term, he shall thereupon cease to be a Director and his place on the Board shall be deemed vacant.
- 3. Vacancy.** Any vacancy occurring in the Board may be temporarily filled by a majority vote of the remaining Directors until the next occurring annual meeting of the Association, at which time, if the term of the office of such Director has not then expired, then the Members having the right to vote at such time shall determine and elect the individual to serve the remaining term of office of such Director by Members holding a majority of the votes of the Association having the right to vote at such time voting in person or by proxy at such annual meeting of the Association; provided however, that a vacancy resulting from removal of a Director pursuant to Article III, Section 7 of these Bylaws shall be filled by Owners holding a majority of the votes of the Association having the right to vote at such time in accordance with Article III, Section 7 of these Bylaws.
- 4. Meetings.** An annual meeting of the Board shall be held immediately following the annual meeting of the Membership and at the same place. Special meetings of the Board shall be

held upon call by the President or a majority of the Board on not less than forty-eight (48) hours notice in writing (via electronic communications with retentive capability) to each Director, unless the Board determines an emergency exists, in which event the Board shall give such notice as is reasonable under the circumstances. Notices to Members of all meetings shall be posted via electronic means accessible to Members at least forty-eight (48) hours prior to the meeting or in the event of an emergency, as soon as practicable. Members shall be entitled to copies of minutes of the Board meeting upon written request.

5. **Waiver.** Any Director or Owner may waive notice of a meeting or consent to the holding of a meeting without notice or consent to any action of the Board without a meeting. Such waiver or consent may be executed prior to, at, or subsequent to the meeting or Board action to which the waiver or consent relates.
6. **Quorum.** A quorum for the transaction of business shall consist of a majority of the Directors. Directors may participate in person, by telephone conference, via the internet, or by other electronic means. A quorum is not required to adjourn a meeting. A majority of Directors present at any meeting where a quorum exists shall decide any matters before the Board.
7. **Removal.** Any Director may be removed from office, with or without cause, by Owners holding a majority of the votes of the Association having the right to vote at such time, at a duly called meeting of Owners. Notwithstanding any other provisions herein, a special meeting of Owners to remove a Director or Directors from office may be called by Owners holding ten (10) percent of the votes of the Association having the right to vote at such time giving notice to all Owners of the meeting, which notice shall state the purpose of the meeting and shall be given to all Owners in writing as provided in Article II, Section 4(c).
8. **Compensation.** Directors shall receive no compensation for their services unless expressly provided for in resolutions duly adopted by Owners holding a majority of the votes of the Association having the right to vote at such time.
9. **Powers and Duties.** The Board shall have the following powers and duties:
  - (a) To elect the officers of the Association as hereinafter provided;
  - (b) To administer the affairs of the Association and the property and formulate policies for such purposes;
  - (c) To adopt administrative rules and regulations governing the administration, management, operation and use of the Common Area and other property in Creston and to amend such rules and regulations from time to time;
  - (d) To provide for maintenance, repair and replacement of those parts of Creston stated in the Declaration to be maintained by the Association;
  - (e) To provide for the designation, hiring and removal of employees and other personnel or service companies, to engage or contract for these services of others, to make purchases for the maintenance, repair, replacement, administration, management and operation of the Common Area and to delegate any such powers to the employees or agents of the Association;

- (f) To estimate the amount of the annual budget, to provide the manner of assessing and collecting from the Owners their respective shares of such estimated expenses as hereinafter provided and to assess any supplemental assessment as the Board shall deem necessary;
- (g) Unless otherwise provided herein or in the Declaration, to comply with the instructions of a majority of the Owners having the right to vote at such time as expressed in a resolution duly adopted at any annual or special meeting of the Owners; and
- (h) To exercise all other powers and duties of the Board provided for in the Declaration and the Articles.

#### **ARTICLE IV - OFFICERS**

1. **Election.** Subject to the provisions of the Declaration and Articles, at each annual meeting of the Board, the Board shall elect from the membership of the Association the following officers of the Association:
  - (a) A president (the “President”), who shall be a Director, shall preside over the meetings of the Board and of the Association and shall be the chief executive officer of the Association. In the recess of the Board, the President shall have general control and management of the business and affairs of the Association;
  - (b) One or more vice presidents (each “Vice President”), who shall, in the absence or disability of the President, perform the duties and exercise the powers of the President;
  - (c) A secretary (the “Secretary”), who shall keep the minutes of all meetings of the Board and of the Membership and who shall perform all duties generally incident to the office of the Secretary;
  - (d) A treasurer (the “Treasurer”), who shall cause to be kept the financial records and books of account of the Association; and
  - (e) Such additional officers as the Board shall see fit to elect. An individual may hold more than one position.
2. **Powers.** The officers shall have the general powers usually vested in such officers of a not-for-profit corporation, provided that the Board may delegate any specific powers to any other officer or impose such limitations or restrictions upon the powers of any officer as the Board may deem necessary. The President and any Vice President may prepare, execute, certify, and record amendments to the Declaration on behalf of the association.
3. **Term.** Each officer may hold office for a staggered term of two (2) years and until his successor shall have been elected and qualified.
4. **Vacancy.** Vacancies in any office shall be filled by the Board at special meetings thereof. Any officer may be removed at any time, with or without cause, by the affirmative vote of a majority of the whole Board.

5. **Compensation.** Officers shall receive no compensation for their services, unless expressly provided for in a resolution duly adopted by Owners holding a majority of the votes of the Association having the right to vote at such time.

## ARTICLE V - ASSESSMENTS

1. **Budget.** The Board shall cause to be prepared an estimated annual budget for each fiscal year of the Association, taking into account the estimated expenses and cash requirements necessary to fulfill all of the obligations of the Association as set for the in the Declaration. To the extent that the Assessments and other cash income collected during the preceding year shall be more or less than the expenditures for such preceding year, such surplus or deficit shall also be taken into account.
2. **Approval.** The estimated annual budget for each fiscal year as provided by the Board shall be approved as provided in the Declaration. A copy of the proposed annual budget shall be mailed or sent via electronic communication with retentive capability to Owners not less than thirty (30) days prior to the meeting at which the budget is to be considered, together with notice of the meeting specifying the time and place at which it will be held.
3. **Payment.** Payment of the Assessments shall be as provided in the Declaration. The Board may send to each Owner a statement of the Assessment of such Owner for the period covered by the statement, but failure to receive such statement shall not relieve any Owner of his obligation to pay his Assessment to the Treasurer (or as otherwise directed) on or before the date owed.
4. **Supplemental Budget.** If during the fiscal year it appears to the Board that the Assessments are insufficient to cover the estimated Common Expenses for the remainder of the year, then the Board shall prepare and approve a supplemental budget covering the estimated deficiency for the remainder of such year, which shall be approved in accordance with the Declaration.
5. **Records.** The Board shall maintain accounting records according to generally accepted accounting practices, which records shall be open to inspection by Owners at reasonable times and upon reasonable notice. These accounting records maintained shall include a record of receipts and expenditures and a separate account for each Owner showing the Assessments charged to and paid by such Owner. Individual accounts for Owners are available only to the Board, officers, and the individual Owner. Within ninety (90) days after the end of each year covered by an annual budget, the Board shall cause to be furnished to each Owner a statement for such year showing the receipts and expenditures and such other information as the Board may deem desirable.
6. **Limitation.** Without the approval of Owners holding at least seventy-five (75) percent of the votes of the Association having the right to vote at such time, the Board shall not approve any capital expenditures in excess of fifteen thousand dollars (\$15,000.00) other than rebuilding, repairing, or replacing damaged property or as specifically provided in the Declaration.

## ARTICLE VI - RULES AND REGULATIONS

Uniform rules and regulations governing use of the Common Area and other property in Creston shall be adopted from time to time by the Board. All Owners shall obey the rules and regulations as adopted by the Board.

## ARTICLE VII - AMENDMENT

These Bylaws may be amended, altered or rescinded by Owners holding a majority of the votes of the Association having the right to vote at such time at a regular or special meeting of the Association, or as provided in Article II, Section 6 of these Bylaws, and in the case of a regular or special meeting, notice of which shall state that such proposed amendment is to be voted on at the meeting. All amendments of these Bylaws shall be posted with the other governing documents on the Association website.

## ARTICLE VIII - ARCHITECTURAL REVIEW COMMITTEE (“ARC”)

**Section 1. Organization, Power of Appointment and Removal.** There shall be an Architectural Review Committee (the “ARC”) organized as follows:

- (a) **Committee Composition.** The ARC shall consist of no less than three (3) and not more than five (5) members, with one member serving as a chairperson and up to four (4) additional members. ARC members who are Owners must be in good standing having the right to vote. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. An Owner may not simultaneously serve on the ARC and the Board of Directors. In the event that members from the same household are concurrently serving on both the Board of Directors and the ARC, the Board member(s) with this apparent conflict of interest shall be required to recuse him or herself from both discussion of and voting on any Owner appeal arising from ARC decisions.
- (b) **Quorum and Meetings of Members.** The ARC shall meet upon the call of the chairman or any three (3) members. At any meeting, three (3) members, one of which may be the chairman, shall constitute a quorum.
- (c) **Terms of Office.** The term of members of the ARC shall be staggered with the initial ARC members designated to serve one (1) year, two (2) year or three (3) year terms and thereafter, each ARC member will serve a three (3) year term. Any new ARC member appointed to replace a member who has resigned or been removed shall serve such member’s unexpired term. ARC members who have resigned, been removed or whose terms have expired may be reappointed.
- (d) **Appointment and Removal.** The right to appoint and remove all members of the ARC at any time, and for any reason, shall be and is hereby vested solely in the Board, provided, however, that no member may be removed from the ARC by the Board except by the vote or written consent of three-fifths of all of the members of the Board.

- (e) **Resignations.** Any member of the ARC may at any time resign from the ARC by giving written notice thereof to the Board.
- (f) **Vacancies.** Vacancies of the ARC, however caused, shall be filled by the Board.

**Section 2. Duties.** It shall be the duty of the ARC to consider and act upon any and all proposals or plans submitted to it pursuant to the terms set forth in the Declaration, to adopt appropriate rules establishing policies for site improvements within Creston, to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by the Declaration.

**Section 3. Meetings and Compensation.** The ARC shall meet from time to time (not less than once each month except in extraordinary circumstances) as necessary to perform its duties hereunder. Subject to the provisions of Article VIII, Section 1, Paragraph (b) above, the vote or written consent of any three (3) members, at a meeting, shall constitute the act of the ARC. The ARC shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. No member of the ARC who is a Member of the Association shall receive from the Association, any compensation for services, provided that the Board may pay reasonable compensation to any member of the ARC who is not a Member of the Association for all reasonable expenses incurred by them in the performance of any ARC functions.

**Section 4.** [RESERVED]

**Section 5. Waiver.** The approval by the ARC of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specifications or matter subsequently submitted for approval.

**Section 6. Liability.** Neither the ARC nor any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of:

- (a) The approval or disapproval of any plans, drawings, specifications, whether or not defective.
- (b) The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications.
- (c) The development of any property, including, but not limited to, defective construction of residences.
- (d) The execution and filing of any estoppels certificate, whether or not the facts therein are correct.

**Section 7. Appeal of ARC Decisions.** Any party aggrieved by a decision of the ARC may appeal such decision to the Board, and such decision of the ARC is final, unless overridden by a vote of two-thirds of the Board entitled to vote at such time. No Owner or any other party shall have recourse against the ARC or the Board for its refusal to approve any plans, specifications or contractors.