

**BY-LAWS
OF
THE BATTALINA CREEK
HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE I
NAME, LOCATION AND PURPOSE**

Section 1: Name. The name of the nonprofit corporation is THE BATTALINA CREEK HOMEOWNERS' ASSOCIATION, INC, hereinafter referred to as the "Association."

Section 2: Principal Office. The principal office of the Association shall be located at 220 North Market St., Washington, North Carolina, 27889.

Section 3: Registered Office. The registered office of the Association required by law to be maintained in the State of North Carolina may be, but need not be, identical with the principal office.

Section 4: Purpose. This Association is charged with the operation and management of The BATTALINA CREEK Subdivision, and such additions thereto as hereafter may be brought within the jurisdiction of the Association, located Beaufort County, North Carolina. Said operation and management shall be carried out consistently with the provisions of these By-Laws, the Declaration for The Association that is recorded in the Register of Deeds in Beaufort County, North Carolina as well as the Articles of Incorporation for said Association.

**ARTICLE II
DEFINITIONS**

Section 1: "Association" shall mean and refer to THE BATTALINA CREEK HOMEOWNERS' ASSOCIATION INC, its successors and assigns.

Section 2: "Common Area" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the owners, and specifically shall mean any storm water control or disposal improvements, piers, walkways and

streets, if any, which may be constructed.

Section 3: "Declarant" shall mean and refer to the successors and assigns of Battalina Creek, LLC, if such successors or assigns had acquired more than one undeveloped lot from the Declarant for the purpose of development. The prior Declarant, Battalina Creek, LLC, is dissolved and no longer in business or have anything to do with this subdivision.

Section 4: "Declaration" shall mean and refer to the Declaration of Covenants Conditions and Restrictions for The Association Subdivision applicable to the properties as the same is or shall be recorded in the Office of the Register of Deeds in Beaufort County, North Carolina.

Section 5: "Lot" shall mean and refer to any plot of land designated for separate ownership and shown upon any recorded subdivision map of the Properties with the exception of the Common Area, and includes any improvements thereon, if any.

Section 6: "Member" shall mean and refer to lot owners and the Declarant as the same are defined by the Declaration and these By-Laws.

Section 7: "Mortgagee" shall mean and refer to persons, firms or corporations holding a recorded lien appearing of record in the Beaufort County Registry against any lots as defined in Section 5 hereof.

Section 8: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 9: "Properties" shall mean and refer to that certain real property described in the Declaration that is recorded in the Register of Deeds in Beaufort County, North Carolina and such additions thereto as hereafter may be brought within the jurisdiction of the Association.

**ARTICLE III
ASSOCIATION MEMBERS**

Consistent with and as more particularly defined in the Declaration, every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject by covenants of record, or to be recorded, to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association.

Section 1: Annual Meeting of Members. The first annual meeting of the members shall be held within one year from the date of incorporation of the Association, at the principal office of the Association, at an hour to be fixed by the President, and each subsequent regular annual meeting of the members shall be held on the same day and the same month of each year thereafter, at the principal office of the Association, at an hour to be fixed by the President for the purpose of electing Directors and for the transaction of such other business as may be brought before the meeting. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day.

Section 2: Substitute Annual Meetings. If the annual meeting shall not be held on the day designated in these By-Laws, a substitute annual meeting at the principal office of the Association may be called in accordance with the provisions of Section 3 of this Article III. A meeting so called shall be designated and treated for all purposes as the annual meeting.

Section 3: Special Meetings of Members: Special meetings of the members may be held in the principal office of the Association, or elsewhere by consent of the members, whenever called by the President, the majority of the Board of Directors, or upon written request of the members representing ten percent (10%) of the membership entitled to vote.

Section 4: Notice of Meetings. Except as otherwise provided for by the Declaration, 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, not less than ten (10) nor more than sixty (60) days in advance of any 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 purpose of the meeting.

Section 5: Quorum. At any meeting of the members, one-tenth (1/10) of the members entitled to vote, present and in person or represented by proxy, shall constitute a quorum of the membership for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. The members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum. If a quorum is not present, the meeting may be recessed from time to time by announcement from the chair at the time such meeting was set and such shall be sufficient notice of the time and place of the recessed meeting. In addition, if a quorum is not present, the majority of members entitled to vote thereat shall also have power to adjourn the meeting from time to time by affirmative vote.

Section 6: Organization. The President, or in his absence, the Vice-President shall preside over all meetings of members and the Secretary of the Association shall act as Secretary at all meetings of members; provided, however, in the Secretary's absence the President may appoint a Secretary for a meeting of the members.

Section 7: Voting. The Association shall have one class of voting membership.

a. Class I. Class I members shall be all owners of a lot in Battalina Creek, with the exception of the Declarant, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

b. Each lot owner, being a member of the Association, shall be entitled to one (1) vote for each lot owned on each matter submitted to a vote at a meeting of members. The vote of a majority of the members at a meeting of members at which a quorum is present shall be the act of the members on that matter, unless

the vote of a greater number is required by law, the Articles of Incorporation, or the Declaration. Cumulative voting shall not be allowed.

Section 8: Voting by Proxy. The vote allocated to a member may be cast pursuant to a dated, written proxy signed by the member and filed with the Secretary. Every proxy shall be revocable by a written notice delivered to the Secretary or person presiding over a meeting of the Association. Every proxy shall automatically cease upon conveyance by the member of their lot.

ARTICLE IV

BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1: Number. The affairs of this Association shall be conducted by no more than seven (7) and not less than three (3) Directors who shall be elected by the Association and have such terms in office as set forth in Section 2 below. The Directors shall be entitled to act on behalf of the Association in all routine, day to day operations of the Association.

Section 2: Term of Office. Members shall elect Directors for a term of three (3) years. The term of office for each Director shall be until the successors to such offices shall have been duly elected and qualified as hereinafter stated.

Section 3: Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of all the members of the Association present and entitled to vote at a meeting of the members at which a quorum is present. In the event of death, resignation or removal of a Director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4: Compensation. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5: Action Taken Without a Meeting. The Board shall have the right to take any action in the absence of a meeting which they could take at a duly held meeting by obtaining the written consent of all of the Board members to the action. Any action so approved shall be filed in the corporate books and

records and shall have the same effect as that taken at a meeting of the Board.

**ARTICLE V
NOMINATION AND ELECTION OF DIRECTORS**

Section 1: Nomination. Nominations for Directors may be made from the floor at the annual meeting and can be made from members only.

Section 2: Election. Election to the Board of Directors shall be by vote either in-person or by written proxy at the annual meeting. At such election, the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration and these By-Laws. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

**ARTICLE VI
MEETINGS OF DIRECTORS**

Section 1: Regular Meetings. Regular meetings of the Board of Directors shall be held at least once a year 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.

**ARTICLE VII
POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Section 1: Powers. Subject to the provisions contained herein, applicable law, the Declaration, and the Articles of

Incorporation, the Board shall have the power and authority to exercise all of the rights and powers of the Association, including, but not limited to the following powers:

a. Adopt and publish rules and regulations governing the use of the common area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

b. To suspend the voting rights and right of use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association; and to suspend such rights, after notice and hearing, for infraction of published rules and regulations for a period not exceed sixty (60) days;

c. To declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board;

d. To employ a manager, an independent contractor, or other employees as is deemed necessary, and to prescribe their duties; provided, that any contract for professional management must contain a clause requiring not more than ninety (90) days termination notice;

e. To procure, maintain and pay premiums on a master policy of hazard insurance as the Board, in its discretion, deems advisable in an adequate amount to be determined by the directors, and to equitably assess the owners of the same for their prorata portion of such expenses;

f. To impose and receive any payments, fees, or charges for the use, rental or operation of the common areas or elements other than for service provided to members;

g. To exercise all other powers that may be exercised in this State by legal entities of the same type as the Association;

h. To exercise any other powers necessary and proper for the governance and operation of the Association; and

i. To have and to exercise any and all power, rights and privileges which a corporation organized under the nonprofit

corporation law of the State of North Carolina may now or hereafter have or exercise.

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

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 one-fourth (1/4) of the Class I members who are entitled to vote;

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 levy and collect assessments, as well as foreclose on any assessment lien.

d. Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether 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 certificate shall be conclusive evidence of such payment;

e. Procure and maintain, at all times, adequate hazard insurance on the property owned by the Association and sufficient liability insurance to adequately protect the Association, said amount of insurance to be determined by the Directors in their discretion;

f. Cause all officers or employees, including officers and employees of professional management having fiscal responsibilities, to be bonded, as it may deem appropriate;

g. Cause the common area to be maintained; and

h. Cause the exterior of the dwellings to be maintained.

ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 1: Enumeration of Officers. 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, 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 or until his successor is elected and qualified, unless he shall sooner resign, or shall be removed, or otherwise be 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, having 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 by 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 replaced.

Section 7: Multiple Officer. The offices of Treasurer and Secretary 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: Officer Duties. The duties of the officers are as follows:

- a. **President.** 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 cosign all checks and promissory notes.

b. **Vice President.** 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.

c. **Secretary.** 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.

d. **Treasurer.** 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 and, consistent with the Declaration, shall sign all checks and promissory notes of the Association, keep proper books of account, cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year, and prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of each to the members.

ARTICLE IX MORTGAGEES OR LIENHOLDERS

Any Mortgagee of or lienholder on any lot may file with the Association a declaration of their interest therein. Thereafter, the consent of seventy-five percent (75%) of the mortgagees or lienholders on all lots then under mortgages or lien shall be required in order for the Association to:

a. Remove, abandon, or substantially alter any property taken under its control for the use and benefit of the owners of the properties from its original use and purpose or from its

status for common use.

b. Diminish the voting interest of any lot owner to less than one vote for each lot or increase the total votes to a larger number than the total number of lots.

c. Dedicate any common areas to any public agencies other than for normal utility easements.

d. Substantially alter the terms of the By-Laws of the Association or the Declaration.

e. Abridge the right of a mortgagee of lots to protect the common area from jeopardy for unpaid taxes, liens and assessments, and in the event any mortgagee shall pay overdue taxes, insurance premiums, or assessments on common property, impair the right to such mortgagee to immediate reimbursement from the Association for all sums so expended in the protection of the common elements.

ARTICLE X COMMITTEES

The Association shall appoint a Nominating Committee as provided in these By-Laws. As more fully provided in the Declaration, the Board of Directors shall appoint an Architectural Control Committee. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE XI 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 or a mortgagee of 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 XII

ASSESSMENTS

As more fully provided in 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 Association may file a lien of record against the lot for which such assessment is delinquent, bring an action at law against the owner personally obligated to pay the sum, and/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 assessment provided for herein by nonuse of the common area or abandonment of his Lot.

The annual maintenance assessment may be increased as provided for and consistent with the Declaration.

ARTICLE XIII INSURANCE AND CASUALTY LOSSES

Section 1: Insurance. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for the common area against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, in an amount sufficient to cover, after application of any deductible, eighty percent (80%) of the replacement cost in the event of damage or destruction from any such hazard. The Board of Directors of the Association or its manager shall also obtain public liability insurance covering the common area and facilities thereon in such amounts and in such form as shall be determined by the Board of Directors of the Association covering the Association, the Board of Directors and officers of the Association, all agents and employees of the Association, and all lot owners and other persons entitled to use the common area and facilities thereon. Premiums for all such insurance shall be common expenses paid for by the Association. Such insurance shall be consistent with and governed by the following provisions:

- a. North Carolina General Statute § 47F-3-113.
- b. All policies shall be written with a company licensed to

do business in the State of North Carolina.

c. Exclusive authority to negotiate and accept settlement under policies hereafter in force on the common area shall be vested in the Association's Board of Directors.

d. The Association's Board of Directors or its manager shall conduct an annual insurance review which shall include a replacement cost appraisal, without respect to depreciation, of all insurable improvements constructed on the common area.

e. The Association's Board of Directors or its manager shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

1. A waiver of subrogation by the insurer as to any claims against the Association, its Board of Directors, its manager, or its members and their respective families, tenants, agents and guests, with respect to property coverage, except for arson and fraud;

2. A waiver by the insurer of its right to repair or reconstruct instead of paying the loss;

3. That the policies cannot be cancelled, invalidated or suspended on account of the conduct of any one or more members or on account of the conduct of any Director, officer or employee of the Association or its manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its agent, mortgagee or any member.

Section 2: Insurance Trustee. All casualty insurance policies purchased by the Association shall provide that proceeds covering property losses shall be paid to an insurance trustee, which shall be the Association or a bank or other financial institution having trust powers with offices in North Carolina, as may from time to time be approved by the Board of Directors of the Association, which insurance trustee is herein sometimes referred to as the "Depositary." In the event the Association shall act as insurance trustee, then the provisions of these By-Laws which by their context contemplate the "Depositary" as a party separate from the Association shall not apply. The duty of the Depositary shall be to receive such proceeds as are paid and hold the same

for the purpose elsewhere stated herein.

Section 3: Damage and Destruction.

a. Immediately after any damage or destruction by fire or other casualty to all or any part of the common area and common facilities, the Association's Board of Directors or its manager shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damages or destroyed property. Repair or reconstruction, as used in this Article means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty. Subject to subsection (b) and (d) hereof, all such damage or destruction shall be repaired or reconstructed promptly and as soon as practicable after any such casualty shall occur and consistent with North Carolina General Statute §47F-3-113.

b. If the estimated cost to repair or reconstruct the property which is damaged or destroyed exceeds the amount of insurance proceeds and other funds, if any, available to meet the same, then, the Association's Board of Directors may levy a special assessment against the lot owners to provide the additional funds needed for such repair or reconstruction. Unless the estimated cost to repair or reconstruct is \$5,000.00 or less, the proceeds from insurance and special assessments, if any, shall be deposited with the Depositary and disbursed as hereinafter provided.

c. In the event that the insurance proceeds and assessments, if any, paid to the Depositary are in excess of the Depositary's expenses and cost of repair or reconstruction, such excess shall be disbursed to the Association as hereinafter provided.

d. Any such damage or destruction to the common area and common facilities shall be repaired or reconstructed unless the members decide not to repair or reconstruct by an eighty percent (80%) vote in which event the damaged or destroyed area or areas shall not be repaired or reconstructed, but rather shall be cleaned up and maintained in a neat and attractive condition compatible with the remainder of the subdivision. In all cases, the Depositary may rely upon a certificate signed by the manager of the Association, if any, or by the President and Secretary of

the Association, to determine whether damage or destruction is to be repaired or reconstructed.

Section 4: Disbursement of Proceeds.

a. If the damage or destruction is not to be repaired, then, after paying or making provision for the expenses of the Depository, the net proceeds of any insurance paid to the Depository shall be disbursed to the Association to pay for the cost of cleaning up the common area and for such other purposes as the Board of Directors of the Association shall determine.

b. If the damage or destruction for which the insurance proceeds are paid to the Depository is to be repaired or reconstructed, then, after paying or making provision for the expenses of the Depository, the remaining proceeds shall be disbursed to defray the cost of such repairs or reconstruction as herein provided. Any proceeds remaining after defraying such costs shall be disbursed to the Association for such purposes as the Board of Directors of the Association shall determine.

1. **Minor Damage.** If the amount of the estimated cost of reconstruction and repair is \$5,000.00 or less, then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon written request to the Depository by the holder of any mortgage affecting that portion of the common area being repaired or reconstructed, such fund shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage. Under the latter circumstances, any special assessments collected by the Association for repair or construction shall also be deposited with the Depository and disbursed in the same manner.

2. **Major Damage.** If the amount of the estimated cost of reconstruction and repair is more than \$5,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of a registered architect or licensed professional engineer selected and employed by the Board of Directors of the Association to supervise the work, or upon approval of a builder selected and employed by the Board of Directors of the Association to supervise or perform the work provided such builder is approved by the holder of any mortgage affecting that portion of the common area being repaired or

reconstructed.

3. **Certificate.** Notwithstanding the provisions herein, the Depositary shall not be required to determine whether or not sums paid by lot owners upon assessment shall be deposited by the Association with the Depositary, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of any third party, nor whether a disbursement is to be made from the construction fund, nor to determine any other fact or matter relating to its duties hereunder. Instead, the Depositary may rely upon a certificate of the Association made by its President and Secretary or manager, if any, as to any or all of such matters and stating the name of the payee and the amount to be paid; provided that when the holder of any mortgage encumbering that portion of the common area which is being repaired or reconstructed shall specifically request the Depositary to do so in writing, the approval of a registered architect, licensed professional engineer or approved builder shall be first obtained by the Association.

ARTICLE XIV AMENDMENTS

Except as otherwise provided herein, applicable law, the Articles of Incorporation, or the Declaration, these By-Laws may be amended or repealed and new By-Laws may be adopted by an affirmative vote of a majority of a quorum of the members present in person or by proxy at a regular or special meeting of the members.

ARTICLE XV DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by members representing eighty percent (80%) of the votes which are allocated to the Members of the Association, as more specifically provided herein.

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.

ARTICLE XVII
EFFECT

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.

IN WITNESS WHEREOF, _____ being the Director of THE BATTALINA CREEK HOMEOWNERS' ASSOCIATION, INC. has hereunto set his/her hand and seal, this the _____ day of _____, 2019.

(Seal)

_____, Director