

EXHIBIT "D"

BY-LAWS

OF

AUTUMN HALL

COMMUNITY ASSOCIATION, INC.

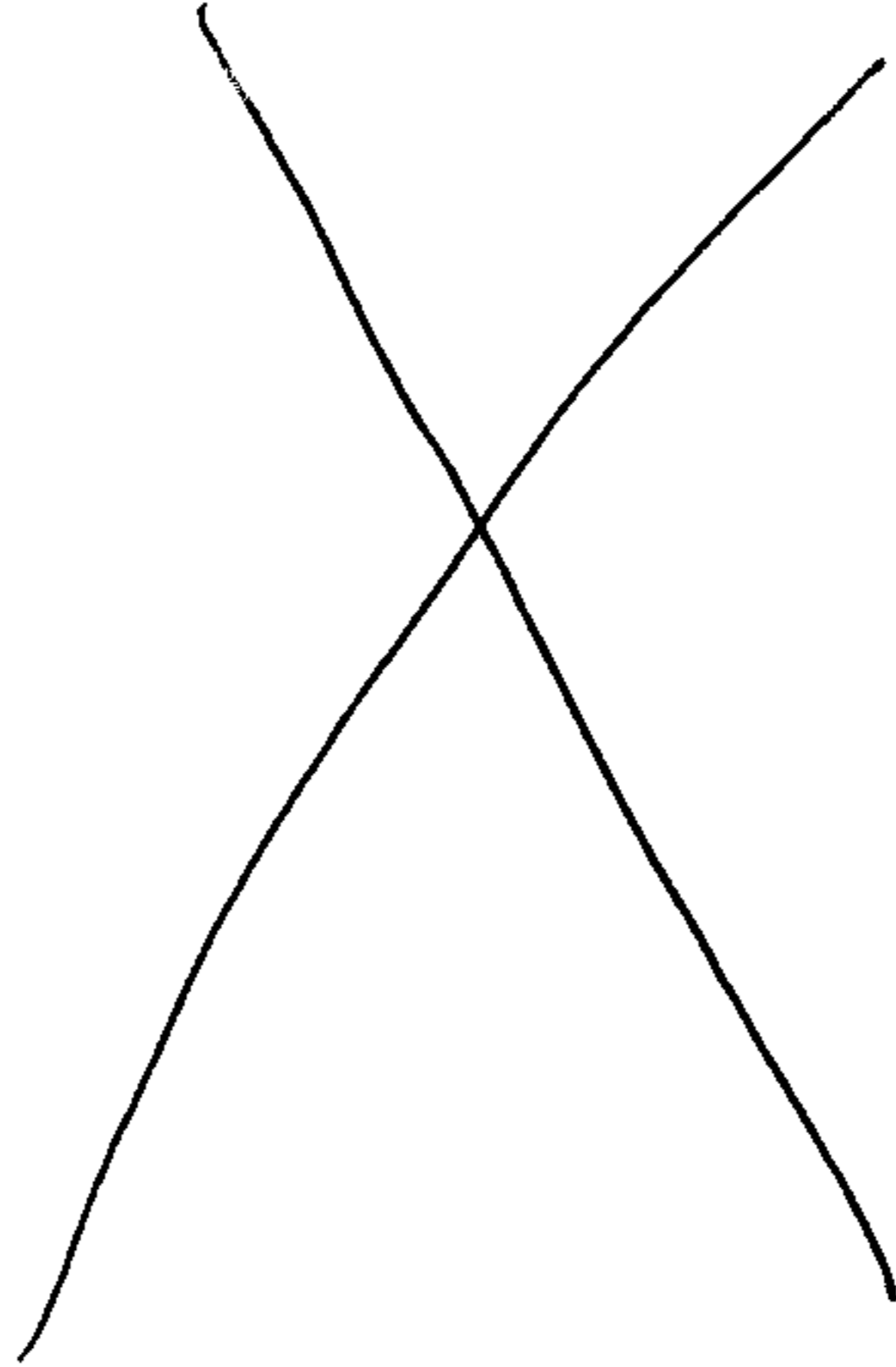


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BY-LAWS
OF
AUTUMN HALL COMMUNITY ASSOCIATION, INC.

Article 1
Name, Principal Office, and Definitions

1.1. Name.

The name of the corporation is Autumn Hall Community Association, Inc. (the "**Association**").

1.2. Principal Office.

The Association's principal office shall be located in New Hanover County, North Carolina. The Association may have such other offices as the Board may determine or as the Association's affairs require.

1.3. Definitions.

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the meaning ascribed to them in the Community Charter for Autumn Hall Community recorded by Autumn Hall, Inc., a North Carolina corporation, in the public records of New Hanover County, North Carolina, as it may be amended (the "**Charter**"). The term "**majority**," as used in these By-Laws, means those votes, Owners, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

Article 2
Membership: Meetings, Quorum, Voting, Proxies

2.1. Membership.

The Association shall have two classes of membership, Owner Membership and Founder Membership, as more fully set forth in the Charter. Provisions of the Charter pertaining to membership are incorporated by this reference. These By-Laws refer to the Owner members and the Founder member collectively as "**Members**" or the "**Membership**" and singly as a "**Member**." These By-Laws refer to Persons holding Owner Memberships as "**Owner Members**" and refer to the holder of the Founder Membership as the "**Founder Member**." Until termination of the Founder Membership, the Founder shall not hold an Owner Membership. Upon termination of the Founder Membership, the Founder shall hold an Owner Membership for each Unit that it owns and shall be an Owner for all purposes under these By-Laws.

2.2. Place of Meetings.

The Association shall hold meetings at the Association's principal office or at such other suitable place the Board may designate.

2.3. Association Meetings.

(a) *General.* The first meeting of the Membership, whether a regular or special meeting, shall be held within one year after the Association's incorporation.

(b) *Annual Meetings.* The Board shall schedule regular annual meetings to occur within 90 days before or after the close of the Association's fiscal year, on such date and at such time and place as the Board shall determine.

(c) *Special Meetings.* The President may call special meetings. In addition, the President or the Secretary shall call a special meeting if so directed by Board resolution or upon a written petition of Owners representing at least 10% of the total votes in the Association.

2.4. Notice of Meetings.

The President, the Secretary, or the officers or other persons calling a meeting of the Membership shall deliver or cause to be delivered to each Owner entitled to vote at such meeting a written notice stating the place, day, and hour of the meeting. In the case of a special meeting or when otherwise required by statute, the Charter, or these By-Laws, the purpose or purposes for which the meeting is called shall also be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

Such notice shall be delivered by such means as permitted under Section 9.5, at least 10 but not more than 60 days before the date of such meeting.

2.5. Waiver of Notice.

Waiver of notice of an Association meeting shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any Association meeting, either before or after such meeting. A Member's attendance at a meeting shall be deemed a waiver by such Member of notice of the time, date, and place thereof, unless the Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.6. Quorum.

Except as these By-Laws or the Charter otherwise provide, the presence of Owners representing 20% of the total votes in the Association and the Founder (until termination of the Founder Membership) shall constitute a quorum at all Association meetings, and the vote of Owners representing a majority of the total eligible votes cast shall constitute the action of the Membership.

2.7. Voting.

Owners shall have such voting rights as are set forth in the Charter, which provisions are specifically incorporated by this reference.

2.8. Proxies.

An Owner may cast his or her vote on any matter in person or by proxy, subject to the limitations of North Carolina law and subject to any specific provision to the contrary in the Charter or these By-Laws.

Every proxy shall be in writing, shall identify the Unit for which it is given, shall be signed by the Owner or the Owner's duly authorized attorney-in-fact, and shall be dated and filed with the Association's Secretary prior to the meeting for which it is to be effective. Unless the proxy specifically provided otherwise, a proxy shall be presumed to cover all votes which the Owner giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

A proxy is effective only for the specific meeting for which it was originally given, as such meeting lawfully may be adjourned and reconvened, and automatically expires 90 days after the date of the meeting for which it was originally given. Every proxy is revocable at any time at the pleasure of the Owner who executes the proxy.

2.9. Adjournment of Meetings.

If any Association meeting cannot be held because a quorum is not present, the Owners representing a majority of the votes present at such meeting, and the Founder, may adjourn the meeting to a time at least five but not more than 30 days from the scheduled date of the original meeting. At the reconvened meeting, the quorum requirement shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of quorum. If such quorum is present at the reconvened meeting, any business may be transacted which might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Board shall provide notice to the Members of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Members to leave less than a quorum, provided at least a majority of the votes required to constitute a quorum must approve any action taken.

2.10. Conduct of Meetings.

The President or a Board-approved designee shall preside over all Association meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions adopted and all other transactions occurring at such meetings are kept with the Association's books.

2.11. Action Without a Meeting.

(a) Any action that the Charter, the Articles of Incorporation, or applicable law requires to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote on such matter. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the Association. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting.

(b) Alternatively, any action that may be taken at a membership meeting may be taken without a meeting if: (i) the Association mails or delivers a ballot or consent form to every Person entitled to vote on the action, setting forth the proposed action and providing an opportunity to approve or disapprove the proposed action; (ii) the number of votes cast in favor of the proposed action equals or exceeds the quorum required for a meeting to consider such action; and (iii) the number of votes cast in favor of the proposed action equals or exceeds the number of votes required to approve such action.

Voting instructions or solicitations for any vote conducted pursuant to this subsection must indicate the number of responses needed to satisfy the quorum requirement, the percentage of votes necessary to approve any action other than election of directors, and the deadline for casting the ballot in order to be counted. A ballot once cast may not be revoked. The Board shall notify Members of the results of the vote within 30 days after the expiration of the voting period. The Association shall maintain ballots approving any action pursuant to this Section in its files for at least four years.

Article 3

Board of Directors: Selection, Meetings, Powers

A. Composition and Selection.

3.1. Governing Body; Qualifications.

The Board shall govern the Association's affairs. Each director shall have one vote. Except with respect to directors appointed by the Founder, directors shall be Owners or residents. However, no Owner and resident representing the same Unit may serve on the Board at the same time. A "**resident**" shall be any natural person 18 years of age or older whose principal residence is a Unit within the Residential Community.

If an Owner is not an individual, any officer, director, partner, or any trust officer of such Owner shall be eligible to serve as a director. However, no Person may have more than one such representative on the Board at a time except in the case of directors the Founder appoints.

3.2. Number of Directors.

The Board shall consist of three to seven directors, as provided in Section 3.3.

FOR COMMENT

3.3. Selection of Directors; Term of Office.

(a) **Initial Board.** The initial Board shall consist of the three directors identified in the Articles of Incorporation, who shall serve until their successors are appointed or elected as provided in this section.

(b) **Directors During Founder Control Period.** Except as otherwise provided in this subsection, the Founder may appoint, remove, and replace Board members until termination of the Founder Control Period. During such period, the Owner Member shall be entitled to elect a minority of the total number of directors according to the following schedule (directors elected by the Owner Member are referred to as "**Owner Directors**"):

(i) Within 60 days after the time that Owner Members other than Builders own 25% of the maximum number of Units permitted by the applicable zoning for the property described in the Master Plan or whenever the Founder earlier determines, the President shall call for an election by which the Owner Member, as a group, shall be entitled to elect one of the three directors, who shall be elected at large (*i.e.*, without regard to Election Districts). The remaining directors shall be appointees of the Founder. The Owner Director shall be elected for a term which expires on the date of the second annual meeting following his or her election or until the happening of the event described in Section 3.3(c)(i), whichever occurs earlier. Upon expiration of such Owner Director's term, and thereafter upon expiration of each successor's term, successor directors shall be elected for two-year terms or until the happening of the event described in Section 3.3(c)(i).

(ii) Within 60 days after the time that Owner Members other than Builders own 50% of the maximum number of Units permitted by the applicable zoning for the property described in the Master Plan or whenever the Founder earlier determines, the Board shall be increased to five directors and the President shall call for an election by which the Owner Members, as a group, shall be entitled to elect two of the five directors, who shall be elected at large. The Founder shall appoint the remaining three directors. The Owner Director elected pursuant to this subsection shall be elected for a term which expires on the date of the second annual meeting following his or her election or until the happening of the event described in Section 3.3(c)(i), whichever occurs earlier. Upon expiration of such Owner Directors' term, and thereafter upon expiration of each successor's term, successor directors shall be elected for two-year terms, or until the happening of the event described in Section 3.3(c)(i).

(c) Directors After the Founder Control Period.

(i) Not later than termination of the Founder Control Period, the Board shall be increased to seven directors. The President shall call for an election by which the Owner Members shall be entitled to elect six directors, with an equal number of directors elected by the Owner Members representing each Election District and any remaining directorships filled at large by the votes of all Owner Members. Three directors shall be elected to serve until the second annual meeting following their election and three directors shall be elected to serve until the third annual meeting following their election, as such directors determine among themselves.

(ii) The Founder shall be entitled to appoint, remove, and replace the seventh director until termination of the Founder Membership, at which time the director appointed by the Founder shall resign. The remaining directors shall be entitled to appoint a successor to fill the vacancy until the next annual meeting, at which time the Owners, voting at large, shall be entitled to elect a successor who shall be elected for a term of two years.

(iii) Upon expiration of the term of office of each Owner Director, the Owners entitled to elect such director shall be entitled to elect a successor to serve a term of two years. Owner Directors shall hold office until their respective successors have been elected. Directors may serve any number of consecutive terms.

The diagram below illustrates the concept of transition of control of the Board during and after the Founder Control Period.

TRANSITION OF CONTROL OF BOARD OF DIRECTORS				
Initial Board	25% of Total Units Conveyed	50% of Total Units Conveyed	Termination of Founder Control Period	Termination of Founder Membership
Founder	Owner	Owner	Owner	Owner
Founder	Founder	Owner	Owner	Owner
Founder	Founder	Founder	Owner	Owner
		Founder	Owner	Owner
		Founder	Owner	Owner
			Owner	Owner
			Founder	Owner

(d) Election Districts.

The Owners within each Election District shall vote on a separate slate of candidates for election to the Board. Each Election District is entitled to elect an equal number of directors.

Acting alone, the Founder shall establish Election Districts, if at all, not later than the date the Founder Control Period expires by filing with the Association and recording a Supplement identifying each Election District by legal description or other means such that the Units within each Election District can be determined easily.

After the Founder's right to create Election Districts expires, the Board, with the approval of Owners representing a majority of the total votes in the Association, may create one or more Election Districts or change existing Election Districts by recording a Supplement or amending a previous Supplement.

Recording or amending a Supplement to create or change Election Districts shall not be an amendment to the Charter or the By-Laws, and no consent or approval of any Person shall be required except as stated in this Section. Until Election Districts are established, the Residential Community shall be a single Election District. After Election Districts are established, all portions of the Residential Community not assigned to a specific Election District shall constitute a single Election District.

3.4. Nomination and Election Procedures.

(a) *Nomination of Candidates.* Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which every eligible person who has an interest in serving as a director may file as a candidate for any Owner Director position.

The Board also may appoint a Nominating Committee to make nominations for election to the Board. A Nominating Committee, if appointed, shall consist of a chairperson, who shall be a Board member, and three or more Owners or representatives of Owners. Any Nominating Committee shall serve a term of

one year or until its successors are appointed. The names of the Nominating Committee members shall be announced in the notice of each election.

In preparation for each election, the Nominating Committee, if appointed, shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Members at such election. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates.

Nominations shall also be permitted from the floor at the meeting at which any election is held. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

(b) Election Procedures. At each election, voting shall be by written ballot. Each Member may cast all votes assigned to the Units it represents for each position to be filled from any slate of candidates on which such Member is entitled to vote.

In the event of a tie vote on any slate, the Members entitled to vote on such slate shall be informed of the tie vote and given the opportunity to discuss the candidates among themselves in an effort to resolve the tie before another vote is taken. Such election shall be held by mail, with ballots to be sent by first class mail to each Member entitled to vote on such slate within 10 days after the meeting at which the original election was held.

3.5. Removal of Directors and Vacancies.

Any Owner Director may be removed, with or without cause, by the vote of Owners holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director by the Owners, the Owners entitled to elect the removed director shall elect a successor for the remainder of the term of such director.

At any meeting at which a quorum is present, a majority of the directors may remove any Owner Director who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or resides in a Unit owned by an Owner who is so delinquent) in the payment of any assessment or other charge due the Association. The Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of an Owner Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Owners entitled to fill such directorship shall elect a successor for the remainder of the term.

Any director whom the Board appoints shall be selected from among eligible Owners or residents of Units within the Election District represented by the director who vacated the position.

This section shall not apply to directors the Founder appoints. The Founder may appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by the Founder.

B. Meetings.

3.6. Organizational Meetings.

Each Board containing newly-elected directors shall hold an organizational meeting within 10 days following the Association's annual meeting at such time and place as the Board shall fix.

3.7. Regular Meetings.

The Board shall hold regular meetings at such time and place as a majority of the directors shall determine, but the Board shall meet at least four times during each fiscal year with at least one meeting per quarter.

3.8. Special Meetings.

The President, Vice President, or any two directors may call a special meeting of the Board.

3.9. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall notify each director of meetings by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Association's records. The Board shall deposit notices sent by first class mail into a United States mailbox at least five business days before the day of the meeting. The Board shall give notices by personal delivery, telephone, or electronic communication at least 72 hours before the time set for the meeting.

(b) The Board shall notify the Members of each Board meeting by either: (i) posting notice of the meeting in a conspicuous place in Autumn Hall at least 48 hours in advance of the meeting; (ii) publication of a schedule of the Board meetings in a newspaper, newsletter, on a community intranet or website, or by similar means at least seven days prior to the meeting; or (iii) mailing notice of the meeting to each Member.

(c) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10. Telephonic Participation in Meetings.

Members of the Board or any committee the Board designates may participate in a Board or committee meeting by conference telephone or similar communications equipment through which all persons partici-

pating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence at such meeting.

3.11. Quorum of Board.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless North Carolina law, these By-Laws, or the Charter specifically provide otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present may adjourn the meeting to a time not less than five or more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present the Board may transact, without further notice, any business it might have transacted at the original meeting.

3.12. Conduct of Meetings.

The President or any designee the Board approves by resolution shall preside over all Board meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions and all transactions occurring at such meetings are included in the Association's records.

3.13. Open Meetings; Executive Session.

(a) Subject to the provisions of Section 3.13(b) and Section 3.14, all Board meetings shall be open to all Members, but only directors may participate in any discussion or deliberation unless a director requests that attendees be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as proposed, pending, or threatened litigation, or other matters specified by law.

3.14. Action Without a Formal Meeting.

Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if the directors sign a written consent, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.15. Powers.

The Board shall have the power to administer the Association's affairs, perform the Association's responsibilities, and exercise the Association's rights as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done on the Association's behalf all acts and things except those which the Governing Documents or North Carolina law require to be done and exercised exclusively by the Membership generally.

3.16. Duties.

The Board's duties shall include, without limitation:

- (a) preparing and adopting, in accordance with the Charter, an annual budget establishing each Member's share of the Common Expenses and any Service Area Expenses;
- (b) preparing or providing for the preparation of the accounts and reports required under Section 7.4;
- (c) levying and collecting assessments from the Membership;
- (d) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;
- (e) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (f) opening bank accounts on the Association's behalf and designating the signatories required;
- (g) depositing all funds received on the Association's behalf in a bank depository which it shall approve and using such funds to operate the Association; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;
- (i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; however, the Association's obligation in this regard shall be conditioned in the manner provided in the Charter;
- (j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Charter, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (k) paying the cost of all services rendered to the Association;
- (l) keeping a detailed accounting of the Association's receipts and expenditures;
- (m) making available to any prospective purchaser of a Unit, any Member, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 9.4;
- (n) indemnifying a director, officer, or committee member or former director, officer, or committee member of the Association to the extent such indemnity is required by North Carolina law, the Articles, and these By-Laws;
- (o) cooperating with the Master Organization in levying and collecting assessments from the Members; and

(p) cooperating with the Master Organization in carrying out its purposes and responsibilities under the Community Covenant and the Master Organization's by-laws.

3.17. Conflicts of Interest.

Unless otherwise approved by a majority of the other directors, no Owner Director may transact business with the Association or any Association contractor during his or her term as director or within two years after the term expires. A director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the directors relative to his or her performance as a director. A director's failure to make such disclosure shall be grounds for removal by a majority vote of the other Board members.

Notwithstanding the above, directors appointed by the Founder may be employed by or otherwise transact business with the Founder or its affiliate, and the Founder may transact business with the Association or its contractors.

Article 4 Officers

4.1. Officers.

The Association's officers shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not, be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2. Election and Term of Office.

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Association, to serve until their successors are elected.

4.3. Removal and Vacancies.

The Board may remove any officer whenever in its judgment the Association's best interests will be served and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. Powers and Duties.

The Association's officers shall have such powers and duties as generally pertain to their respective offices as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Treasurer shall have primary responsibility for preparing the Association's budgets as provided for in the Charter and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5. Resignation.

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 the receipt of such notice or at a later time specified therein. Unless the resignation specifies, acceptance of such resignation shall not be necessary to make it effective.

Article 5 Committees

5.1. General.

The Board may appoint such other committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2. Covenants Committee.

In addition to any other committees that the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Owners who shall not be officers, directors, or employees of the Association. Acting in accordance with the provisions of the Charter, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article 8. The Covenants Committee shall have no responsibility for seeking out violations of the Governing Documents.

5.3. Service Area Committees.

The Owners within any Service Area which has no formal organizational structure or association may elect a Service Area Committee to determine the nature and extent of services, if any, which it desires to have the Association provide to the Service Area, over and above those services which the Association provides to all Units in the Residential Community. A Service Area Committee, if elected, shall consist of three Owners of Units in the Service Area; however, if approved by the vote of at least 51% of the Owners of Units within the Service Area, the number may be increased to five.

Service Area Committee members shall be elected for a term of one year or until their successors are elected. Any director elected to the Board from a Service Area shall be an *ex officio* member of the Service Area Committee. The members of the committee shall elect a chairperson from among themselves, who shall preside at its meetings and shall be responsible for transmitting any and all communications to the Board.

In the conduct of its duties and responsibilities, each Service Area Committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.9 and 3.11. Meetings of a Service Area Committee shall be open to all Owners of Units in the Service Area and their representatives. Members of a Service Area Committee may act by unanimous written consent in lieu of a meeting.

Article 6 Standards of Conduct; Liability and Indemnification

6.1. Standards for Directors and Officers.

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under North Carolina law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data prepared or presented by others to the extent authorized under North Carolina law.

6.2. Liability.

(a) A director or officer shall not be personally liable to the Association, any Member, or any other Person for any action taken or not taken as a director or officer if he or she has acted in accordance with Section 6.1.

(b) Pursuant to the business judgment rule, a director also shall not be personally liable for any action taken or not taken as a director if the director:

(i) acts within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*;

(ii) affirmatively undertakes to make decisions which the director reasonably believes are necessary for the Association's continued and successful operation and, when decisions are made, makes them on an informed basis;

(iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other) and avoiding participation in decisions and actions on matters as to which he has a conflict of interest (beyond that which all directors have by virtue of their ownership or occupancy of a Unit); and

(iv) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

(c) The Association's officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or directors may also be Members).

6.3. Indemnification.

Subject to the limitations of North Carolina law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under North Carolina law; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Association;

(ii) intentional misconduct or knowing violation of the law;

(iii) an unlawful distribution to members, directors, or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

6.4. Advancement of Expenses.

In accordance with the procedures and subject to the conditions and limitations set forth in North Carolina law, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director, or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

6.5. Board and Officer Training.

The Board may conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. Such programs may include instruction on applicable North Carolina corporate and fiduciary law principles, other issues relating to administering community affairs, and upholding and enforcing the Governing Documents. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose. Each newly elected officer and director shall be encouraged to complete a training seminar within the first six months of assuming such position. The seminar may be live, video or audiotape, or in other format. The cost of such seminar shall be a Common Expense.

The Board also may provide, or provide for, Owner and resident education designed to foster a better understanding of Autumn Hall's governance and operations and leadership training classes designed to educate Owners of the nomination, election, and voting processes and the duties and responsibilities of directors and officers.

Article 7 Management and Accounting

7.1. Compensation of Directors and Officers.

The Association shall not compensate directors and officers for acting as such unless Owners representing a majority of the total votes in the Association approve such compensation at an Association meeting. The Association may reimburse any director or officer for expenses he or she incurs on the Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association. However, such director must make known his or her interest to the Board prior to entering into such contract, and a majority of the Board, excluding any interested director, must approve such contract.

7.2. Right of Founder to Disapprove Actions.

So long as there is a Founder Membership, the Founder shall have a right to disapprove any action, policy, or program of the Association, the Board, and any committee which, in the Founder's sole judgment, would tend to impair rights of the Founder or Builders under the Charter or these By-Laws, interfere with development or construction of any portion of Autumn Hall, or diminish the level of services the Association provides. The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein until and unless the requirements of this section have been met.

(a) Notice. The Association shall give the Founder written notice of all meetings of the Membership, the Board, and committees and any actions proposed to be taken by any of them by written consent in lieu of a meeting. The Association shall give such notice by certified mail, return receipt requested, or by personal delivery at the address the Founder has registered with the Association. Such notice shall comply as to Board meetings with Section 3.9, and shall, except in the case of regular Board meetings pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) Opportunity to be Heard. At any such meeting, the Association shall give the Founder the opportunity to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

The Founder, its representatives, or its agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Founder, acting through any officer or director, agent, or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action.

The Founder may use this right to disapprove to block proposed actions but shall not use it to require any action or counteraction of any committee, the Board, or the Association. The Founder shall not use its right to disapprove to reduce the level of services the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

7.3. Managing Agent.

The Board may employ for the Association professional management agents, at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.16. The Board may employ the Founder or any Founder Affiliate as managing agent or manager.

The Board may delegate to one of its members the authority to act on its behalf on all matters relating to the duties of the managing agent or manager which might arise between Board meetings.

Except for a contract which was not bona fide or was unconscionable to the Owners at the time entered into under the circumstances then prevailing (as provided in the North Carolina Planned Community Act), the Owners may not terminate a management contract during the Founder Control Period. Unless the Board otherwise grants such right, or unless the management contract otherwise provides, the Board may act in its discretion with respect to executing and terminating management contracts during the Founder Control Period. After the Founder Control Period terminates, the Association may not terminate any management contract, or retain a new managing agent, without the approval of Owners representing a majority of the Association's total votes. In addition, the Founder's consent shall be required.

The managing agent shall not accept remuneration from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association. The managing agent shall promptly disclose to the Board any financial or other interest which it may have in any firm providing goods or services to the Association.

7.4. Accounts and Reports.

(a) The Board shall follow the following accounting standards unless the Board by resolution specifically determines otherwise:

- (i) accounting and controls should conform to generally accepted accounting principles; and
- (ii) the Association's cash accounts shall not be commingled with any other accounts, and during the Founder Control Period, operating accounts shall not be commingled with reserve accounts;

(b) Commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association within 60 days after the end of each quarter:

- (i) an income statement reflecting all income and expense activity for the preceding period;
- (ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless the Board specifies otherwise by resolution). A copy of the quarterly financial report shall be made available at no charge to any Member requesting a copy.

(c) An annual report consisting of at least the following shall be made available for Members' review within 180 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant. During the Founder Control Period, the annual report shall include certified financial statements.

The Association shall provide each Member or its authorized agent a copy of the annual financial report, excluding the delinquency report, within 10 business days following receipt of a written request for access. In addition, if North Carolina law requires, the Association shall send a copy of the annual report to each Member by mail or personal delivery within 90 days following the close of the fiscal year.

7.5. Borrowing.

The Association shall have the power to borrow money for any legal purpose. However, the Board shall obtain Membership approval in the same manner provided in the Charter for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year.

7.6. Right to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhood and other owners or residents associations, within and outside Autumn Hall. The Board shall consent to any common management agreement.

7.7. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All Association agreements, contracts, deeds, leases, checks, and other instruments shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

Article 8

Enforcement Procedures

The Association shall have the power, as provided in the Charter, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Charter, the Board shall comply with the following procedures prior to imposition of sanctions:

8.1. Notice and Response.

The Board or its delegate shall serve the alleged violator with written notice describing (a) the nature of the alleged violation, (b) the proposed sanction to be imposed, and (c) that the alleged violator shall have 14 days to respond to the notice of the alleged violation in writing or cure the alleged violation.

The alleged violator shall respond to the notice of the alleged violation in writing within such 14-day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board in writing within such 14-day period the Board may, but shall not be obligated to, waive the sanction. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

If the alleged violator does not respond to the notice of the alleged violation in writing or cure the alleged violation within 14 days of the date of the written notification, the Board or its delegate shall serve the alleged violator with a second written notice sent via certified mail describing (a) the nature and date of the alleged violation, (b) the proposed sanction to be imposed, (c) the alleged violator shall have 14 days to present a written request for a hearing.

If the alleged violator (a) does not cure the alleged violation, (b) present a written plan to correct the alleged violation, or (c) present a written request for a hearing within 14 days of the second notification, the Board or its delegate shall serve the alleged violator with a third written notice sent via certified mail describing (a) the nature and date of the violation, and (b) the commencement date of the sanction.

Prior to the effectiveness of sanctions imposed pursuant to this Article, proof of proper notice shall be placed in the minutes of the Board or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

8.2. Hearing.

If a hearing is requested within the allotted 14-day period, the hearing shall be held before the Covenants Committee, if appointed, or the Board, if a Covenants Committee has not been appointed. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meetings of the Covenants Committee shall contain a written statement of the results of the hearing (*i.e.*, the Committee's decision) and the sanction, if any, to be imposed. The Covenants Committee, or the Board, shall send written notice to the alleged violator within five business days describing (a) the nature of the alleged violation, (b) the Covenants Committee's or Board's decision, (c) the amount of the fine, and (d) the date the fine will be imposed if the alleged violation is not cured. The fine will not commence until the hearing has been held and a decision has been rendered.

8.3. Appeal.

Following a hearing before the Covenants Committee, the alleged violator shall have the right to appeal the decision to the Board. To exercise this right, the alleged violator must deliver a written notice of appeal to the Association's manager, President, or Secretary within 10 days after the hearing date.

Article 9 Miscellaneous

9.1. Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

9.2. Parliamentary Rules.

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law or the Governing Documents.

9.3. Conflicts.

If there are conflicts among the provisions of North Carolina law, the Articles of Incorporation, the Charter, and these By-Laws, the provisions of North Carolina law, the Charter, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

9.4. Books and Records.

(a) *Inspection by Members and Mortgagees.* The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit; any Member; or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the Membership register, books of account, the minutes of meetings of the Members, the Board, and committees, and any other records as required by North Carolina law. The Board shall provide for such inspection to take place within 10 business days after receipt of a written request for access at the Association's office or at such other place within Autumn Hall as the Board shall designate.

(b) *Rules for Inspection.* The Board shall establish rules with respect to:

- (i) the frequency and manner of inspection; and
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing documents requested.

(c) *Inspection by Directors.* Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties owned or controlled by

the Association. A director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

9.5. Notices.

(a) Form of Notice and Method of Delivery. Except as otherwise provided in the Charter or these By-Laws or by North Carolina law, all notices, demands, bills, statements, or other communications under the Charter or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or, if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile or electronic mail with written confirmation of transmission.

(b) Delivery Address. Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Member, at the address, telephone facsimile number, or e-mail address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member;

(ii) if to the Association, the Board, or a committee of either, at the address, facsimile number, or e-mail address of the principal office of the Association or its managing agent or at such other address as the Association shall designate by notice in writing to the Members pursuant to this Section; or

(iii) if to the Founder, at the Founder's principal address as it appears on the Secretary of State's records or at such other address as the Founder shall designate by notice in writing to the Association pursuant to this Section.

(c) Effective Date. Notice sent in accordance with Sections 9.5(a) and (b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iii) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

9.6. Amendment.

(a) By Founder. Prior to termination of the Founder Control Period, the Founder may unilaterally amend these By-Laws. Thereafter, the Founder may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units. So long as there is a Founder Membership, the Founder

may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any Owner's substantive rights.

(b) *By Owners Generally.* Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing a majority of the total votes in the Association (with each Unit being assigned a vote, including Units the Founder or a Founder Affiliate owns), and the consent of the Founder during the period of the Founder Membership. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) *Validity and Effective Date of Amendments.* Amendments to these By-Laws shall become effective upon recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of the Founder without the written consent of the Founder or the assignee of such right or privilege.

5649/By-Laws/Autumn Hall/031108/tfw



REBECCA P. SMITH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

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Document No.: 2008022255

DECL 107 \$329.00
PGS

Recorder: JOHNSON, CAROLYN

State of North Carolina, County of New Hanover

YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.

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