

**By-laws  
of the  
Backwater  
Homeowner's  
Association, Inc.**

**(Adopted 11-13-2012)**

**Backwater Homeowner's Association  
By-Laws**

**ARTICLE I  
NAME**

**Section 1. Name.** These are the By-Laws of and for the Mississippi non-profit and non-share corporation named, BACKWATER HOMEOWNER'S ASSOCIATION, INC.

**ARTICLE II  
DEFINITIONS**

**Section 1. Assessment.** "Assessment" shall mean a lot owner's share of the common expenses from time to time assessed such lot owner by the Association. Assessment or Assessments refer to annual, replacement or special assessment or any combination thereof.

**Section 2. Association.** "Association" shall mean and refer to The Backwater Homeowner's Association, Inc. (BHOA) a non-profit corporation, incorporated under the laws of the State of Mississippi for the purpose of effecting the intents and objectives herein set forth, its successors and assigns.

**Section 3. Board of Directors.** "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association.

**Section 4. Common Area.** "Common Area" shall mean all real property (including the improvements thereon) owned by the Association for the common use and enjoyment of the owners.

**Section 5. Declarant.** "Declarant", shall mean and refer to Backwater Development, LLC, and its successors and/or assigns.

**Section 6. Declaration.** "Declaration", shall mean this instrument as it is from time to time amended.

**Section 7. Member.** "Member" shall refer to each Owner as provided herein in Article III.

**Section 8. President, Vice-President, Secretary and Treasurer.** The words "President", "Vice-President", "Secretary" and "Treasurer," as used herein, mean, respectively, the President, Vice-President, Secretary and Treasurer of the Association.

**Section 9. Other Definitions.** Unless a different meaning is apparent from the context, all other expressions used herein shall have the same meaning as they are defined to have in the Declaration, except that the word "herein" as used in these By-Laws shall mean in the By-Laws.

**ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section 1. Membership.** The Members of the Association shall be and consist of each and all of the following, to-wit:

- (a) Every person who is, or who hereafter becomes, an owner of record of the fee title to a Lot. The expression "owner of record of the fee title to a Lot" shall include a contract seller of any such Lot, but shall not include any person who owns such a title solely as security for the performance of an obligation or payment of a debt.

(b) The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Members with the exception of Declarant and its nominee or nominees, if any. Class A Members shall be entitled to one vote for each Lot owned. When more than one person or entity holds an interest or interests in any Lot, all such persons or entities shall be Members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote cast with respect to any such Lot.

Class B. Class B Member(s) shall be the Declarant and its nominee or nominees, if any. The Class B Member(s) shall be entitled to three (3) votes for each Lot owned except as restricted under Section 2 hereof. When the total votes outstanding in the Class A membership equal the votes outstanding in the Class B membership, then the Class B membership shall cease and be converted into Class A membership. Notwithstanding the foregoing, on November 1, 2017, all Class B memberships shall cease and be converted into Class A memberships.

**Section 2. Voting Rights.** Each Member shall be entitled to voting rights as stated in Section 1 of Article III.

**Section 3. Memberships Appurtenant to Real Property.** In every case, the membership of both Class A and Class B Members shall be appurtenant to the ownership of a Lot. A membership shall not be held, assigned, transferred, pledged, hypothecated, encumbered, conveyed or alienated in any manner except in conjunction with and as an appurtenance to the ownership, assignment, transfer, pledge, hypothecation, encumbrance, conveyance, or alienation of the Lot to which the membership is appurtenant.

**Section 4. Other Voting Provisions.** If the fee title to a particular Lot is owned of record by more than one person or entity, then the vote appurtenant to such Lot may be exercised by any one of the fee owners thereof, unless the other owner or owners of such fee title shall object prior to the completion of voting upon the particular matter under consideration. In the case of any such objection, the vote appurtenant to said Lot shall not be counted.

## **ARTICLE IV MEETING OF MEMBERS**

**Section 1. Place of Meeting.** Meetings of the members shall be held at whatever suitable place or places within the State of Mississippi as are reasonably convenient to the membership as may be designated by the Board of Directors from time to time.

**Section 2. Annual Meeting.** An annual meeting shall be held on the first Tuesday of March. All eligible BHOA Members will be allowed to participate in these meetings.

**Section 3. Special Meetings.** It shall be the duty of the President to call a special meeting of the Members whenever such is directed by resolution of the Board of Directors, or when ever such is requested by a petition presented to the Secretary after first having been signed by at least twenty percent (20%) of the eligible Members; provided, however, that no special meetings shall be called, except upon resolution of the Board of Directors, prior to the first annual meeting of the Members as herein above provided. The notice of any special meeting shall state the time and place of such

meeting and the purpose thereof. No business shall be transacted at a special meeting except such as is stated in the notice. All eligible BHOA members will be allowed to participate in these meetings.

At the written request of one-fifth (1/5) of the eligible BHOA membership, the President shall call a meeting within thirty (30) days after receipt of the written notice. All eligible BHOA members will be allowed to participate in these meetings.

**Section 4. Notice of Meeting.** It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof, as well as the time and place where the meeting is to be held, to each Member of record, at his address as it appears on the membership roster of the Association or, if no such address appears, at his last known address at least ten (10) days but not more than thirty (30) days prior to such meeting. Any notice so mailed shall be considered as a notice properly served.

**Section 5. Roster of Membership.** The Secretary shall maintain a current roster of the names and addresses of the Members of the Association. Each member, upon becoming a Member, shall furnish the Secretary with his current mailing address, and thereafter shall notify the Secretary immediately in writing of any change or changes in his current mailing address.

**Section 6. Voting.** Each eligible Member of the Association is entitled to voting rights as designated in Section 1 of Article II.

**Section 7. Member and Eligible Member.** All lot owners in Backwater are members of BHOA. A member is deemed to be eligible if that member's dues and/or assessments are current and paid in full. A Member who is shown by the books of the Association to be more than sixty (60) days delinquent in any payment due the Association shall be not be eligible to vote, either in person or by proxy, and no such delinquent Member shall be eligible to be elected to the Board of Directors or as an officer of the Association.

**Section 8. Quorum.** The presence, either in person or by proxy, of Members having at least fifty-one (51%) of the votes held by all members, shall constitute a quorum for the transaction of business at any meeting of Members. Once a quorum has been established, all transition of business will be conducted.

**Section 9. Adjourned Meeting.** If at any meeting of Members a quorum shall not be present, either before or after the meeting has begun, the Members who are present may adjourn the meeting to another designated time not less than forty-eight (48) hours from the time originally scheduled for the meeting.

**Section 10. Voting.** At every meeting of Members, the eligible Members shall have the voting rights specified in Article III and in Section 7 above. The affirmative vote of the eligible Members having at least fifty-one (51%) percent of the total number of votes represented at the meeting, in person or by proxy, shall be necessary to decide any question properly brought before the meeting, unless the question be one as to which, by provision of the law, or the Declaration, or these By-Laws, a different vote is required, in which case such provision of law, or the Declaration or these By-Laws shall govern and control.

**Section 11. Proxies.** A residential Member may appoint only another Member or the management Agent as his Proxy, provided that in no case may any Member other than a Declarant of the Management Agent cast more than one (1) vote on behalf of another Member by virtue of a proxy

from such other Member. All proxies must be in writing and must be in such form as has been approved by the Board of Directors and must be filed with the Secretary prior to the appointed time of the meeting at which the proxy is to be exercised. Unless limited by its provisions to a shorter term, each proxy shall continue until revoked, in writing, and properly filed with the Secretary or by the death of the Member who gave the proxy, provided, however, that no proxy shall be effective for a period in excess of one hundred eighty (180) days.

**Section 12. Rules of Order.** Robert's Rules of Order shall govern the proceedings of all meetings of BHOA and its constituent parts, except as provided by in these by-laws.

## **ARTICLE V OFFICERS**

**Section 1. Designation.** The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected to the Board by the Members. Only those individuals who are eligible members of the then current Board of Directors shall be eligible to serve as officers of the Association. In addition to the officers named above, the Board may elect, from among eligible members, one or more other officers as in their judgment may be necessary and appropriate.

**Section 2. Election and Terms of Officers.** The officers of the Association shall be elected by the eligible Members. Each officer so elected shall hold office for a term as follows: President, 3 years; Vice-President, 2 years; Secretary, 2 years; Treasurer, 3 years.

**Section 3. Vacancies.** Should the office held by an officer become vacant, such vacancy shall be filled by an election the next Board meeting or at a special Board meeting called for that purpose, and the individual so elected shall hold the office to which elected until the term has been completed.

**Section 4. Removal of Officers.** At any meeting duly called for such purpose, any officer may be removed from office, with or without cause, by the affirmative vote of a majority of the eligible Members present and voting, in person, at such meeting, and in the event of such removal, a successor to the officer thus removed may be elected then and there to fill the vacancy thus created. Any officer whose removal has been proposed shall be given an opportunity to be heard at the meeting called for the purpose of considering such removal.

**Section 5. Duties of the Office.** The duties of the officers shall be as follows:

- (a) **President.** The President shall be the chief executive officer of BHOA. The President shall preside at all meetings of the Members and all meetings of the Board of Directors. The President shall have all of the general authorities, powers and duties which are normally vested in the office of President of a corporation, provided, however, that such authorities, powers and duties, from time to time, and at any time, may be restricted or enlarged by the Board of Directors.
- (b) **Vice President.** The Vice-President shall take the place of the President, and shall have the authorities and powers and perform the duties of the President, whenever the President is unwilling or unable to act. If neither the President nor the Vice-President is willing and able to act, then the Board of Directors shall appoint one of its members to act as the chief executive officer of the Association on an interim basis. The Vice-President shall assist the President generally, and when acting for the President, shall have the same authorities, powers and

duties as the President. The authorities, powers and duties of the Vice-President, from time to time and at any time, may be restricted or enlarged by the Board of Directors.

- (c) **Secretary.** The Secretary shall keep the minutes of all Members' meetings and the minutes of all Board of Directors' meetings. The Secretary shall give notice of all annual and special Members' meetings and all regular and special Board of Directors' meetings. The Secretary shall have charge of the membership books and of such other books and papers as the Board of Directors may specify. In addition, the Secretary shall have whatever other authorities, powers and duties, but only such authorities, powers and duties as may be prescribed by the Board of Directors. If, at any one or more time, the Secretary is unwilling or unable to perform his/her duties, such duties may be performed by any one or more individuals designated by the Board of Directors.
- (d) **Treasurer.** The Treasurer shall have responsibility for the funds and securities of the Association, and shall have accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall have responsibility for causing the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as from time to time may be designated by the Board of Directors. In addition, the Treasurer shall have whatever other authorities, powers and duties, but only such authorities, power and duties, as may be prescribed by the Board of Directors. If, at any one or more times, the Treasurer shall be unwilling or unable to perform any part of his/her duties, such duties may be performed by one or more other individuals designated by the Board of Directors.

**Section 6. Power of the Officers.** In the case of absence of any officer of BHOA, or for any reason that the officers deem sufficient, the officers may delegate, for the time being, the powers or any of them, of any officer to any other eligible member of BHOA.

**Section 7. Resignation of Officers.** Any officer of BHOA intending to resign from the BHOA Officers must give written notice of his/her intention to the BHOA Secretary.

## **ARTICLE VI ELECTION OF OFFICERS**

**Section 1. Time, Place, and Details of Election.** Officers shall be elected every year. Voting in all elections for the officers shall be by a ballot. Officers shall be elected by majority vote with a run-off of the top two (2) candidates, in case no one candidate receives a clear majority during the initial vote. Only eligible Members can be nominated and elected to one of the officer positions.

**Section 2. Nomination and Manner of Election.** The manner of nominations and election of officers shall be as follows:

- (a) Any member of BHOA eligible to be a candidate may secure a place on the ballot by having a proposed and seconded nomination to the BHOA members.
- (b) The BHOA members will be given a ballot with the names to be chosen for election.

## **ARTICLE VII COMMITTEES**

**Section 1. Special Committees.** Special committees may be designated by the President with the consent of the Board of Directors.

**Section 2. Appointment of Chairperson and Voting.** All committees shall be composed of such number of members as the President shall designate; and, the President, with the approval of the Board of Directors, shall appoint the chairperson and membership of all committees. The committee Chairperson shall be a voting member of the Board.

## **ARTICLE VIII COVENANTS OF ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** Declarant, for each Lot owned by it within the Properties, hereby covenants and agrees, and each purchaser of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual maintenance assessments or charges set forth in Article VIII, Section 2 and (2) special assessments set forth in Article VIII Section 4 to be fixed, established and collected from time to time. The annual maintenance and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

**Section 2. Purpose of Annual Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the residents of the Properties, and in particular for the supervision, improvement and maintenance of the Common Area; and for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of the Common Area and interests of the Association. The following expenses are included but in no way limited by the following:

- (a) The cost of utilities and maintenance consumed by the subdivision.
- (b) The cost of necessary management and administration of the Association.
- (c) The cost of other services rendered at the request of the association.

**Section 3. Maximum Annual Assessment.** The maximum annual assessment shall be Six Hundred and Sixty dollars (\$660.00) per lot.

- (a) The maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year without a vote of the membership.
- (b) The maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3rds) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum assessment permitted.

**Section 4. Special Assessments.** In addition to the annual assessments, the BHOA membership shall have the right to levy and collect special assessments deemed necessary and appropriate if approved by two-thirds (2/3) of the members of BHOA at a meeting called for this purpose by written notice sent at least ten (10) days and not more than thirty (30) days in advance of such meeting, setting forth the purpose of the meeting. Each lot owner shall pay the proportionate share of the special assessment.

**Section 5. Date of Commencement of Assessments: Due Dates.** The annual assessments provided for herein shall commence as to all Lots, except Lots owned by Developers or Declarant, on the first day of January. Assessments on Lots owned by Developers or Declarant shall commence as provided in Section 8. The due dates shall be established by the Board of Directors.

**Section 6. Duties of the Board of Directors with Respect to Assessments.**

- (a) The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association.
- (b) Written notice of the assessment shall thereupon be delivered or mailed to every owner subject thereto.
- (c) The Board of Directors shall, upon demand at any time furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Said certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

**Section 7. Effect of Non-Payment of Assessments.**

- (a) If any assessment or any part thereof is not paid on the date(s) when due, then the unpaid amount of such assessment shall, together with such interest thereon and cost of collection thereof as hereinafter provided, become a continuing lien on the Lot of the non-paying Owner, which lien shall be binding upon such Lot and the Owner thereof, his heirs, executors, devisees, personal representatives and assigns. The Association shall have the right to reject partial payments of an assessment and demand the full payment thereof. The obligation of the then existing Owner to pay such assessment, however shall remain his personal obligation and shall not be extinguished by transfer of title. The lien for unpaid assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for the assessment provided herein by abandonment of his Lot.
- (b) The Association shall give written notification to the holder(s) of the mortgage on the Lot of the non-paying Owner of such Owner's default in paying any assessment when such default has not been cured within sixty (60) days, if such mortgagee has requested same.
- (c) If any assessment or part thereof is not paid within forty (40) days after the delinquency date, the unpaid amount of such assessment shall bear interest from the date of delinquency at the maximum interest rate per annum which can be charged to individuals and the Association may, at its election, bring an action at law against the owner personally obligated to pay the same in order to enforce payment and/or to foreclose the lien against the Property subject thereof after giving Notice to the holder of any Recorded First Mortgage. There shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action and/or all costs of foreclosure, including a reasonable attorney's fee.

**Section 8. Assessment of Developers and Builders.** Any Lot owned by a Developer or Builder shall not be subject to Assessment by the Association until sixty (60) days after completion of construction of any Dwelling on such Lot or, if earlier, one hundred eighty (180) days after the date a



deed for such Lot is delivered to the Developer or Builder. Any annual maintenance and/or Special Assessment upon any Lot owned by a Developer or Builder shall be twenty-five (25%) of the Assessment against each similar Lot not owned by a Developer or Builder. The Declarant shall not be subject to Assessment by the Association until one hundred eighty (180) days after the Plat, or, if applicable, an amended or supplemental Plat is filed for record in connection with the annexation of all or a portion of the Additional Property to the Property.

## **ARTICLE IX COVENANT INTERPRETATION AND MISCELLEANOUS**

**Section 1. Conflict.** These By-Laws are subordinate and subject to all provisions of the Declaration and to the provisions of the Charter. All the words and expressions in these By-Laws shall have the same meanings, respectively, as are attributed to them by the Declaration of Covenants, except where such is clearly repugnant to the context. In the event of any conflict between these By-Laws and the Declaration, the provisions of the Declaration shall control.

**Section 2. Notices.** Unless another type of notice is herein elsewhere specifically provided for, any and all notices called for in these By-Laws shall be given in writing.

**Section 3. Severability.** In the event any promise or provisions of these By-Laws shall be determined to be invalid, void or unenforceable, such determination shall not render invalid, void or unenforceable, any other provisions hereof which can be given effect.

**Section 4. Waiver.** No restrictions, condition, obligation or provision of the By-Laws shall be deemed to have been abrogated or waived by reason of any failure of failures to enforce the same.

**Section 5. Captions.** The captions contained in these By-Laws are for convenience only and are not a part of these By-Laws and By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these By-Laws to aid in the construction thereof.

## **ARTICLE X FUNDS**

**Section 1. Monies.** All monies and property of BHOA must be used for the benefit of BHOA as provided for in these by-laws. All expenditures and appropriations must be authorized by a majority of the officers.

**Section 2. Signature of Funds.** All check, drafts, and notes of BHOA shall be signed by the Treasurer.

**Section 3. Banking Institution.** The officers shall designate the banking institution to be used for the deposit of funds of BHOA.

**Section 4. Indebtedness.** Before any indebtedness (indebtedness shall be defined as any monetary loan or loan guarantee) is incurred by BHOA, it must be approved by a simple majority of the BHOA membership.

**Section 5. Audit Committee.** An Audit Committee, consisting of at least two (2) eligible members and a chairperson, shall be appointed by the President with the approval of the officers, at least thirty

(30) days prior to the date of the annual election meeting. This committee shall audit the books of BHOA and prepare a detailed report. This report shall be delivered to all members at least one (1) week prior to the annual election meeting.

**Section 6. Spot Audits.** Spot audits of BHOA books may be authorized at any time, by a majority vote of the officers or by a majority of the eligible membership present and voting at any regularly scheduled meeting or special meeting.

**Section 7. Liability of BHOA.** No member of BHOA shall ever be held liable or responsible for any contracts, debts or obligations of BHOA nor shall any informality in organization have the effect of rendering these by-laws null, or of exposing the members to any individual liability.

## **ARTICLE XI AMENDMENTS**

**Section 1. Amendments of By-Laws.** These by-laws may be repealed, changed, modified, or amended and additional by-laws enacted by a Board at any regular meeting, or at any special meeting called for that purpose, where such purpose is stated in the call for such special meeting; but in order to do so, it shall require the affirmative vote of two-thirds (2/3) of all the members of the Board and the affirmative vote of the eligible Members having at least fifty-one (51%) percent of the total number of votes.

## **ARTICLE XII COPIES OF BY-LAWS**

**Section 1. Copies of By-Laws.** Copies of the by-laws shall be furnished to each member of BHOA. The Secretary shall have a copy present at all meetings and shall hold in his/her possession any extra copies and/or electronic copies.