

# **TAMARACK FALLS**

## **HOMEOWNERS ASSOCIATION, INC.**

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### **BY-LAWS OF TAMARACK FALLS HOMEOWNERS ASSOCIATION INC.**

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# **Article I - General**

## **1.1 Applicability**

These By-Laws provide for the self-government of the Tamarack Falls Homeowners Association, Inc., in accordance with the Articles of Incorporation filed with the Secretary of State and the Declaration of Covenants, Conditions and Restrictions for Tamarack Falls Subdivision, recorded in the Cobb County, Georgia land records ("Declaration").

## **1.2 Name**

The name of the corporation is Tamarack Falls Homeowners Association, Inc., ("Association").

## **1.3 Definitions**

The terms used herein shall have their generally accepted meanings or such meanings as are specified in paragraph 2 of the Declaration.

## **1.4 Membership**

An Owner of a Lot shall automatically become a member of the Association upon tacking title to the Lot and shall remain a member for the entire period of ownership. As may be more fully provided below, a spouse of a member may exercise the powers and privileges of the member. If title to a Lot is held by more than one (1) Individual, the membership shall be shared in the same proportion as the title, but there shall be only one (1) membership and one (1) vote per Lot. Membership does not include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. Membership shall be appurtenant to the Lot and shall be transferred automatically by conveyance of that Lot and may be transferred only in connection with the transfer of title.

## **1.5 Entity Members**

In the event an Owner is a corporation, partnership, trust, or other legal entity not being a natural person or persons, then a natural person who is an officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust, or manager of such other legal entity shall be designated to act as an agent for the legal entity or entities. This Agent shall be eligible to represent such entity or entities in the affairs of the Association. Such Agent's relationship with the Association shall terminate automatically upon the termination of the such Agent's relationship with the entity or entities which are the Owner, and termination of the person's relationship with the Association will create a vacancy in elected or appointed position within the Association in which such Agent may have been serving and such vacancy will be filled in accordance with these By-Laws.

## **1.6 Voting**

Each Lot in the Subdivision shall be entitled to one equally weighted vote, which vote may be cast by the Owner, the Owner's spouse, or by a lawful proxy as provided below. When more than one (1) Person owns a Lot, the vote for such Lot shall be exercised as they determine between or among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot. If only one (1) co-owner attempts to cast the vote for a Lot, it shall be conclusively presumed that such co-owner is authorized on behalf of all co-owners to cast the vote for such Lot. In the event of a disagreement between or among co-owners and an attempt by two (2) or more of them to cast such vote or votes, such Persons shall not be recognized and such vote or votes shall not be counted.

No Owner shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, if that Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association or if the Owner has had

its voting rights suspended for the infraction of any provision of the Declaration, the By-Laws, or any rule of the Association. If the Owner has been suspended, That Owner shall not be counted as an eligible vote for the purposes of establishing a Majority or a quorum or for the purposes of amending these By-Laws or the Declaration.

### **1.7 Majority**

As used in these By-Laws, the term "majority" shall mean those votes, owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total number of eligible votes, Owners, or other group, respectively. Unless otherwise specifically stated, the words "majority vote" mean more than fifty (50%) percent of those voting in person or by proxy. Except as otherwise specifically defined in the Declaration or these By-Laws, all decisions shall be by majority vote.

### **1.8 Purpose**

The Association shall have the responsibility of administering the Property, establishing the means and methods of collecting the contributions to the Common Expenses, arranging for the management of the Property and performing all of the other acts that may be required to be performed by the Association pursuant to the Georgia Nonprofit Corporation Code and the Declaration. Except as to those matters which the Declaration or the Georgia Nonprofit Corporation Code specifically require to be performed by the vote of the Association membership, the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth below.

## **Article II - Meeting of Members**

### **2.1 Annual Meetings**

The regular annual meeting of the members shall be held on the second Sunday in November of each year with the hour, and place to be set by the Board of Directors. At this meeting, the Primary Officers of the Board of Directors will be elected.

### **2.2 Special Meetings**

Special meetings of the members may be called for any purpose at any time by the President, the Secretary, or by request of any two (2) or more members of the Board of Directors, or upon written petition of twenty-five (25%) percent of the Lot Owners. Any such written petition by the members must be submitted to the Association's Secretary. The Secretary shall then verify that the required number of members have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then promptly call a special meeting for the purpose stated in the petition and the Secretary shall send notice of the meeting in accordance with these By-Laws.

### **2.3 Notice of Meetings**

It shall be the duty of the Secretary to mail or deliver to each Owner of Lots of record a notice of each annual or special meeting of the Association at least fourteen (14) days prior to each annual meeting and at least seven (7) days prior to each special meeting. The notice shall state the purpose of any special meeting, as well as the time and place where it is to be held. If any Owner

wishes notice to be given at an address other than his or her Lot, the Owner shall have designated by notice in writing to the Secretary such other address. The mailing or delivering of a notice of meeting in the manner provided in this Section shall be considered proper service of notice. The Secretary shall also place signs at the point of entrance and exit of the subdivision announcing any meetings. The signs shall be visible for at least seven (7) days prior to any meeting.

## **2.4 Quorum**

Except as may be provided elsewhere, the presence, in person or by proxy at the beginning of the meeting, of Owners entitled to cast one fourth (1/4) of the eligible vote of the Association shall constitute a quorum.

Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is adjourned and shall not need to be reestablished. Owners whose voting rights have been suspended pursuant to the Declaration or these By-Laws shall not be counted as eligible votes towards the quorum requirements.

## **2.5 Adjournment**

Any meeting of the Owners may be adjourned from time to time for periods not to exceed ten (10) days by vote of the Owners holding the Majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business which could be transacted properly at the original session of the meeting may be transacted at a reconvened session, and no additional notice of such reconvened session shall be required.

## **2.6 Proxy**

Any Member entitled to vote may do so by written proxy duly executed by the member setting forth the meeting at which the proxy is valid. To be valid, a proxy must be signed, dated, and filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies may be delivered to the Board by personal delivery, U.S. mail or telefax transmission to any Board member or the property manager. Proxies may be revoked only by written notice delivered to the Association, except that the presence in person by the giver of a proxy at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.

## **2.7 Action without a Meeting**

Any action that may be taken at any annual or special meeting of members may be taken without a meeting if the Association delivers a written ballot to every member entitled to vote on the matter.

(a) A written ballot shall:

- (1) set forth each proposed action; and
- (2) provide an opportunity to vote for or against each proposed action

(b) Approval by written ballot pursuant to this Section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(c) All solicitations for votes by written ballot shall:

- (1) indicate the number of responses needed to meet the quorum requirements;
- (2) state the percentage of approvals necessary to approve each matter other than election of directors; and
- (3) Specify the time by which a ballot must be received by the corporation in order to be counted.

(d) A written ballot may not be revoked. The Association shall maintain such ballots in its file for a period of at least three (3) years.

## **2.8 Order of Business**

At all meetings of the Association, Roberts Rules of Order (latest edition) shall govern when not in conflict with the Declaration, these By-Laws or the Articles of Incorporation.

# **Article III - Board of Directors**

## **A. Composition and Selection**

### **3.1 Composition**

The affairs of the Association shall be governed by a Board of Directors. The Board shall be composed of four (4) principle officers and the chairpersons of each committee. The directors shall be Owners of Lots or spouses of such Owners; provided, however, no Owner and his or her spouse may serve on the Board at the same time, and no co-owners may serve on the Board at the same time.

### **3.2 Term of Office**

Those directors serving on the date these amended and restated By-Laws are recorded in the Cobb County, Georgia land records shall remain in *office* until the terms for which they were elected expire. Successor Principle Officers shall be elected by the vote of those members present or represented by proxy, at the annual or other meeting of the membership of the Association, a quorum being present. Those persons receiving the most votes shall be elected to the number of positions to be filled. All successor Principle Officers shall be elected for one (1) year terms and shall hold office until their successors are elected.

The *Officers* of the Board of Directors shall also include the Chairperson from the association committees. It will be each committee's duty to elect a Chairperson of the Committee from their group and to report such election to the Principle Officers of the Board of Directors. If the committee is unable to elect a chairperson, the President of the Board of Directors shall appoint a member to serve as the chairperson. Chairperson Officers shall hold a one (1) year term and shall hold office until their successors are elected from the committee members or appointed by the President of the Board of Directors.

### **3.3 Removal of Members of the Board of Directors**

At any regular or special meeting of the Association dully called, any one or more of the members of the Board of Directors may be removed with or without cause by a Majority of the members of the Association that are eligible to vote, and a successor may then and there be elected to fill the vacancy thus created. Moreover, a director who has had three (3) consecutive unexcused absences from regularly scheduled Board meetings or is more than sixty (30) days past due in the payment of any assessment may be removed by the vote of a Majority of the other directors. Any director whose removal has been proposed shall be given at least ten (10) days notice of the calling of the meeting to consider his or her removal and the purpose thereof and shall be given an opportunity to be heard at the meeting. For the purpose of this Section, no Owner may vote more than his or her own vote and the vote of four (4) proxies; however, the Association or the Board members may vote any number of proxies.

### **3.4 Vacancies**

Vacancies in the Board of Directors caused by any reason, except the removal of a director by vote of the membership, shall be filled by a vote of the majority of the remaining directors, even though less than a quorum, at any meeting of the Board of Directors. The successor so selected shall hold office for the remainder of the term of the director being replaced.

### **3.5 Compensation**

Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a Majority vote of the Members. Directors may be reimbursed for the expenses incurred in carrying out their duties as directors upon approval of such expenses by the Board of Directors.

### **3.6 Director Conflicts of Interest**

Nothing herein shall prohibit a director from entering into a contract and being compensated for services or supplies furnished to the Association in the capacity other than as director, provided that the director's interest is disclosed to the Board and the contract is approved by a Majority of the directors who are at a meeting of the Board of Directors at which a quorum is present, excluding the director with whom the contract is made. The interested director shall not count for purposes of establishing a quorum of the Board. The interested director shall be entitled to be present at any meeting at which the proposed contract is discussed and to discuss the proposed contract, unless requested by any other director to leave the room during the discussions.

### **3.7 Nomination**

Nomination for election to the Board shall be made by a Nominating Committee which shall consist of at least (1) member of the Board of Directors and a least two (2) other volunteer members of the Association who are not Board members, at least thirty (30) days prior to the annual meeting to serve a term of one (1) year. The members of the Nominating Committee shall be announced at the annual meeting. The Nominating Committee may nominate any number of qualified individuals, but not less than the number of principle directors to be elected. The nominations shall be made at least fourteen (14) days prior to the annual meeting. Nominations shall also be allowed from the floor at the meeting. Each candidate shall be given a reasonable opportunity to communicate his or her qualifications to the membership prior to the election. No member shall be nominated for election to the Board of Directors, nor permitted to run for election, if more than thirty (30) days past due in the payment of any assessment. Failure to comply with this Section shall in no way invalidate the election of directors who were not nominated in accordance with the provisions hereof

## **B. Board Member Meetings**

### **3.9 Regular Meetings of the Board of Directors**

Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the Board, but such meetings shall be held at least once every three (3) months. The newly elected Board shall meet within ten (10) days after each annual meeting of the membership.

### **3.10 Special Board Meetings**

Special meetings of the Board of Directors may be called by the President on seven (7) days notice to each director given by mail, in person, by telephone, or by facsimile transmission, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President, Vice President, Secretary or Treasurer in like manner and on like notice on the written request of at least two (2) directors.

### **3.11 Waiver of Notice**

Any director may, at any time, in writing waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board of Directors shall also constitute a waiver of notice by him or her of the time and place of such meeting. If all directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.



### **3.12 Conduct of Meeting**

The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. The presence of directors entitled to cast one-half of the votes of the Board shall constitute a quorum for the transaction of business. One or more directors who participate in a meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such meeting, provided all persons participating in the meeting can hear each other.

### **3.13 Open Meetings**

All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board. Notwithstanding the above, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

### **3.14 Action without a Meeting**

Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if a Majority of the directors consent in writing to such action. Such written consents must describe the action taken and be signed by no fewer than a Majority of the directors and such written consent or consents shall be filed with the minutes of the Board of Directors.

## **C. Powers and Duties**

### **3.15 Powers and Duties**

The Board of Directors shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration for the Property and may do all such acts and things as are not by the Declaration, the Articles of Incorporation, or these By-Laws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these ByLaws, the Board of Directors shall have the power to and shall be responsible for the following, in ways of explanation, but not limitation:

- (a) preparation and adoption of an annual budget, in which there shall be established the contribution of each Owner to the Common Expense;
- (b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment (Unless otherwise determined by the Board of Directors, the annual assessment for each Lot's proportionate share of the Common Expenses shall be payable in an annual installment to be due and payable in advance on the first day of February).
- (c) providing for the operation, care, upkeep, and maintenance of all of the Areas of Common Responsibility;
- (d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, repair, and replacement of the Common Property, Association property, and the Area of Common Responsibility and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;
- (e) collecting the assessments, depositing the proceeds thereof in a financial depository or institution which it shall approve, or otherwise investing the

- proceeds in accordance with any limitations set forth in O.C.G.A. § 14-3-202, and using the proceeds to administer the Association.
- (f) making and amending rules and regulations and imposing sanctions for violation thereof, including reasonable monetary fines;
  - (g) opening of bank or other financial accounts on behalf of the Association and designating the signatories required;
  - (h) making or contracting for the making of repairs, additions, and improvements to, or alterations of the Common Property in accordance with the other provisions of the Declaration and these By-Laws without approval of the members of the Association for any expense which does not exceed one thousand five hundred dollars (\$1,500). The only exception to this limit is after damage or destruction by fire or other casualty;
  - (i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it, and bringing any proceeding which may be instituted on behalf of or against the Owners concerning the Association;
  - (j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
  - (k) paying the costs of all services rendered to the Association or its members and not directly chargeable to specific Owners;
  - (l) keeping books with detailed accounts of the receipts and expenditures *affecting* the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred; and contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, or other Associations or corporations. Any and all functions for the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

### **3.16 Management agent**

The Association may, but shall not be required to, hire a professional management agent or agents, at a compensation established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize. The Board shall use reasonable efforts in any management contract to provide for termination of such contract with or without cause and without penalty, upon no more than thirty (30) days to run this, and for term not in excess of one (1) year.

### **3.17 Borrowing**

The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, restoration for improvement of the common property and facilities. The power to borrow money shall require a majority vote at an Annual Meeting, Special Meeting, or via ballot as described under Action without a Meeting.

### **3.18 Liability and indemnification of Officers and Directors**

The Association shall indemnify every Officer and Director against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon such Officer or Director in connection with any action, suit, or other proceedings (including settlement of any such action, suit, or proceedings, if approved by the then Board of directors) to which he or she may be made a party by reason of being or having been an Officer or Director, whether or not such person is an Officer or Director at the time such expenses are incurred. The Officers and Directors shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such Officer or Director in the performance of his or her duties, except for his or her own individual willful misfeasance or malfeasance. The Officers and Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent of such officers or directors may also be

members of the Association), and the Association shall indemnify and forever hold each such Officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Officer or Director may be entitled. The Association shall, as a common expense, maintain adequate general liability and, if obtainable, Officers' and Directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

## **D. Committees**

### **3.19 Nominating Committee**

Pursuant to Section 3.7 of this Article, there shall be a nominating Committee composed of at least three (3) members appointed in the manner and to perform the functions specified in Section 3.7 of this Article. It will be the committee's duty to elect a Chairperson of the Nominating Committee and to report such election to the Principle Officers of the Board of Directors. If the committee is unable to elect a chairperson, the president of the Board of Directors shall appoint a member to serve as the chairperson.

### **3.20 Architectural Control Committee**

The Board will establish an Architectural Control Committee for the purpose of establishing and maintaining architectural standards in the Property as provided in the Declaration. The Architectural Control Committee shall be composed of not less than three (3) and no more than five (5) individuals; provided, however, that the Architectural Control Committee shall always have an uneven number of members. The members of the Architectural Control Committee shall be elected by a majority vote of the Association at the Annual meeting of each year. Once the Architectural Control Committee members have been elected, it will be their duty to elect a Chairperson of the Architectural Control Committee and to report such election to the Principle Officers of the Board of Directors. If the Committee is unable to elect a Chairperson, the President of the Board of Directors shall appoint a member of the Committee to serve as the Chairperson for the Committee. This Committee shall be expected to present a written report at each of the regularly scheduled Board of Director meeting denoting each and every action taken by the Architectural Control Committee during the preceding quarter and to bring before the Board of Directors any issues requiring resolution. Such written report shall be submitted to the Secretary for inclusion in the minutes from such meeting.

### **3.21 Social Committee**

A Social Committee shall be comprised of volunteers from the Association. The Social Committee shall assist in the planning and executing social activities at regular intervals for the Association. The committee's shall elect a Chairperson of from the Committee members and will report such election to the Principle Officers of the Board of Directors. If the Committee is unable to elect a Chairperson, the president of the Board of Directors shall appoint a member to serve as the Chairperson. The Social Committee shall be expected to keep the members of the Association informed of upcoming social events and provide assistance as needed to carry out such events.

### **3.22 Other Committees**

There shall be such other committees as the Board shall determine with the powers and duties that the Board shall authorize.

### **3.23 Service on Committees**

Unless otherwise provided in these By-Laws or in the resolution authorizing a particular committee, the members of any committee shall be appointed volunteers from the Association Members and shall serve at the pleasure of the Board of Directors. Any committee member may be removed with or without cause at any time and without a successor being named.

## **Article IV - Officers**

### **4.1 Designation**

The principal officers of the Association shall be the President, the Vice President, the Secretary, and the Treasurer. The President, Vice President, and Secretary shall be elected by and from the general membership. The Board of Directors may appoint or more Assistant Treasurer, Assistant Secretaries, and other such subordinate officers as in its judgment may be necessary. Any assistant or subordinate officer shall not be required to be a member of the Board of directors. Except for the offices of Secretary and Treasurer, which may be held by the same person, no person may hold more than one (1) office. The Board of Directors shall be composed of the Principal Officers plus the Committee chairpersons.

### **4.2 Election of Officers**

The officers of the Association shall be elected annually by the General Membership at the annual meeting of the members (as detailed in Article II, Section 2.1) and shall hold office until successors are elected.

### **4.3 Removal of Officers**

Upon the affirmative vote of the Majority of the members of the Board of Directors, an officer may be removed, either with or without cause, and successor may be elected.

### **4.4 Vacancies**

They vacancy in any office are rising because of death, resignation, removal, or otherwise may be filled by the Board of directors for the unexpired portion of the term.

### **4.5 President**

The President shall be the chief executive officer of the Association and shall preside at all the meetings of the members of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the President of a corporation organized under the Georgia Nonprofit Corporation Code, including, but not limited to, the power to appoint committees from among the members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

### **4.6 Vice President**

The Vice President shall act in the President's absence and shall have all powers, duties and responsibilities provided for the President was so acting.

#### **4.7 Secretary**

The Secretary shall keep the minutes of all meetings of the members and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct, and shall, in general perform all duties incident to the office of the Secretary of a corporation organized under Georgia law.

#### **4.8 Treasurer**

The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit all monies or valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall be responsible for the preparation of the budget as provided in the declaration. The treasurer may delegate all or part of the preparation and notification duties associated with the above responsibilities to a management agent.

#### **4.9 Other Officers**

Other offices may be created by the Board, and the Board members which hold such offices shall have such titles and use it as are defined by the Board.

#### **4.9 Agreements, Contracts, Deeds, Leases, Etc.**

All agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association exceeding the amount specified in Article III, Section C, 3.151 should be executed by at least two (2) Officers or by such other person or persons as may be designated by resolution of the Board of Directors.

### **Article V - Rule Making and enforcement**

#### **5.1 Authority and Enforcement**

The Property shall be used only for those uses and purposes set out in the Declaration. The Board of Directors shall have the authority to make, modify, repeal and enforce reasonable rules and regulations governing the conduct, use, and enjoyment of Lots and the Common Property; provided copies of all such rules and regulations shall be furnished to all Owners and Occupants. Any rule or regulation may be repealed by the affirmative vote or written consent of the Majority of the total Association that in annual or special meeting of the membership. Every Owner and Occupant shall comply with the declaration, BY-LAWS and rules and regulations of the Association, and any lack of compliance therewith shall entitle the Association and, in appropriate case, one or more aggrieved Unit Owners, to take action to enforce the terms of the declaration, BY-LAWS or rules and regulations.

The Board shall have the power to impose reasonable fines, which shall cause constitute a lien upon the owner's lot, and to suspend an Owner's right to vote or to use the Common Property for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of directors to limit ingress and egress to or from a lot. In the event that any occupant of a lot violates the Declaration, BY-LAWS, or a rule or regulation and a fine is imposed, notice of such violation shall be sent to the Owner and the Occupant, and the fine shall first be assessed against such Occupant; provide, however, if the fine is not paid by the Occupant within the time period set by the Board, the Lot Owner shall pay the fine upon notice from the Association, and the fine shall be an assessment and a lien against the Lot until paid. The failure of the Board to

enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

## **5.2 Fining and Suspension Procedure**

The Board shall not impose a fine or suspend the right to vote or to use the common property (unless an Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association in which case such suspensions shall be automatic) unless and until notice of the violation is given as provided in subsection (a) below. Any such fine or fines may be effective or commence upon the sending of such notice for such later date as may be set forth in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge such fine under subsection (b) below.

### **(a) Notice**

If any provision of the declaration or By-Laws or any rule or regulation of the Association is violated, the Board shall serve the violator with written notice sent certified mail, return receipt requested, which shall:

- (i) State the nature of the alleged violation;
- (ii) The proposed sanction to be imposed;
- (iii) A statement that the violator may challenge the fact of the occurrence of the violation, the proposed sanction, or both, by written challenge and written request for a hearing before the Board, which request must be received by the Board within ten (10) days of the date of the notice;
- (iv) The name, address, and telephone number of a person to contact to challenge the proposed action.

If a timely challenge is made and the violation is cured within (10) days, the Board, at its discretion, may, but is not obligated to, wave any sanction or portion thereof. In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and funds may be opposed on a per Diem basis without further notice to the violator.

### **(b) Hearing**

If the alleged violator timely challenges the proposed action, a hearing before the Board of Directors shall be held in executive session. The hearing shall be set at a reasonable time and date by the Board, in message that time, date (which shall not be less than ten (10) days from the giving of the notice without the consent of the violator), and place of the hearing, and an invitation to attend the hearing and produce any statements, evidence, and witnesses shall be sent to the alleged violator. Proof of such notice shall be placed in the minutes of the meeting. 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 or director who delivered, such notice. The notice requirement shall be deemed satisfied if the violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

This section shall be deemed complied with if a hearing is held and the violator attends and is provided an opportunity to be heard, notwithstanding the fact that the notice requirements contained herein are not technically followed.

## **5.3 Additional Enforcement Rights**

Notwithstanding anything to the contrary herein contained, the Association, acting through its Board of Directors, may elect to enforce any provision of the Declaration, the By-Laws, or the rules and regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in Section 2 of this Article. In any such action, to the maximum extent

permissible, the Owner or Occupant responsible for the violation for which abatement is sought shall pay all cost, including reasonable attorney's fees actually incurred.

The Association or its duly authorized agent shall have the ability to enter a Lot or upon any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the By-Laws, or the rules and regulations. All cost of self-help, including reasonable attorney's fees, shall be assessed against the violating Lot Owner and shall be collected as provided herein for the collection of assessments.

## Article VI - Miscellaneous

### 6.1 Notices

Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by the United States mail, first class postage prepaid:

(a) If to a Lot Owner, at the address which the Lot Owner has designated in writing and filed

with the Secretary, or if no such address has been designated, at the address of the Lot of such Owner;

(b) If to an Occupant, at the address of the Lot occupied; or

(c) If to the Association, the Board of Directors or the managing agent, at the principle office

of the Association or the managing agent, if any, or at such other address as shall be designated in writing and filed with the Secretary.

### 6.2 Severability

The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these By-Laws or the intent or any provision thereof.

### 6.3 Captions

The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these BY-LAWS or the intent of any provision thereof.

### 6.4 Gender and Grammar

The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

### 6.5 Fiscal Year

The fiscal year of the Association may be set by resolution of the Board of Directors. In the absence of such resolution by the Board of Directors, the fiscal year shall be the calendar year.

### 6.6 Financial Review

A financial review of the accounts of the Association shall be performed annually in a manner provided by the Board. However, after having received the Board's financial review at the annual meeting, the owners may by a Majority of the Association vote, require that the accounts of the Association be audited as a common expense by an independent accountant.

## 6.7 Amendment

Except where a higher vote is required for action under a particular provision of the Declaration or BY-LAWS, in which case such higher vote shall be necessary to amend, these BY-LAWS may be amended by affirmative vote, written consent, or any combination of affirmative vote and written consent of the members holding sixty-six and two-thirds (66-2/3%) percent of the total eligible vote of the Association. Notice of any meeting at which an amendment will be considered shall state that fact and the subject matter of the proposed amendment. No amendment shall become effective until it is certified by the President and Secretary of the Association and recorded in the Georgia land records. Any amendment duly certified and recorded (containing any additional signatures required by the Declaration) shall be conclusively presumed to have been duly adopted in accordance with the Declaration and By-Laws. Owners whose voting rights have been suspended pursuant to the Declaration of these By-Laws shall not be counted as eligible votes towards the amendment requirement.

Any action to challenge the validity of an amendment adopted under this section must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.

## 6.8 Books and Records

(a) All members of the Association and any institutional holder of a first Mortgage shall be entitled to inspect the following records at a reasonable time and location specified by the Association, upon written request at least five (5) days before the date on which the member wishes to inspect and copy:

- (i) its Articles or restated Articles of Incorporation and all amendments to them currently in effect;
- (ii) its By-Laws or restated By-Laws and all amendments to them currently in effect;
- (iii) resolutions adopted by either its members or Board of Directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
- (iv) resolutions adopted by either its members or Board of Directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
- (v) the minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;
- (vi) all written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years;
- (vii) a list of the names and business or home addresses of its current directors and officers and
- (viii) its most recent annual report delivered to the Secretary of State.

(b) A member may inspect and copy the following records upon written notice at least five (5) business days before the date on which the member wishes to inspect and copy only if the member's demand is made in good faith and for a proper purpose that is reasonably relevant to the member's legitimate interest as a member; the member describes with reasonable particularity the purpose and the records the member desires to inspect; the records are directly connected with this purpose; and the records are to be used only for the stated purpose:

- (i) Excerpts from minutes of any Board meeting, records of any action of a committee of the Board while acting in place of the Board on behalf of the Association, minutes of any meeting of the members, and records of action



taken by the members or the Board without a meeting, to the extent not subject to inspection under subsection 9(a);

(ii) Accounting records of the Association; and

(iii) the membership list only if for a purpose related to the member's interest as a member. Without the consent of the Board, a member list or any part thereof may not be: used to solicit money or property; used for any commercial purpose; or sold to or purchased by any person.

The Association may impose a reasonable charge, covering the cost of labor and material, for copies of any documents provided to the member.

# **CERTIFICATION**

I, the undersigned, do hereby certify:

That I am the duly elected and acting secretary of Tamarack Falls Homeowners Association, Inc., a Georgia corporation.

That the foregoing By-Laws were duly adopted by the Board of Directors on the \_\_\_\_\_ day of \_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed the seal of said Association this the day of \_\_\_\_\_

Tamarack Falls Homeowners  
Association, Inc.

Secretary