



**BY-LAWS  
OF  
BIRMINGHAM HOMES ASSOCIATION**

**ARTICLE I**  
**PURPOSES AND RESTRICTIONS**

Section 1.1 The purpose of the Association shall be those non-profit purposes stated in the Articles of Incorporation, as may be amended. No part of the net earnings of other assets of the Association shall insure to the benefit of, be distributed to or among, or revert to, any director, officer, contributor of other private individual, having, directly or indirectly, any personal or private interest in the activities of the Association, except that the Association may pay reasonable compensation for services rendered and may make payments and distributions in furtherance of the non-profit purposes stated in the Articles of Incorporation.

**ARTICLE II**  
**OFFICES**

Section 2.1 The Association may have offices at such places as the Board of Directors may from time to time determine.

**ARTICLE III**  
**PURPOSES AND RESTRICTIONS**

Section 3.1 Each Unit Owner of New Birmingham, A Planned Community shall be a member of the Association and each member that has made at least one assessment payment and is current in such payments shall be a Voting Member. There shall be an annual meeting of the Voting Members on December 10<sup>th</sup> in each year if not a legal holiday, and if a legal holiday, then on the next business day following, at 5:00 P.M. The President shall give notice of the meeting to the Voting Members not less than ten (10) days nor more than sixty (60) days prior to such meeting. The notices shall state the time, place, and purpose of the meeting. Such a meeting shall be held at the office of the Association, if any, or at such other place as shall be fixed by resolution of the Board of Directors

Section 3.2 The Grantor (as defined in Section 1.14 of the Declaration of Covenants and Restrictions for New Birmingham, A Planned Community dated May 15, 1997, (the "Declaration") shall be entitled to one vote for each Unit (as defined in Section 1.19 of the

Declaration) or vacant parcel it owns or controls. Each Voting Member (as defined in Section 1.21 of the Declaration) shall be entitled to one vote for each Unit owned by such Voting Member.

Section 3.3 At all meetings of the Voting Member, 51% of the Voting Members shall be necessary and sufficient to constitute a quorum for the transaction of business. If a quorum shall not be present at any meeting of the Voting Members, the Voting Members present may adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 3.4 Voting members may vote by delivering their written proxy to the Secretary prior to the commencement of any meeting.

Section 3.5 Special meetings of the Voting Members may be called by the President on ten (10) days notice to each Voting Member, given personally or by mail upon which notice shall state the time, place, and purpose of the meeting. Special meetings of the Voting Members shall be called by the President or Secretary in like manner and on like notice on the written request of at least one-third of the Voting Members.

## **ARTICLE IV**

### **DIRECTORS**

Section 4.1 The Board of Directors shall manage and direct the business of the Association as set forth in the Declaration.

Section 4.2 The Number of directors which shall constitute the Board of Directors shall be no less than three (3) or more than seven (7).

Section 4.3 The initial Board of Directors will be appointed by the Grantor for a period of three (3) years. Not later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Units, not less than twenty-five percent (25%) of the directors of the Board shall be elected by Voting Members. Not later than sixty (60) days after the conveyance of fifty percent (50%) of the Units, not less than thirty-three (33%) of the directors of the Board shall be elected by the Voting Members. Other than directors appointed by the Grantor, directors shall be elected by the Voting Members at the annual meeting of the Voting Members. The persons receiving the highest number of votes will be elected to the available directorships as determined by the Board of Directors. Each elected director shall serve until the next succeeding annual meeting of Voting Members and until his or her successor has been elected and qualified. Directors may succeed themselves without limitations.

Section 4.4 The directors may hold their annual meeting and keep the books of the Association at the principal business office of the Association, if any, or at such a place as they may from time to time determine and as may be permitted by law.

Section 4.5 A director may resign by giving written notice to the President. A director may be removed by a two-thirds (2/3) vote of the Voting Members present at a meeting of the Board with or without cause, except for a director appointed by the Declarant. If the office of a director becomes vacant for any reason, including resignation or removal, the remaining directors shall choose a successor or successors who shall hold office for the unexpired term in respect of which such a vacancy occurred or until the next election of directors.

Section 4.6 There shall be an annual meeting of the newly elected Board of Directors immediately following the annual meeting of the Voting Members. Regularly scheduled meetings of the Board may be held with notice at such time and place as shall from time to time to be determined by the Board.

Section 4.7 Special meetings of the Board may be called by the President on two (2) days notice to each director, either personally or by mail or by telegram. Special meetings of the Board may be called by the President or Secretary in like manner and on like notice on the written request of the majority of directors.

Section 4.8 At all meetings of the Board, a majority of the directors shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by the statute. If a quorum shall not be present at any meeting of directors, the directors present may adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 4.9 Members of the Board of Directors, or of any committee designated by the Board of Directors, may participate in a meeting of the Board or committee by means of conference telephone or similar communication equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute in person at the meeting.

## **ARTICLE V**

### **OFFICERS**

Section 5.1 The officers of the Association shall be president, vice president, a secretary and a treasurer, all of whom shall be members of the Board of Directors and chosen by the Board of Directors at its annual meeting.

Section 5.2 Any two or more offices may be held by the same person, except the office of president

Section 5.3 The Board may appoint such other officers, and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

Section 5.4 The officers of the Association shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative majority vote of the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

### **PRESIDENT**

Section 5.5 The President shall preside at all meetings of the directors at which he/she is present. He/she shall perform such duties as the Board of Directors may prescribe and shall see that all orders and resolutions of the Board are carried into effect.

### **VICE PRESIDENT**

Section 5.6 The Vice President, if any, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board of Directors may prescribe.

### **SECRETARY**

Section 5.7 The Secretary shall keep or cause to be kept a record of all meetings of the Board of Directors and record all votes and the minutes of all proceedings in a book to be kept for that purpose. He/she shall give or cause to be given, notice of all special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or President, under whose supervision he/she shall be.

### **TREASURER**

Section 5.8 The Treasurer shall have the custody of the funds and securities of the Association, shall keep full and accurate accounts of the receipts and disbursements in books belonging to the Association, shall deposit all moneys and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors and shall perform such other duties as the Board of Directors may prescribe.

Section 5.9 The Treasurer shall prepare an annual operating budget and financial report for the Association.

Section 5.10 The Treasurer shall disburse the funds of the Association as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and directors, at the regular meetings of the Board, or whenever they may require it, an account of all his/her transactions as Treasurer and of the financial condition of the Association.

## **ARTICLE VI**

### **NOTICES**

Section 6.1 Whenever, under the provisions of the statutes, the Article of Incorporation, or these By-Laws, notice is required to be given to any director or Voting Member, it shall not be construed to mean only personal notice, but such notice may be hand-delivered or given in writing, by mail, by depositing the same in the post office or in a letterbox, in a postage-paid sealed wrapper, addressed to such director or Voting Member at his or her mailing address or other designated address and such notice shall be deemed to be given at the time when the same shall be thus mailed.

Section 6.2 Whenever any notice is required to be given, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

## **ARTICLE VII**

### **LIABILITY OF DIRECTORS AND OFFICERS**

Section 7. Liability of Directors. Except for responsibility or liability of a director pursuant to any criminal statute or for payment of taxes pursuant to local, state, or Federal law, a director of the Association shall not be personally liable for monetary damages for any action taken or any failure to take any action unless (a) such director has breached or failed to perform his/her fiduciary duties as provided in Section 7.2 hereof and (b) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

Section 7.2 Director's Fiduciary Duties. A director of the Association shall stand in a fiduciary relation to the Association and shall perform his/her duties as a director (including as a member of any committee of the Board) in accordance with the standards set forth in Section 511(a) of the Association Code, 15 Pa C.S.A. Section 511(a), as the same may be amended from

time to time. Absent breach of fiduciary duty, lack of good faith or self-dealing, actions taken as a director or any failure to take any action shall be presumed to be in the best interest of the association.

Section 7.3 Liability of Directors and Officers. As provided in 42 Pa C.S.A. Section 8332.2 and so long as the Association is qualified under Section 528 of the Internal Revenue Code, no director or officer of the Association who serves without compensation, other than reimbursement for actual expenses, shall be liable for any civil damages as a result of any acts or omissions relating solely to the performance of his/her duties as a director or officer, unless (a) the conduct of such director or officer falls substantially below the standards generally practiced and accepted in like circumstances by similar persons performing the same or similar duties and (b) it is shown that the director or officer did an act or omitted doing an act which he/she was under a recognized duty to another to do, knowing or having reason to know that the act of omission created a substantial risk of actual harm to the person or property of another.

## **ARTICLE VIII**

### **INDEMNIFICATION**

Section 8.1 Right to Indemnification. In the event a representative was, is or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, because he/she is or was a representative or because he/she is or was serving as a representative of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise on behalf of the Association, the Association (a) shall indemnify a representative who has been successful on the merits or otherwise in defense of any such action, suit or proceeding or in defense of any claim, issue or matter therein, against expenses (including attorneys' fees), judgements, fines and amounts paid in settlement actually and reasonably incurred by him/her even if he/she has not been successful on the merits in other than a derivative suit, if he/she acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interests of the Association (and, in the case of a criminal proceeding, has no reason to believe his/her conduct was unlawful); and (b) may indemnify a representative for expenses (including attorneys' fees) actually and reasonably incurred by him/her in a suit by or in behalf of the Association (derivative suit) even if he/she is unsuccessful on the merits, if he/she acted in good faith and in a manner he/she reasonable believed to be in or not opposed to the best interests of the Association and is not adjudged to be liable for willful misconduct or recklessness in the performance of his/her duty to the Association.

Section 8.2 Required Determination. Any indemnification under Section 8.1 (unless ordered by a Court) shall be made by the Association only as authorized in the specific case upon a determination that the indemnification of the representative is proper in the circumstances because he/she has met the applicable standard of conduct set forth in Section 8.1. Such

determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit, or proceeding, or (b) if such a quorum is not obtainable, or even is obtainable directs, by independent legal counsel in a written opinion.

Section 8.3 Advances for Expenses. Expenses incurred by or imposed upon a representative in defending a civil or criminal action, suit, or proceeding may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the representative to repay such amount if it shall ultimately be determined that he/she is not entitled to be indemnified by the Association as authorized in this Article.

Section 8.4 Non-Exclusivity and Non-Duplication. The indemnification and advancement of expenses provided by the Article shall not be deemed exclusive of any other rights to which any person seeking indemnification may be entitled under any other by-law, agreement, vote of members or disinterested directors or otherwise, both as to the action in his/her official capacity and as to action in another capacity while holding such office. Notwithstanding any other provision set forth in this Article, the indemnification authorized and provided hereby shall be applicable only to the extent that any such indemnification shall not duplicate indemnification or reimbursement which such person has received or shall receive other than under this Article.

Section 8.5 Preservation of Rights. No amendment or repeal of this Article shall adversely affect any right or protection extended to a representative hereunder for an act or failure to act occurring prior to the time of such amendment or repeal. Each representative shall be deemed to act in such capacity in reliance upon the rights of indemnification and advancement of expenses hereunder. The rights to indemnification and advancement of expenses hereunder shall continue as to a person who has ceased to be a representative and shall inure to the benefit of the heirs, executors, and administrators of such person.

Section 8.6 Insurance or Other Funding. The Association may create a fund of any nature which may, but need not be, under the control of a trustee or otherwise secured or may insure in any manner its indemnification obligations, whether arising hereunder or otherwise. The Association may purchase and maintain insurance on behalf of any person who is or was a representative of the Association or is or was serving at the request of the Association as a representative of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise against any liability asserted against him/her and incurred by or imposed upon him/her in any such capacity or arising out of his/her status as such, whether or not the Association would have the power to indemnify him/her against such liability under the provisions of this Article or otherwise, upon such terms and conditions as the Association may deem requisite including a requirement that any such person must contribute a portion of all of the cost of maintaining such insurance.

Section 8.7 Definitions. As used in this Article, references to the "Association" include all constituent corporations absorbed in a consolidation, merger, or division, as well as the



surviving or new corporations surviving or resulting therefrom, so that any person who is or was a representative of such a constituent, surviving or new corporation, or is or was serving at the request of such constituent, surviving or new corporation as representative of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, shall stand in the same position under the provision of this Article with respect to the surviving or new corporation as he/she would if he/she had served the surviving or new corporation in the same capacity. As used herein, references to a “representative” shall include without limitation any director officer, Voting Member, employee or agent.

**ARTICLE IX**  
**MISCELLANEOUS**

**CHECKS**

Section 9.1 All checks or demand for money and notes of the Association shall be signed by such officer or officers, or such other person or persons as the Board of Directors may from time to time designate.

**FISCAL YEAR**

Section 9.2 The fiscal year of the Association shall begin the first day of January each year.

**SEAL**

Section 9.3 The Association shall have a seal.

Section 9.4 Annual Report. The President and Treasurer shall present an annual report to the Board of Directors at its annual meeting showing in appropriate detail the assets and liabilities of the Association at the end of the immediately preceding fiscal year, principal changes in such assets and liabilities during such fiscal year, and revenues and disbursement of the Association.

Section 9.5 Books and Accounts. Books and accounts of the Association shall be kept under the direction of the Treasurer of the Association.

Section 9.6 Execution of Documents. With the prior authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Association by either the President or a Vice President and attested to by the Secretary, Treasurer, or Assistant Secretary or Assistant Treasurer.

Section 9.7 Fidelity Bonds. Fidelity Bonds will be required for all officers and employees of the Association having custody or control of corporate funds. The Association shall obtain and pay the premiums on the Fidelity Bonds.

## **ARTICLE X**

### **ALTERATION, AMENDMENT, OR REPEAL OF BY-LAWS**

Section 10.1 These By-Laws may be altered, amended, or repealed at any regular meeting of the Voting Members or at any special meeting of the Voting Members if notice of the proposed alterations, amendment, or repeal be contained in the notice of such special meeting, by the affirmative vote of 67% of the Voting Members. The Secretary shall prepare, execute, certify and record all alterations and amendments to the By-Laws.