

## BY-LAWS

### ASBURY TERRACE SECTION II HOMEOWNERS ASSOCIATION

#### Article I

#### NAME AND LOCATION

The name of the corporation is ASBURY TERRACE SECTION II Homeowners Association, Inc., hereinafter referred to as the "Association." The principal office of the corporation shall be located in Stephens City, Virginia but meetings of members and directors may be held at such places within the State of Virginia, County of Frederick as may be designated by the Board of Directors.

#### Article II

#### DEFINITIONS

Section 1. "Association" shall mean and refer to the ASBURY TERRACE SECTION II Homeowners Association, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions.

Section 3. "Open Space" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Open Space Area.

Section 5. "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties, recorded, or to be recorded, in the Clerk's office of the Circuit Court of the County of Frederick, Virginia.

Section 8. "Declarant" shall mean and refer to Town House Restaurant, Inc. its successors and assigns designated by it under a written recorded instrument to have the rights of Declarant hereunder or any mortgagee acquiring title to all or a portion of the properties pursuant to the exercise of rights under or foreclosure of a Deed of Trust granted by the Declarant provided that each successor, assignee, or mortgagee acquires title to more than one undeveloped lot for the purpose of development and/or construction.

### Article III

#### MEMBERSHIP

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any residential lot, which is subject by covenants of record to assessments by the Association. The foregoing is not intended to include the Declarants or persons or entities who hold an interest merely as security for the performance of an obligation. No owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any residential lot which is subject to assessments by the Association. Ownership of such residential lot shall be the sole qualification for membership.

Section 2. Suspension of Membership. During any period in which a member shall be in default in payment of an annual or special assessment levied by the Association, the voting rights of such member in the Association may be suspended by the Board of Directors until such assessment has been paid. Such rights of a member may also be suspended after notice and hearing, for a period not to exceed thirty (30) days, for violation of any rules and regulations established by the Board of Directors governing the use of the Open Space Area and facilities.

### Article IV

#### PROPERTY RIGHTS: RIGHT OF ENJOYMENT

Each member shall be entitled to the use and enjoyment of the Open Space Areas and facilities as provided in the Declaration. Any member may delegate his right of enjoyment of the Open Space Areas and facilities to members of his family, his tenants or contract purchasers, who reside on the property. Such member shall notify the secretary or property manager, in writing, of the name of any such delegee. The rights and privileges of such delegee are subject to suspension to the same extent as those of the member.

### Article V

#### BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of this Association may be managed by a Board of three (3) to five (5) directors, who need not be members of the Association during the period of time in which the Declarant is a member but thereafter all directors must be members of the Association. The number of directors cannot be changed to provide for less than three (3) directors at any time.

Section 2. Election. The initial Board of Directors shall serve until the first annual meeting at which time the members shall elect three (3) to five (5) directors for a term of three years for the President, two years for the Vice-President, and one year for all other officers and directors.

Section 3. Removal. Any director may be removed from the Board of Directors with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by a majority vote of the remaining members of the Board and shall serve for the unexpired term of his predecessor.

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

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting by obtaining the written approval of all directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

## Article VI

### MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held quarterly without notice, at such place and hour as may be fixed from time to time by the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by a majority vote of the other directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## Article VII

### NOMINATION AND ELECTION OF DIRECTORS

Section 1. Initial Board of Directors. The initial Board of Directors has been appointed by the Declarant and they shall serve until the first Annual meeting of the Association.

Section 2. Nomination. Nomination for election to the Board of Directors will be accepted on a volunteering or interest basis. Nominations may also be made from the floor at the annual meeting.

Section 3. Election. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## Article VIII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

- (a) Adopt and publish rules and regulations governing the use of Open Space Areas and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

- (b) Exercise for the Association powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-laws, the Articles of Incorporation, the Declaration, or the Virginia Property Owners' Association Act Title 55, Chapter 26;
- (c) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;
- (d) Appoint and remove officers of the Association;
- (e) To suspend the voting rights of any member pursuant to Article III, Section 2, hereof;
- (f) Employ a manager, an independent contractor, or such other employees as they deem necessary and to prescribe their duties.

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

- (a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting, when such statement is requested in writing by one-fourth (1/4) of the general members who are entitled to vote;
- (b) Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- (c) As more fully provided herein, and in the Declaration to:
  - (1) Prepare the annual budget;
  - (2) Fix the amount of the annual assessments against each lot at least thirty (30) days in advance of each annual assessment period;
  - (3) Send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period;
  - (4) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after the due date or to bring an action at law against the Owner personally obligated to pay the same.
- (d) Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A fee of \$5.00 will be assessed by the Board of Directors for issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (e) Procure and maintain adequate liability and hazard insurance on the property owned by the Association and Directors and Officers coverage;
- (f) Cause all officers or employees having fiscal responsibilities to be honored as it may deem appropriate, and

(g) Cause the Open Space Areas to be maintained.

## Article IX

### COMMITTEES

Section 1. The Association may appoint an Architectural Control Committee, as provided in the Declaration, as provided in these By-laws. In addition, the Board of Directors may appoint other committees as deemed appropriate in carrying out its purposes, such as:

- (a) A Maintenance Committee which shall advise the Board of Directors on all matters pertaining to the maintenance, repair or improvement of the properties, and shall perform such other functions as the Board, in its discretion, determines;
- (b) A Publicity Committee which shall inform the members of all activities and functions of the Association, and shall, after consulting with the Board of Directors, make such public releases and announcements as are in the best interests of the Association; and
- (c) An Audit Committee which shall supervise the annual audit of the Association's books and approve the annual budget and statement of income and expenditures to be presented to the membership at its regular annual meeting. The Treasurer shall be an exofficio member of the committee.

Section 2. It shall be the duty of each committee to receive complaints from members on any matter involving Association functions, duties, and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, director or officer of the Association as is further concerned with the matter presented.

## Article X

### MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held within three (3) months from the date of the completion and occupancy of 60% of the lots, and each subsequent regular annual meeting of the members shall be held the same month of each year thereafter, at the hour of 7:00 p.m.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the President or by the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all of the votes of the entire membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, not less than ten (10) days nor more than fifty (50) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and, in case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members in person or by proxy entitled to cast not less than twenty-five percent (25%) of the votes of membership shall constitute a quorum for any action except as otherwise provided in the Article of Incorporation, the Declaration, or these By-laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his lot.

## Article XI

### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of the Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary and a treasurer, and such other offices as the Board may from time to time by resolution create. The secretary/treasurer may be a member of the Board of Directors or a managing agent of the Association.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and the President shall hold office for three (3) years, Vice-President for two (2) years, all other officers and directors for a term of one (1) year, unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may from time to time determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled in the manner prescribed for regular election. The office elected to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of the secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

### President

- (a) The President shall preside at all meetings of the Board of Directors; shall see the orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deed and other written instruments and shall co-sign checks and promissory notes if necessary.

### Vice-President

- (b) The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

### Secretary

- (c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings to the Board and to the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the he Board.

### Treasurer

- (d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes if necessary; keep proper books of account; cause an annual review of the Association books to be made by an accountant, or review committee comprised of at least 3 homeowners, at the completion of each fiscal year; and shall prepare an annual budget and statement of income and expenditures to be presented at the regular annual meeting of the members, and deliver a copy to each of the member present. The Treasurer whether a homeowner or managing agent, of the Association is required to be bonded, the Association will pay for such fee.

### Article XII

#### COVENANT FOR MAINTENANCE ASSESSMENTS FOR THE HOMEOWNERS ASSOCIATION

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each residential lot owned within the Properties, after the construction of improvements (houses) has been completed, hereby covenants and each Owner of any residential lot by acceptance of a deed therefore, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual assessments 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 the property against which each assessment is made. Each assessment, together with such interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the he assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the properties and in particular for the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Neighborhood Common Areas, and of the homes situated upon the residential lots in the Properties, which may include trash service, snow removal from private roads, common greens and all other areas owned by the Association.

Section 3. Determination of Association Expenses and Assessments Against Lot Owners.

- (a) Fiscal Year. The fiscal year of the Association shall begin January 1 of any given year and end December 31.
- (b) Preparation and Approval of Budget. Each year, on or before the first day of the fiscal year of the Association, the Board of Directors of the Association shall adopt a budget for the Association, containing an estimate of the total amount which it considers necessary to pay the cost of maintaining the Open Space Areas, any parking areas (not individual driveways), private roads, the cost of wages materials, insurance premiums, services, supplies and other expenses which will be incurred during the ensuing fiscal year for the administration, operation, maintenance and repair of the Neighborhood Common Areas. The budget may also include:
  - (1) Any amount necessary to discharge any lien or encumbrance levied against the Association property, or any portion thereof; and
  - (2) Such reasonable amounts as the Board of Directors considers necessary to provide working funds for the Association, a general operating reserve and reserves for contingencies and replacements.
- (c) Assessment and Payment of Association Expenses. The total amount of the estimated funds required for the operation of the Neighborhood Common Areas set forth in the budget for the fiscal year adopted by the Board of Directors shall be assessed against each residential lot, with the exception of those owned by the Declarant, equally after the completion of construction of improvements (houses). During the period of construction on undeveloped lots, no assessments shall be made until purchase of said improvements (houses) or one (1) year following the issuance of a building permit, whichever occurs first.

It is provided however, that the annual assessments shall be subject to the following limits:

- (1) Until January 1st of the year immediately following the conveyance of the first lot, the maximum annual assessment imposed shall be \$40 per year.
- (2) The initial yearly assessment for the Association will be \$40 per year, until such time as the Board of Directors, or general membership collectively sees fit to increase the this rate, however, the yearly assessment rate cannot be increase above the maximum without action as called for in the Articles of Incorporation, Declaration, or these By-laws,
- (2) From and after January 1st of the year immediately following the conveyance of the first lot, the maximum annual assessment may be increased each year by ten percent (10%) without a vote of the membership, provided however, that any increase shall



not bring the assessment above \$40.

- (3) From and after January 1st of the year immediately following the conveyance of the first lot, the maximum annual assessment may be increased above the amount specified in sub-paragraph (2) by a vote of more than two-thirds (2/3) of members entitled to vote who are voting in person at a meeting duly called for this purpose.
  - (4) After consideration of current operating and maintenance costs and fixture needs of the Association, the Board of Directors may fix the annual assessment at any amount not in excess of the maximum.
- (d) Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Board of Directors to prepare or adopt the annual budget for any fiscal year shall not constitute a waiver or release in any manner of a Lot Owner's obligation to pay his allocable share of the Association expenses as herein provided. Whenever the same shall be determined, and in the absence of an annual budget or adjusted budget, each residential lot owner shall continue to pay the yearly charge at the then existing yearly rate established for the previous fiscal period until the new annual or adjusted budget shall have been mailed or delivered.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement upon the Open Space Areas, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of more than two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than twenty-five (25) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting.

Section 5. Uniform Rate of Assessment. Except as is otherwise provided for herein in regarding those unimproved lots during the period of construction, both annual and special assessments must be fixed at a uniform rate for all residential lots and will be collected on an annual basis or any other basis established by the Board of Directors.

Section 6. Date of Commencement of Annual Assessments Due Dates. The annual assessments provided for herein shall commence as to all residential lots on the day of closing or within one year of issuance of building permit, on unoccupied lots, whichever comes first. The amount assessed will be prorated for the number of months remaining in the fiscal year. Thereafter assessments shall be due on March 15th of each successive year. The Board of Directors shall fix the annual assessment amount for each residential lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to each Owner subject thereto. The Association shall upon demand, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified residential lot have been paid. A charge of \$5.00 will be assessed for the issuance of said certificate. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at a rate of twelve percent (12%), and the Association may bring an action at law against the Owner personally

obligated to pay the same. In such action at law, the Association shall be entitled to interest, costs and reasonable attorney's fees in addition to the delinquent assessments. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Open Space Areas or abandonment of his residential lot. Delinquency notices will be sent at thirty (30), sixty (60), and ninety (90) days delinquent for a collection fee in the amount of \$10.00 plus postage, chargeable to delinquent owners account. After 90 days a lien will be filed on the delinquent lot and the account will be turned over to the Association's attorney for collection.

Section 8. Subordination of the Lien to Mortgages or Deeds of Trust. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any residential lot shall not affect the assessment lien. However, the sale or transfer of any residential lot which is subject to any first mortgage or deed of trust, pursuant to a decree of foreclosure under such mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which become due prior to such sale or transfer. No sale or transfer shall relieve such residential lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 9. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) Open Space Areas, (b) Property owned by Declarant, (c) all the properties dedicated to and accepted by a local public authority.

#### Article XIII

#### BOOKS AND RECORDS

The Books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member and with reasonable notification. The Declaration, the Articles of Incorporation, and the By-laws of the Association shall be available for inspection by any member at the principal office of the Association where copies may be purchase as follows: Declaration (\$10.00), Articles of Incorporation (\$2.00) and By-laws (\$8.00), an entire Disclosure Package, including a certificate of payment and any violations, as well as Declaration, Articles of Incorporation, and By-laws, may be purchased for a fee of \$25.00.


#### Article XIV

#### AMENDMENTS

Section 1. These By-laws may be amended, at a regular or special meeting, duly called, and with prior notification of and to all members, by a vote of a majority of the quorum of members present in person or by proxy.

Section 2. In case of any conflict between the Article of Incorporation and these By-laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-laws, the Declaration shall control, in case of any conflict between the Virginia Property Owners' Association Act, and the Declaration, the Act shall control.

In WITNESS WHEREOF, WE, being all the Directors of the ASBURY TERRACE SECTION II Homeowners Association, have hereunto set our hand this 17 Day of September, 1998.

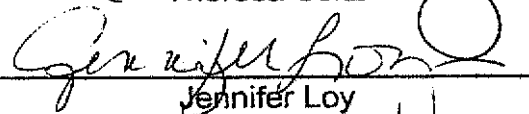
  
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David B. Holliday

  
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