

BY-LAWS
OF
BILTMORE PARK TOWN SQUARE
CONDOMINIUM ASSOCIATION, INC.

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OF
BILTMORE PARK TOWN SQUARE
CONDOMINIUM ASSOCIATION, INC.

Article I GENERAL

1.1. Applicability.

These By-Laws provide for the governance of Biltmore Park Town Square, a Condominium, in accordance with the North Carolina Condominium Act, N.C.G.S. §47C-1-101, *et seq.* (the "**Act**"), the Articles of Incorporation for Biltmore Park Town Square Condominium Association, Inc. filed with the North Carolina Secretary of State, as they may be amended (the "**Articles**"), and the Declaration of Condominium for Biltmore Park Town Square, a Condominium, recorded by Town Square West, LLC ("**Declarant**") in the office of the Register of Deeds of Buncombe County, North Carolina, as it may be amended (the "**Declaration**").

1.2. Name.

The name of the corporation is Biltmore Park Town Square Condominium Association, Inc. (the "**Association**").

1.3. Definitions.

Capitalized terms used in these By-Laws shall be defined as set forth herein and in Paragraph 2 of the Declaration. Unless the context otherwise requires, all other terms used in these By-Laws generally shall have their normal, commonly accepted meanings or the meanings specified in the Act.

1.4. Purpose.

The Association shall be responsible for administering the Condominium, establishing the means and methods of collecting the contributions to the Common Expenses, arranging for the management of the Condominium, and performing all of the other acts that may be required to be performed by the Association by the Act and the Declaration. Except as to those matters that the Act, the Condominium Instruments, or the North Carolina Nonprofit Corporation Act specifically make subject to a vote of the membership, the Board may carry out such responsibilities without a vote of the membership.

Article II MEMBERSHIP AND VOTING RIGHTS

2.1. Membership.

The Owner of each Unit in the Condominium shall automatically become a member of the Association ("**Member**") upon taking record title to such Unit and shall remain a Member for the entire period of such ownership. If more than one Person holds record title to a Unit, the membership shall be shared in the same manner as the title, but there shall be only one membership and one vote per Unit, as provided below and in the Declaration.

Association membership does not include Persons who hold an interest in a Unit merely as security for the performance of an obligation, and the giving of a security interest shall not terminate an Owner's

membership. Membership shall be appurtenant to the Unit, shall be transferred automatically by transfer of record title to the Unit, and may be transferred only in connection with the transfer of record title.

2.2. Voting.

Each Unit shall be allocated one equal vote, which may be cast by the Owner of the Unit or by the Owner's lawful proxy appointed in accordance with Section 2.3. In the event the Owner is a corporation, partnership, trust, or other legal entity, other than a natural person, the vote may be cast by the president, managing partner, executor, or chief executive officer of such legal entity or his or her designee. When more than one Person owns a particular Unit, the vote for such Unit shall be exercised as they determine between or among themselves, but in no event shall more than one vote be cast with respect to any Unit. In the event that two or more Persons representing a Unit attempt to cast the vote for such Unit, such Persons shall not be recognized and such vote shall not be counted.

No Owner shall be eligible to vote, either in person or by proxy, or to be elected to the Board, if that Owner is shown on the books or management accounts of the Association to be more than 60 days delinquent in any payment due the Association, or is under suspension for the infraction of any provision of the Declaration, these By-Laws, or any rule. If the vote attributable to any Unit has been suspended, neither the vote, the Unit to which it is attributable, nor the Owner thereof shall be counted for purposes of determining the number of eligible votes, Owners, or Units with respect to any matter requiring approval under the Condominium Instruments.

Except as otherwise specifically provided in the Act, the North Carolina Nonprofit Corporation Act, or the Condominium Instruments, any decision requiring a vote or approval of the Owners shall be determined by a majority of the votes cast.

2.3. Proxies.

At all meetings of the Members, each Member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of the meeting for which they are given. A photocopy, telegram, cablegram, facsimile transmission, or equivalent reproduction of a writing appointing one or more proxies, shall be acceptable. In addition, a member may appoint one or more proxies by an electronic mail message or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the member. However, the Association shall have no obligation to recognize any proxy that is not actually received prior to the deadline established by the Board for delivery of proxies (which deadline may be earlier for proxies sent via mail, facsimile, or electronic transmission).

Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable upon actual notice given to the person presiding over a meeting of the Association. A proxy shall automatically cease upon conveyance by the Member of his or her Unit, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of the Member, or upon the expiration of one year from the date of the proxy.

2.4. Action Without a Meeting.

(a) *By Unanimous Written Consent.* Any action required to be taken at a meeting of the Members may be taken without a meeting, without prior notice, and without a vote if written consent specifically authorizing the proposed action is signed by all Members entitled to vote on such matter. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the Association. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting.

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

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

Article III MEETINGS OF MEMBERS

3.1. Annual Meetings.

The first annual meeting of the Members of the Association shall be held within 60 days before or after the end of the Association's first full fiscal year. Subsequent annual meetings shall be held within 60 days before or after the end of each of the Association's fiscal years, at a time, date, and place set by the Board.

3.2. Special Meetings.

The President or the Secretary may call special meetings of the Members for any purpose, at any time. In addition, the President or Secretary shall call a special meeting upon the request of a majority of the members of the Board or upon written petition signed by Owners entitled to cast at least 20% of the total Association votes. Any such petition shall state the purpose or purposes for which the meeting is requested and the issue or issues to be considered by the membership, which issues shall be limited to matters upon which the Owners are entitled to vote under the Act, the North Carolina Nonprofit Corporations Code, or the Condominium Instruments.

3.3. Notice of Meetings.

The President, the Secretary, or the officers or other persons calling a meeting of the Members shall deliver or cause to be delivered to each Member entitled to vote at such meeting a written notice stating the place, day, and hour of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these By-Laws to be voted on at the meeting, any budget

changes, and any proposal to remove a director or officer. In the case of a special meeting, no business shall be transacted except as stated in the notice.

Such notice shall be delivered not less than 10 or more than 50 days before the date of such meeting, by any means permitted under Section 8.1.

3.4. Waiver of Notice.

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

3.5. Quorum.

Except as may be provided elsewhere, the presence, in person or by proxy, of Owners or Members entitled to cast at least 20% of the total Association vote shall constitute a quorum for the transaction of business at any meeting of the membership, and the casting of ballots representing at least 20% of the total votes in the Association shall constitute a quorum for any membership vote conducted by means other than at a meeting; provided, if a quorum is not represented at any meeting when originally called, then the quorum for any subsequent attempt to convene such meeting shall be reduced to 10% of the total votes in the Association.

3.6. Adjournment.

If any meeting of the Members cannot be held because a quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted that might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the meeting when originally called, or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

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

3.7. Conduct of Business.

The President or a Board-approved designee shall preside over all Association meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions adopted and all other transactions occurring at such meetings are kept with the Association's books. *Roberts Rules of Order* (the then latest edition) shall govern conduct of any meeting of the membership when not in conflict with the Condominium Instruments, unless the Board votes to dispense with or modify such rules by resolution.

Article IV BOARD OF DIRECTORS

A. Composition and Selection.

4.1. Number and Qualification.

The Association's affairs shall be governed by a Board consisting of directors, as specified below, each of whom shall have one equal vote on matters coming before the Board. Except for those directors appointed by Declarant during the Declarant Control Period, the directors shall be Owners or spouses or "domestic partners" of Owners; provided, no person or his or her spouse or domestic partner may serve on the Board at the same time. No person shall be eligible to be elected or continue to serve on the Board if they are shown on the books and records of the Association to be more than 30 days delinquent in the payment of any assessment or charge by the Association. In the case of an Owner which is a corporation, partnership, limited liability company, trust, or other legal entity, the officer, director, partner, trustee, employee, or other individual whom the Owner designates in writing to the Association's Secretary as the representative of such Owner shall be eligible to serve as a director; provided, any such individual serving as a director shall be deemed to have resigned as a director upon the Association's receipt of notice from the designating Owner of termination of such individual's relationship with such Owner.

A "domestic partner" shall be any adult who occupies a Unit with an Owner and has been designated as such Owner's domestic partner in a written instrument signed by the Owner and filed with the Association. A person shall cease to be a domestic partner at such time as he or she no longer occupies the Unit with the Owner or upon the Association's receipt of a written termination notice signed by the Owner or the domestic partner, whichever occurs first.

4.2. Selection of Directors and Term of Office.

(a) Directors During Declarant Control Period. Except as provided below, the directors shall be appointed by Declarant acting in its sole discretion and shall serve at the pleasure of Declarant during the Declarant Control Period.

(b) Number of Directors. The number of directors shall be not less than three or more than five, as provided in Section 4.2(d). The initial Board shall consist of three members as identified in the Articles of Incorporation.

(c) Nominations. Prior to any election of directors, the Board may appoint a Nominating Committee consisting of at least one member of the Board and at least two other Members of the Association who are not then serving as directors. The Nominating Committee may nominate any number of qualified individuals, but not less than the number of directors to be elected. The members of the Nominating Committee and the Committee's nominations shall be announced at least 14 days prior to the election.

Nominations also shall be allowed from the floor, if the election is held at a meeting, or if the election is held by ballot without a meeting, space shall be provided on the ballot to write in the name of a candidate. Each candidate nominated prior to the balloting shall be given a reasonable opportunity to communicate his or her qualifications to the membership prior to the close of the balloting. No Member shall be nominated for election to the Board or permitted to run for election if more than 30 days past due

in the payment of any assessment. Failure to comply with this paragraph shall not invalidate the election of directors who were not nominated in accordance with the provisions hereof.

(d) Election and Term of Office. Notwithstanding any other provision of these By-Laws:

(i) Within 60 days after the time Members other than Declarant own 25% of the maximum number of Units permitted by the Declaration, or whenever Declarant earlier determines, the Association shall call a special meeting at which the Members other than Declarant shall elect one of the three directors. The Declarant shall appoint the remaining two directors. The director elected by the Members shall not be subject to removal by Declarant and shall be elected for a term of two years or until the happening of the event described in Section 4.2(d)(ii), whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (ii) below, a successor shall be elected for a like term.

(ii) Not later than the termination of the Declarant Control Period, the Board shall be increased to five directors. The Association shall call a special meeting at which the Members other than Declarant shall elect three of the five directors. The Declarant shall appoint the remaining two directors. One of the directors shall be elected by the Owners of Townhome Units, one of the directors shall be elected by the Owners of Terrace Units, a one director shall be elected by all of the Owners of Units at large. The directors elected by the Members shall not be subject to removal by Declarant and shall serve until the next annual meeting following their election.

(iii) At the first annual meeting of the membership after the termination of the Declarant Control Period, all five directors shall be elected by the Members. Two directors shall be elected by the Owners of Townhome Units ("Townhome Directors"), two directors shall be elected by Owners of Terrace Units ("Terrace Directors"), and one director shall be elected by the Owners of all of the Units ("At Large Director"). The Townhome Director and the Terrace Director receiving the most votes shall be elected for a term of two years and the other two directors shall serve a term of one year. The At Large Director shall be elected for a term of one year. At the expiration of the initial term of office of each director elected in accordance with this paragraph, and at each annual meeting thereafter at which directors are to be elected, a successor shall be elected to serve for a term of two years by the Owners entitled to elect such director. At the conclusion of the term of the original At Large Director, the At Large Director shall be elected by the Owners of the Townhome Units. Then, at the termination of such At Large Director's term, the Owners of the Terrace Units shall be entitled to elect its successor. Subsequently, the election of the At Large Director shall rotate between the Owners of Townhome Units and the Owners of Terrace Units.

Each Member shall be entitled to cast the vote attributable to his or her Unit with respect to each vacancy on the Board to be filled by the votes of members that Member is entitled to vote for other than Declarant. There shall be no cumulative voting. The candidate(s) receiving the most votes shall be elected. The directors elected shall hold office until their respective successors have been elected. Directors may be elected to serve any number of consecutive terms.

4.3. Removal of Directors.

At any regular or special meeting of the Association duly called, any Townhome Director may be removed, with or without cause, by a majority vote of Townhome Unit Owners represented in person or

by proxy at such meeting, and a successor may then and there be elected to fill the vacancy thus created. At any regular or special meeting of the Association duly called, any Terrace Director may be removed, with or without cause, by a majority vote of Terrace Unit Owners represented in person or by proxy at such meeting, and a successor may then and there be elected to fill the vacancy thus created. At any regular or special meeting of the Association duly called, the At Large Director may be removed, with or without cause, by a majority vote of Owners entitled to elect the At Large Director represented in person or by proxy at such meeting, and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the Members shall be given at least 10 days' notice of the calling of the meeting and the purposes thereof and shall be given an opportunity to be heard at the meeting prior to a vote being taken on the issue of his removal. Further, any director who is more than 30 days delinquent in the payment of any assessment or charge by the Association, as shown on the books and records of the Association, shall automatically be removed from the Board, even if the director subsequently pays the amount owed.

Additionally, any Member-elected director who has had three consecutive unexcused absences from Board meetings may be removed from office upon the affirmative vote of a majority of the total number of directors.

4.4. Vacancies.

Vacancies on the Board caused by any reason, other than the removal of a director by vote of the membership or by Declarant, may be filled by a vote of a majority of the remaining directors, even though less than a quorum, at any meeting of the Board. Each person so selected shall serve until a successor shall be elected at the next annual or special meeting of the membership to fill the unexpired portion of the term. Vacancies on the Board caused by removal of a director by vote of the membership shall be filled by a vote of the membership in the same manner as permitted for removal under Section 4.3.

B. Meetings.

4.5. Organizational Meeting.

The first meeting of the Board after each election of directors shall be held within 10 days after the election at such time and place as a majority of the directors may determine.

4.6. Regular Meetings.

Board meetings shall be held regularly at such time and place as the Board shall determine by resolution, with at least one meeting each calendar quarter. No notice shall be required for Board meetings held in accordance with a regular schedule which the Board has adopted by resolution.

4.7. Special Meetings.

Special meetings of the Board may be called by the President or by any two directors.

4.8. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a Person at the director's office or home who would reasonably be expected to

communicate such notice promptly to the director; or (iv) facsimile, computer, or other electronic mail, messaging, or communication device, with printed confirmation of successful transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or mailing or physical address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least five business days before the time set for the meeting. Notices given by personal delivery, telephone, or other permitted device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

(b) Any director may, at any time, in writing, waive notice of any meeting of the Board, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any Board meeting 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 Board meeting, no notice shall be required and any business may be transacted at the meeting.

4.9. Quorum; Telephonic Participation.

A majority of directors shall constitute a quorum for the transaction of business at any Board meeting. One or more directors may participate in and vote during any regular or special meeting of the Board by telephone conference call or similar communication equipment by means of which all Persons participating in the meeting can hear each other at the same time, and those directors so participating shall be deemed present at such meeting and counted for purposes of establishing a quorum. Except as otherwise provided in the Condominium Instruments, a decision of the Board shall be by vote of a majority of those directors present at a duly called meeting at which a quorum is established.

4.10. Conduct of Meetings.

The President or a Board-approved designee shall preside over all Board meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions adopted and all other transactions occurring at such meetings are kept with the Association's books. Except as modified or dispensed with by Board resolution, *Roberts Rules of Order* (the then latest edition) shall govern the conduct of the meetings of the Board when not in conflict with the Act, the Condominium Instruments, or any Board resolution.

4.11. Open Meetings.

All meetings of the Board shall be open to all Members. Members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board; provided, the Board shall provide Owners with regular opportunities to speak at Board meetings about their issues and concerns. The Board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak. 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.

4.12. Action Without a Meeting.

Any action by the Board required or permitted to be taken at any meeting may be taken without a meeting if all of the directors consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

C. Powers and Duties.

4.13. Powers.

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

The Board may enter into contracts on behalf of the Association with any Person for the performance of various powers and duties as it deems appropriate in the exercise of its business judgment. Except to the extent restricted by law, the Board may transfer any and all functions of the Association, in whole or in part, to any other entity.

4.14. Duties.

In addition to such other duties as the Condominium Instruments may specifically impose, the Board shall be responsible for the following:

(a) preparing and adopting an annual budget, in which there shall be established the contribution of each Owner to the Common Expenses;

(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 the Board otherwise specifies, the annual assessment for each Unit's proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each quarter.);

(c) providing for the operation, care, upkeep, and maintenance of the Common Elements and such other areas as are designated as Association maintenance property under the Declaration;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, repair, and replacement of the Common Elements 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 bank depository which it shall approve, and using the proceeds to administer the Association;

(f) opening of bank accounts on behalf of the Association and designating the signatories required;

(g) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Elements in accordance with the other provisions of the Declaration and these By-Laws, after damage or destruction by fire or other casualty;

(h) obtaining and carrying insurance against casualties and liabilities, as provided in the Act and the Declaration, and paying the premium cost thereof;

(i) paying the costs of all services rendered to the Association or the Members and not directly chargeable to specific Owners;

(j) 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

(k) imposing sanctions for violations of, and otherwise enforcing by any legal means, the provisions of the Condominium Instruments and Association rules, and bringing any proceedings that may be instituted on behalf of or against the Owners concerning the Association.

Article V OFFICERS

5.1. Designation.

The principal officers of the Association shall be the President, Vice President, Secretary, and Treasurer, all of whom shall be appointed by Declarant during the Declarant Control Period and thereafter shall be elected by and from the Board. The Board may appoint such other subordinate officers as in its judgment may be necessary. The President and Secretary shall be directors; other officers may be, but shall not be required to be, directors. Except for the offices of Secretary and Treasurer, which may be held by the same Person, no Person may hold more than one office.

5.2. Election of Officers.

The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the Members and shall hold office at the pleasure of the Board and until a successor is elected.

5.3. Removal of Officers.

Upon the affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and a successor may be elected.

5.4. President.

The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. The President shall have all the general powers and duties that are incident to the office of the president of a corporation organized under the North Carolina Nonprofit Corporation Code.

5.5. Vice President.

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

5.6. Secretary.

The Secretary shall keep the minutes of all meetings of the Association and of the Board and shall have charge of such books and papers as the Board may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with North Carolina law. If no Vice President is appointed, the Secretary shall act in the President's absence and shall have all the powers, duties, and responsibilities of the President when so acting.

5.7. Treasurer.

The Treasurer shall have the responsibility for the Association's funds and securities and shall, together with such managing agent, 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 of all monies and other valuable effects in the name of the Association in such depositories as the Board may designate from time to time. The Treasurer shall cause the budget to be prepared as provided below. The Association may retain a managing agent to assist the Treasurer in the performance of his duties.

Article VI MANAGEMENT AND ADMINISTRATION

6.1. Compensation.

Directors and officers of the Association may be compensated for their service as such only if and to the extent authorized by majority of the total votes in the Association. Directors and officers shall be entitled to reimbursement for expenses incurred on behalf of the Association in carrying out their duties as directors or officers upon majority vote of the entire Board.

6.2. Conflicts of Interest.

An officer or director shall not be precluded from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as an officer or director, provided (a) the officer's or director's interest is disclosed to the Board, and (b) the contract is approved by a majority of the directors present at a meeting of the Board at which a quorum is established, excluding any director having an interest in the transaction (although any such director may be counted for purposes of establishing a quorum). 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 another director requests that he or she leave the room during the discussion.

6.3. Management Agent.

The Association, acting through the Board, may employ for the Condominium a professional management agent or agents at a compensation established from time to time by the Board to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 4.14. The Declarant or a Declarant Affiliate may be retained as managing agent or manager. The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

No remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association. Any financial or other interest that the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board.

6.4. Committees.

The Board may establish such committees as it deems desirable to serve such purposes as the Board may designate by resolution establishing the committee. Unless such resolution otherwise provides, the members of a committee shall be appointed by the Board and shall serve at the pleasure of the Board. The Board may remove any committee member, with or without cause, at any time and with or without a successor being named.

6.5. Agreements, Contracts, Deeds, Leases, Checks, and Other Instruments.

All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such Person or Persons as may be designated by resolution of the Board.

6.6. Borrowing.

The Association, acting through the Board, shall have the power to borrow money for the purpose of repair or restoration of improvements for which the Association has maintenance responsibility without the approval of the Members of the Association. The Association, acting through the Board, may also borrow money for other purposes; provided, the Board shall obtain membership approval in the same manner as required for a special assessment under the Declaration if the proposed borrowing is (a) for the purpose of modifying or improving the Common Elements, the Units, or other improvements beyond the initial standard or adding amenities to the Condominium, or (b) for any other purpose if the total amount of such borrowing exceeds or would exceed \$20,000.00 outstanding debt at any one time.

6.7. Indemnification of Officers, Directors, and Committee Members.

The Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under the Articles and North Carolina law. The Association shall indemnify and forever hold each officer, director, and committee member harmless from any and all liability to others on account of any contract, commitment or action taken in good faith on behalf of the Association. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation if such insurance is reasonably available.

6.8. Accounts and Reports.

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

(i) accounting and controls should conform to generally accepted accounting principles; and

(ii) cash accounts of the Association shall not be commingled with any other accounts.

(b) Commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

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

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

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report.

An annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (A) a balance sheet; (B) an operating (income) statement; and (C) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement. During the Declarant Control Period, the annual report shall include certified financial statements.

6.9. Fiscal Year.

The fiscal year shall be set by resolution of the Board. In the absence of a resolution by the Board, the fiscal year shall run from January 1 of each year until December 31 of that year.

6.10. Books and Records.

All Members of the Association; every director; and any holder, insurer, or guarantor of a first Mortgage on a Unit, or the duly appointed representative of any of the foregoing, shall, upon written request to the Association, be entitled to inspect the books and records of the Association and current copies of the Condominium Instruments and the Association rules. Such right to inspect shall be limited to purposes reasonably related to the requesting party's interest in a Unit. Such inspection shall be during normal business hours at the office of the Association or such other reasonable place as the Board may designate as the depository of such books and records. The party conducting the inspection shall be entitled to make copies of documents upon payment of the reasonable cost of reproducing the same, except that a director shall be entitled to a copy of documents requested in his or her capacity as a director at the Association's expense.

Article VII ENFORCEMENT

7.1. Authority and Sanctions.

The Board shall have the power to impose reasonable fines for violations of the Declaration, By-Laws, or any rule or regulation of the Association, which fines shall constitute a lien upon the Unit owned or occupied by the violator, and to suspend any nonessential services provided by the Association to the Owner's Unit and suspend the Owner's right to vote, for any violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, nothing herein shall authorize the Association or the Board to limit ingress and egress to or from a Unit. In the event that any occupant of a Unit violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, the fine may first be assessed against such Occupant; provided, if the fine is not paid by the Occupant within the time period set by the Board, the Unit Owner shall pay the fine upon notice from the Association. The Board's failure to enforce any provision of the Act or 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.

7.2. Notice and Hearing Procedure.

The Board shall not impose a fine (a late charge shall not constitute a fine) or suspend the right to vote unless and until the following procedure is followed:

- (a) Notice. Written notice shall be given to the violator specifying:
 - (i) the nature of the alleged violation and the proposed sanction to be imposed;
 - (ii) that the violator may, within 10 days from the date of the notice, submit a written request to the Association or managing agent, if any, for a hearing to challenge the allegations, the proposed sanction, or both;
 - (iii) the name and address to whom any such request for a hearing is to be addressed;
 - (iv) that the alleged violator shall be entitled to make a statement, and present relevant evidence and witnesses on his or her behalf at the hearing; and
 - (v) that all rights to have the sanction reconsidered are waived if a hearing is not requested within 10 days of the date of the notice.
- (b) Hearing. If the alleged violator timely challenges the proposed action, the Board shall set a time and date for a hearing which shall be held before the Board in executive session and the alleged violator shall be given a reasonable opportunity to be heard and to present relevant evidence and witnesses on his or her behalf. The Board shall give the alleged violator at least 10 days' prior written notice of the time, date, and place of the hearing. A copy of the notice, together with a statement of the date and manner of delivery, shall be signed by the Person who delivered such notice and filed in the Association records along with minutes containing 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.

7.3. Additional Enforcement Rights.

Notwithstanding anything to the contrary in this Article, the Association, acting through its Board, may elect to enforce any provision of the Act, the Declaration, these By-Laws, or the rules and regulations by:

(a) self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations), except that judicial proceedings shall be instituted before the Association may alter or demolish any items of construction undertaken by an Owner; or

(b) 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 this Article. In the event of any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorneys fees actually incurred.

Article VIII MISCELLANEOUS

8.1. 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 given in any manner authorized under Paragraph 3 of the Declaration.

8.2. 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.

8.3. Captions; Gender and Grammar.

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. 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.

8.4. Conflicts.

In the event of conflicts between or among the Act, the Declaration, and these By-Laws, the Act, the Declaration, and the By-Laws shall control, in that order.

8.5. Amendment.

These By-Laws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Owners holding at least 67% of the total vote of the Association. In addition, the requisite approval of Interested Mortgagees shall be obtained if required under Paragraph 16 of the Declaration. 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 recorded in the Official Public Records of Buncombe County, North Carolina.

No amendment may remove, revoke, or modify any right or privilege of Declarant without its written consent. In addition, during the Declarant Control Period, no amendment to these By-Laws shall be effective until approved in writing by Declarant.

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CERTIFICATION

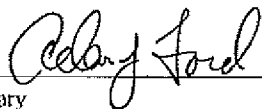
I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Biltmore Park Town Square Condominium Association, Inc., a North Carolina corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board thereof held on the 8th day of October, 2009.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 8th day of October, 2009.

[SEAL]


Secretary