

John H. Merrill
Secretary of State

P.O. Box 5616
Montgomery, AL 36103-5616

STATE OF ALABAMA

I, John H. Merrill, Secretary of State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that

pursuant to the provisions of Title 10A, Chapter 1, Article 5, Code of Alabama 1975, and upon an examination of the entity records on file in this office, the following entity name is reserved as available:

Birchwood Owners Association, Inc.

This name reservation is for the exclusive use of Marsh & Cotter, LLP., PO Box 310910, Enterprise, AL 36331 for a period of one year beginning March 14, 2019 and expiring March 14, 2020



RES832466

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the city of Montgomery, on this day.

March 14, 2019

Date

A handwritten signature in cursive script that reads "John H. Merrill".

John H. Merrill

Secretary of State

CERTIFICATE OF FORMATION
OF
BIRCHWOOD OWNERS ASSOCIATION, INC.,
A NONPROFIT CORPORATION

In compliance with the requirements of the Alabama's Non-Profit Corporation Law under §§ 10A-3-1.01 et seq, Code of Alabama, 1975, as amended, the undersigned has this day voluntarily formed a corporation not for profit and does hereby certify:

ARTICLE I

NAME

The name of the corporation is Birchwood Owners Association, Inc., hereinafter referred to sometimes as the "Association".

ARTICLE II

PRINCIPAL OFFICE

The principal office of the Association is located at 531 Boll Weevil Circle, Enterprise, Alabama Enterprise, Alabama 36330.

ARTICLE III

REGISTERED AGENT

Billy Cotter, whose address is 531 Boll Weevil Circle, Enterprise, Alabama 36330 is hereby appointed the initial registered agent of this Association.

ARTICLE IV

PURPOSE AND POWERS OF THE ASSOCIATION

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for maintenance,

preservation and architectural control of the lots and common areas in the subdivision known as Birchwood Subdivision (which for purposes of the Association shall mean all phases thereof), a subdivision in Enterprise, Coffee County, Alabama and to promote the welfare of the owners within the properties or lots (as that term is defined in the Declaration) and to, through its Board of Directors or otherwise as provided by its By-Laws:

(a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, for Birchwood Subdivision and to promote the welfare of the owners within the properties (as that term is defined in the Declaration) and to:

(b) Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office or other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) To sue or be sued;

(d) To enforce covenants, conditions or restrictions affecting any property to the extent authorized under the Declaration of Covenants, Conditions, Restrictions or Bylaws for/of Birchwood Subdivision and the Association, as the same may be amended, including, but not limited, the power to file liens for enforcement of same in the Office of the Judge of Probate, Enterprise, Coffee County, Alabama;

(e) To acquire by mortgage, pledge, deed, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(f) Borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(g) Dedicate, sell or transfer all or any part of the common areas between any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members according to the terms of the Declaration;

(h) Participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property and common areas, according to the terms of the Declaration;

(I) To indemnify any officer or director or former director or officer of the Association, any person who may have served at its request as a director or officer of another corporation, whether for profit or not for profit, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of a duty; but such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled, under any Bylaws, agreement, vote of Board of Directors or members or otherwise;

(j) To have and to exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Corporation Act of the State of Alabama by law may now or hereafter have or exercise;

(k) To have and to exercise any and all powers, rights and privileges granted under Ala. Code § 35-20-11;

(l) To have and to exercise any and all powers authorized by Ala. Code § 35-20-12 (but to the extent this Certification of Formation, or by-laws or other governing documents provide additional or different powers related to the subject matter of said Code section, the Board or the Association, as the case may be, is empowered to carry out said additional or different powers); and,

(l) To have and to exercise any and powers, rights and privileges as set forth in the Association's by-laws.

ARTICLE V

MEMBERSHIP

(a) The owner of each Lot subject to the Declaration of Covenants for Birchwood Subdivision shall be a member of the Association in accordance said Declaration of Covenants and shall be entitled to vote in accordance with the formulas set forth in the Declaration or By-Laws, except there shall be no votes for any properties owned by the Association. The manner of exercising voting rights shall be determined by the Bylaws of the Association or Declaration of Covenants and if any conflict between said By-Laws and Declaration, the Declaration shall govern.

(b) Change of membership of the Association shall be established by recording in the Office of the Judge of Probate of Coffee County, a deed or other instrument establishing record title to a Lot subject to the Declaration. The owner designated by such instrument thereby becomes a member of the Association, and the membership of the prior owner is terminated.

ARTICLE VI

TERM

The existence of the corporation/Association shall be perpetual.

ARTICLE VII

INCORPORATOR

The name and address of the sole incorporators are:

NAME:

ADDRESS:

Billy Cotter 531 Boll Weevil Circle, Enterprise, Alabama 36330

Norman Riley 643 Glover Avenue, Enterprise, Alabama 36330

ARTICLE VIII

BOARD OF DIRECTORS

A. The affairs of this Association shall be managed by a Board of Directors of not less than three Directors but no more than nine (9). The number of Directors may be changed by amendment of the Bylaws of the Association but shall not exceed nine (9).

The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successors are:

Norman Riley, 643 Glover Avenue, Enterprise, Alabama 36330

Billy Cotter, 531 Boll Weevil Circle, Enterprise, Alabama 36330

Tamra Bowdoin, 531 Boll Weevil Circle, Enterprise, Alabama 36330

B. To the fullest extent that the Alabama Nonprofit Corporation Act, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of directors, no director of the Association shall be personally liable to the Association or its Members for monetary damages for breach of duty of care or other duty as a director. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Association for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

C. The method of election and the term of office, removal, and filing of vacancy shall be set forth in the Bylaws or Covenants.

ARTICLE IX

BYLAWS

The Bylaws of the Association shall be adopted by the Board of Directors and may be altered, amended, or rescinded in the manner provided by the Bylaws.

ARTICLE X

AMENDMENTS

Amendments to the Certificate of Formation shall be proposed and made by the Board of Directors and not the members of the Association.

ARTICLE XI

DISSOLUTION

The Corporation/Association may be dissolved in accordance with §10A-3-7.01, Code of Alabama, as may be amended from time to time or as otherwise provided by law.

ARTICLE XII

INDEMNIFICATION

(a) The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including appeals (other than an action by or in the right of the Association), by reason of the fact that he is or was a director, officer, employee, or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such claim, action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to

the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any claim, action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association , and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances

of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(c) Any indemnification under subsections (a) and (b) [unless ordered by the court] shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsections (a) and (b). Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to, or who have been wholly successful on the merits or otherwise with respect to, such claim, action, suit or proceeding, or (2) if such quorum is not obtainable, or even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by a majority vote of the members of the Association.

(d) Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit or proceeding may be paid by the Association in advance of the final disposition of such claim, action, suit or proceeding as authorized in the manner provided in subsection (d) upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount if and to the extent that it shall ultimately be determined that he is not entitled to be indemnified by the Association as authorized in this Section.

(e) The indemnification authorized by this Section shall not be deemed exclusive of and shall be in addition to any other rights to which those indemnified may be entitled under any statute, rule of law, provision of articles or certificate of

incorporation, by-law, agreement, vote of members or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(f) The Association shall have power to purchase and maintain insurance on behalf of any person who is or was director, officer, employee or agent of the Association, or is or was serving at the request of the Corporation as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Section.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the Laws of Alabama, the undersigned, constituting the sole incorporators of this Association, have executed this Certificate of Formation this _____ day of _____, 2019.

Incorporators:



Billy Cotter



Norman Riley

BYLAWS OF BIRCHWOOD OWNERS ASSOCIATION, INC.

ARTICLE I

NAME, MEMBERSHIP, APPLICABILITY AND DEFINITIONS

- A. Name. The name of the Association shall be Birchwood Owners Association, Inc. (hereinafter referred to as the "Association"), a non-profit Alabama corporation. The provisions of these by-laws are expressly subject to the terms and conditions of the Birchwood Subdivision Declaration of Covenants, together with all subsequent amendments thereto, recorded in the Office of the Judge of Probate, Enterprise, Coffee County, Alabama. These By-Laws are applicable to the Association.
- B. Principal and Registered Office. The principal and registered office of the Association shall be located at 531 Boll Weevil Circle, Enterprise, Alabama. The Association may have such other offices as from time to time the Board may designate.
- C. Definitions. Except as may be specifically otherwise provided in these By-laws, the words used in these Bylaws shall have the same meaning as set forth in the Declaration of Covenants for Birchwood Subdivision, as amended, renewed or extended from time to time, hereinafter sometimes referred to as the "Declaration," unless the context shall prohibit such meaning.

ARTICLE II

ASSOCIATION: MEETINGS, QUORUM, VOTING, PROXIES

- A. Membership. The Association shall have two (2) classes of membership. Class "A" and Class "B", as more fully set forth in the Declaration and in Article X below, the terms of which pertaining to membership are specifically incorporated herein by reference.

B. Place of Meetings. Meetings of the Association shall be held at such suitable place convenient to the members as may be designated by the Board of Directors either within the properties or as convenient thereto as possible and practical.

C. Annual Meeting. Except for the initial organizational meeting, the first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of the incorporation of the Association. The next annual meeting shall be set by the Board so as to occur within thirteen (13) months after the initial annual meeting. Subsequent regular annual meetings of the Association shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board. Subject to the foregoing, the annual meeting of the Association shall be held at a date, time and place as set by the Board of Directors.

D. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of the Board of Directors or upon a petition signed by members of the Association representing at least 15% percent of the total votes of the Association. The notice of the special meeting shall state the date, time and place of the meeting and the purpose thereof. No business shall be transacted at a special meeting except that so stated in the notice.

E. Notice of Meeting. Written or printed notice stating the place, day and hour of any meeting of the Association shall be delivered, either personally or by United States Mail, to each member, not less than ten (10) days nor more than thirty (30) days before the date of such meeting, by or at the direction of the President or the Secretary or officers or persons calling the meeting.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in

the United States Mail addressed to the member at the address of the member as it last appeared on the records of the Association, with postage thereon prepaid.

F. Waiver of Notice. Waiver of notice of a meeting of the Association shall be deemed the equivalent of proper notice. A member may, in writing, waive notice of any meeting of the Association, 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 shall also be deemed a waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting at which proper notice was not given, is raised before the business is put to a vote.

G. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to members in the manner prescribed for regular meetings.

The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum, provided that at least twenty-five percent (25%) of the total votes of the Association remain present in person, or by proxy and provided further that any action taken shall be approved by at least a majority of the members required to constitute

a quorum.

H. Voting. The voting and membership rights of the Association shall be as set forth in the Declaration, and such voting and membership rights and provisions are specifically incorporated herein by reference. It is the intention of these By-laws that the only matters to be voted on by the members of the Association, are the election of directors when authorized, or as to matters specifically authorized by the Declaration or these by-laws.

I. Proxy. Members of the Association may vote by proxy.

J. Majority. As used in these Bylaws, the term “majority” shall mean those votes, members or other group as the context may indicate, totaling more than fifty (50) percent of the total number of votes in both Class “A” and Class “B” membership.

K. Quorum. Except otherwise provided in these bylaws or in the Declaration, the presence in person or by proxy of members representing one-third (1/3) of the Association shall constitute a quorum at all meetings of the Association. However, until Class “B” membership converts to Class “A” membership, a quorum will not exist without the presence of Declarant, which is Birchwood Land Development, LLC, or its designees, its successors and assigns. For so long as Declarant, is the owner of any lot within the properties, Declarant shall be given a written notice of all meetings and proposed actions of the Association by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association as it may change from time to time. Declarant or his designated representatives shall be given the opportunity at any such meeting to join in discussion from the floor of any prospective action, policy or program to be implemented by the Association.

L. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all

resolutions adopted at the meeting as well as a record of all transactions occurring thereat.

M. Action without a Meeting. Any action required by law to be taken at the meeting of the Association, or any action which may be taken at a meeting of the Association, may be taken without a meeting if consent in writing setting forth the action so taken shall by all members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Association.

ARTICLE III

BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

Governing Body – Composition.

Section 1. Except where the Declaration or By-laws require a vote of the members of the Association, the affairs of the Association shall be governed by a Board of Directors. Except as otherwise provided herein, the Directors shall be members, spouses of such members or officers of business entity members; provided, however, no person and his or her spouse may serve on the board at the same time, and only one officer of a corporate member may serve on the board at the same time, except in regards to the Declarant which may have more than one officer or designated representative who serves on the Board.

Section 2. Directors Appointed by Declarant. Declarant shall have the right to appoint or remove any member or members of the Board of Directors with or without cause as long as it owns any lot or property in Birchwood Subdivision, or any phase thereof; or there has occurred the expiration of 10 years from the date of these By-laws; or the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association.

Each owner, by acceptance of a deed to or other conveyance of property within the

properties, vests in Declarant such authority to appoint and remove Directors of the Association. The Directors selected by the Declarant need not be owners or occupants in the properties of Birchwood Subdivision or any phase thereof. The names of the initial Directors selected by the Declarant are set forth in the Articles of Incorporation of the Association.

Section 3. Veto. As long as there exists a Class "B" membership, the Declarant shall have a veto power over all actions of the Board, as is more fully provided in this section. This power shall expire at such time as the first of the events designated in Section 2 above shall occur. This veto power shall be exercisable only by the Declarant, his successors, and assigns who specifically take this power in a recorded instrument.

No action authorized by the Board of Directors shall become effective, nor shall any action, policy, or program be implemented until and unless: Declarant shall have been given the written notice of all meetings and proposed actions to be approved at meetings by certified mail, return receipt requested, or by personal delivery at the address registered with the Secretary of the Association, as it may change from time to time, which notice shall comply with the provisions of these Bylaws regarding notice of regular or special meetings of the Directors and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth in reasonable particularity the agenda to be followed at the meeting; and Declarant shall have been given the opportunity at such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program to be implemented by the board or the Association. Declarant and its representatives or agents may make its concerns, thoughts, and suggestions known to the members of the Association and/or the board. The Declarant shall have and is hereby granted a veto power over any such action, policy, or program authorized by the Board of Directors

and to be taken by the board. The veto may be exercised by Declarant, its representatives, or agents either at the meeting held pursuant to the terms and provisions hereto or by written notice to the Board within 15 days from the date of adoption of any proposed action or policy or program of the Board or Association. Any veto power shall not extend to the requiring of any action or counterclaim on behalf of the board.

Section 4. Number of Directors. The initial Board of Directors shall consist of at least three (3) but no more than nine (9) members. The Board of Directors shall be increased from time to time as provided in Section 6 of this Article.

Section 5. Nomination of Directors. Elected Directors shall be nominated by the board and may also be nominated by a nominating committee if such committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications and to solicit votes.

Section 6. Election and Term of Office. Notwithstanding any other provision contained in these By-laws:

Within 30 days after the time Class "A" Members, other than the Declarant, own at least Fifty Percent (50%) of the lots as platted in the Birchwood Subdivision Plat, or whenever the Class "B" Member earlier determines, the Board shall be increased to five (5) directors. The Association shall call a special meeting at which the Class "A" Members shall elect two of the five directors. The remaining three (3) directors shall remain appointees of the Class "B" Member and shall serve in office as determined by the Declarant. The directors elected by the Class "A" Members shall be elected for a term of two years or until the happening of the event described in subsection (b) below, whichever is shorter.

Within 30 days after termination of Class "B" Control Period as referenced in the

Declaration of Covenants, the Association shall call a special meeting at which the Class "A" Members shall elect all directors and set terms for each director so elected.

Section 7. Removal of Directors and Vacancies. Directors may be removed for cause or for no cause by Declarant as long as Declarant owns any lot or properties. A Director who is elected solely by the votes of members other than Declarant may be removed from office prior to the expiration of his or her term by the votes of a majority of the members who elected the Director. As long as there is a Class "B" membership, any Director appointed by the Declarant may only be removed by the Declarant. After termination of Class "B" status, a Director appointed by the Declarant may be removed by a vote of a majority of votes of the Association. In the event of the death or resignation of a Director, his or her successor shall be selected by a majority of the remaining members of the Board and shall serve the unexpired term of his or her predecessor unless the Director who dies or resigns is subject to being replaced by Declarant.

Chairman and Vice-Chairman. The Board of Directors shall elect by majority vote a Chairman and Vice-Chairman of its Board. Officers of the Association may serve as Chairman or Vice-Chairman and vice-versa. The Chairman and Vice-Chairman shall be elected serve for two (2) year terms and shall continue in office until their successors are elected by the Board. The Chairman shall chair the meetings and set and control the agenda, unless by a majority vote of the Directors, the Directors amend the agenda. The Chairman or Vice Chairman, or a majority of the Board, shall have the right to call any meetings. In absence of the Chairman at any meetings, the Vice-Chairman shall have such powers as are granted the Chairman. The Chairman and Vice-Chairman shall be entitled to vote on all matters of Board business.

Section 8. Meetings.

Organizational Meetings. The initial Directors have been appointed at the organizational meeting of the Directors.

Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time, by a majority of the Directors. Notice of the time and place of the meeting shall be communicated to Directors personally or by mail, telephone, or telegraph, at least three (3) days prior to the day the name for such meeting, provided, however, notice of the meeting need not be given to a Director who has signed a waiver of notice or written consent to hold the meeting.

Special Meetings. Special meetings of the Directors shall be held when called by written notice signed by the Chairman or by a majority of the Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Not less than three (3) days notice of the meeting shall be given to each Director by either, written notice by First Class mail, postage prepaid, telephone communication or telegram provided, however, that if notice is sent to a Director by First Class Mail, such notice shall be deposited into the United States Mail Box at least four (4) days before the time set for the meeting.

Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice.

Quorum. A quorum at Directors' meetings shall consist of the Directors entitled to cast a majority of the votes of the entire Board of Directors. The acts of the board approved by a majority of votes present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except where approval by a greater number of Directors is required

by the Declaration or Bylaws. If at any meeting of the Board of Directors there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any additional meeting, any business which might have been transacted at the meeting as originally called, may be transacted without further notice. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such Director for the purpose of determining a quorum.

Conduct. The Chairman shall preside over all meetings of the Board of Directors, and Secretary shall keep a minute book of the meetings. In the absence of the Chairman, the Vice-Chairman shall preside, and in the absence of both the Chairman and the Vice-Chairman, the Directors present shall designate one of their number to preside.

Compensation. Directors may be reimbursed for their actual out-of-pocket expenses necessarily incurred in connection with their services as Directors. However, no Director shall receive any compensation from the Association from acting as such unless approved by a majority vote of the members at a regular or special meeting of the Association.

Action without Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous meeting.

Powers and Duties. The Board of Directors shall be responsible for the affairs of the Association and shall have all the powers and duties necessary for the administration of the Association's affairs and, as provided by law, the Declaration of Covenants or these by-laws, may do all acts and things as are not by the Declaration of Covenants, Certificate of Formation or these Bylaws directed to be done and exercised exclusively by members. The Board of

Directors may delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties and powers imposed or authorized by these Bylaws, the Declaration of Covenants or by any resolution of the Board or under law, the Board of Directors shall have the following powers to/of, on behalf of the Association, (in way of explanation, but not limitation):

Preparation and adoption of an annual budget in which this shall be established the contribution of each owner to the common expenses;

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, provided, unless otherwise determined by the Board of Directors, the annual assessment against the proportionate share of the common expense shall be payable and equally quarterly installments, each such installment to be due and payable in advance of the 1st day of the month for such quarter unless provided by the Board.

Providing for the operation, care, upkeep and maintenance of all of the area of common responsibility;

Granting easements, leases, licenses and concessions through or over the common areas, if any;

Designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, in the area of common responsibility and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the

performance of their duties;

Collecting the assessments, depositing the proceeds thereof in a bank or depository which it shall approve, and using in the proceeds to administer the Association; the reserve fund may be deposited, in the Directors' best business judgement, in depositories other banks;

Making and amending rules and regulations;

Opening of bank accounts on behalf of the Association and designating the signatures required;

Making or contracting for the making of repairs, additions, and improvements to or alterations of the common area in accordance with the provisions of the Declaration and these Bylaws after damage or destruction by fire or other casualty;

Enforcing by legal means the provisions of the Declaration of Covenants, these Bylaws, and the rules and regulations adopted by the Board and bringing any proceedings which may be instituted on behalf of or against the owners concerning the Association;

Obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

Paying the cost of all services rendered to the Association or its members and not chargeable to an owner;

Keeping books with detailed accounts of receipts and expenditures of the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred.

Making available upon request by a prospective purchaser of a lot, any owner of a lot, any first mortgagee, or the holders, insurers of guarantors of a first mortgage on any lot, current copies of the Declaration of Covenants, the Certificate of Formation, the Bylaws, and

rules governing the Association, together with all other books, records and financial statements of the Association;

Permit utility suppliers to use portions of the common area reasonably necessary to the ongoing development of the property;

To make contracts and incur liabilities in connection with the exercise of any of the powers and duties of the Board to provide or cause to be provided all goods and services required by the Bylaws or by law, or which the Board, in its discretion, deems necessary for the proper operating and maintenance of the common areas;

To employ any persons or firms reasonably necessary to carry out the provisions of the Declaration of Covenants, Bylaws, Certificate of Formation and any rules and regulations permitted thereby, including accountants and attorneys;

To employ a management agent or manager, at compensation established by the Board, to perform such duties and services as the Board shall authorize including, but not limited to, the duties listed in this section; and any such duties so conferred upon the managing agent or manager by the Board of Directors may be revoked immediately and without formal notice; or, modified or amplified by the Board of the directors at a duly constituted meeting. The Declarant or a designee of the Declarant, may be employed as a managing agent or manager;

Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and Restrictions for Stonechase Subdivision and to promote the welfare of the owners within the properties (as that term is defined in the Declaration) and to:

Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all

office or other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

To sue or be sued;

To enforce covenants, conditions or restrictions affecting any property to the extent authorized under the Declaration of Covenants or Bylaws for/of Birchwood Subdivision and the Association, as the same may be amended, including, but not limited, the power to file liens for enforcement of same in the Office of the Judge of Probate, Enterprise, Coffee County, Alabama;

To acquire by mortgage, pledge, deed, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

Borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

Dedicate, sell or transfer all or any part of the common areas between any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members according to the terms of the Declaration;

Participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property and common areas, according to the terms of the Declaration;

To indemnify any officer or director or former director or officer of the Association, any person who may have served at its request as a director or officer of another corporation, whether for profit or not for profit, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party

by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of a duty; but such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled, under any Bylaws, agreement, vote of Board of Directors or members or otherwise;

To have and to exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Corporation Act of the State of Alabama by law may now or hereafter have or exercise;

To have and to exercise any and all powers, rights and privileges granted under Ala. Code § 35-20-11;

To have and to exercise any and all powers authorized by Ala. Code § 35-20-12 (but to the extent these by-laws or other governing documents provide additional or different powers related to the subject matter of said Code section, the Board or the Association is empowered to carry out said additional or different powers); and,

To have and exercise any and all powers which may be granted pursuant to action or resolution authorized by the Board.

ARTICLE IV

OFFICERS

A.Officers. The officers of the Association shall be a President, Vice-President, Secretary, and Treasurer. The Board of Directors may elect such other officers, including one or more assistant Secretaries and one or more assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two or more offices may be held by the same person.

B. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Association. A vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board of Directors for the un-expired portion of the term.

Removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

The initial officers of the Association shall be President, Vice-President and Secretary-Treasurer and shall be elected by Board.

The President shall be the chief executive officer of the Association. He/She shall have all the powers and duties which are usually vested in the office of the President of an Association, including but limited to the power to appoint committees from among the members from time to time, as he may in his discretion determine appropriate, to assist in the conduct of the affairs of the Association.

The Vice-President shall, in the absence of or disability of the President, exercise the powers and perform the duties of the President, he/she shall also generally assist in the President and exercise such other powers or perform such duties as shall be prescribed by the Director.

The Secretary shall keep the minutes of all proceedings of the Directors and members. He/she shall attend to the giving and serving of all notices to the members and directors and other notices required by law. He/she shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He/she shall keep the records of the Association, and shall perform all other duties incident to the office of

the Secretary of an Association as may be required by the Directors or the President.

The Treasurer shall have custody of all property of the Association, including funds, securities, and evidences of indebtedness. He/she shall keep the financial records and books of account of the Association in accord with good accounting practices; shall keep detailed, accurate records and chronological order of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and other expenses incurred; shall keep in account for each lot setting forth any shares of common expense or other charges, due dates thereof, present balance due for each lot, and any interest and common surplus. The Treasurer shall perform all other duties incident to the office of Treasurer. The records, books of account, and vouchers authorizing payments, shall be available for examination by members of the Association as convenient.

Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the 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.

ARTICLE V

FISCAL MANAGEMENT/RECORDS

The Board of Directors shall prepare a budget covering estimated common expenses during the coming year and a separate budget covering estimated expenses. Copies of the proposed budgets shall be delivered to each member (or each member's household) of the Association. Upon reasonable advance notice, any Board member or member of the

Association may request the right to inspect the financial records of the Association and the President or Chairman of the Board shall provide such opportunity to inspect.

ARTICLE VI

COMMITTEES

The Board of Directors may appoint committees to perform such tasks and to serve such periods as may be designated by resolution of the Board at a regular, special or annual meeting as provided for by the Bylaws. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors. Members of the committee may be nonmembers of the Association provided, however, that no committee shall be composed entirely of nonmembers of the Association.

ARTICLE VII

AGENT TO RECEIVE SERVICE OF PROCESS

The following person, who is a resident of the State of Alabama, is designated as agent to receive service of process upon the Association, and said agent may be changed from time to time by the Board of Directors:

Name: Billy Cotter

Address: 531 Boll Weevil Circle, Enterprise, Alabama 36330

ARTICLE VIII

PARLIAMENTARY RULES

Roberts Rules of Order (latest addition) shall govern the conduct of Association meeting when not in conflict with the Declaration of Covenants or these Bylaws.

ARTICLE IX

INDEMNIFICATION

(a) The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including appeals (other than an action by or in the right of the Association), by reason of the fact that he/she is or was a director, officer, employee, or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such claim, action, suit or proceeding 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, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any claim, action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he/she is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him/her in connection with the defense or settlement of such action or suit if he/she acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

© Any indemnification under subsections (a) and (b) [unless ordered by the court] shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he/she has met the applicable standard of conduct set forth in subsections (a) and (b). Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to, or who have been wholly successful on the merits or otherwise with respect to, such claim, action, suit or proceeding, or (2) if such quorum is not obtainable, or even if obtainable, a quorum of

disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by a majority vote of the members of the Association.

(d) Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit or proceeding may be paid by the Association in advance of the final disposition of such claim, action, suit or proceeding as authorized in the manner provided in subsection (d) upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount if and to the extent that it shall ultimately be determined that he is not entitled to be indemnified by the Association as authorized in this Section.

(e) The indemnification authorized by this Section shall not be deemed exclusive of and shall be in addition to any other rights to which those indemnified may be entitled under any statute, rule of law, provision of articles or certificate of incorporation, by-law, agreement, vote of members or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(f) The Association shall have power to purchase and maintain insurance on behalf of any person who is or was director, officer, employee or agent of the Association, or is or was serving at the request of the Corporation as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against

such liability under the provisions of this Section.

ARTICLE X- ASSOCIATION MEMBERS; ASSESSMENTS

A. Membership: In accordance with the Declaration of Covenants, the Association has two classes of voting membership:

Class A. Class A members shall be all owners of the lots of Birchwood Subdivision, with the exception of the Declarant, and shall be entitled to cast one vote for each lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B members shall be the Declarant and shall be entitled to cast the total number of votes of Class A members plus one. As to the lots in the subdivision, the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) November 16, 2028, or
- (b) when Declarant voluntarily ceases membership as a Class B member.

B. Assessments.

Creation of the Lien and Personal Obligation of Assessments. Each Lot owner hereby covenants to pay to the Association:

- (1) annual assessments or charges, and

(2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property/lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person(s) who was the Owner of such property at the time when the assessment fell due. The Association, as authorized by the Board of Directors, shall be expressly authorized to file a lien in the Office of the Judge of Probate, Coffee County, Enterprise, Alabama against a lot and owner for delinquent assessments, charges, fees and expenses.

Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and/or welfare of the residents in the subdivision and for the improvement and maintenance of the common areas, detention ponds, irrigation, subdivision signs or other items of common interest within the subdivision.

Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association, through its Directors, may levy, in any assessment year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repairs or replacement of a capital improvement or other expenses upon the common areas of interest, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the Board.

Date of commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following notice from the Board of Directors. The first annual assessment shall be adjusted

according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly execute certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 6 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or cause the lien against the property to be recorded at the Probate Office, Coffee County, Enterprise, Alabama. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Builders' and Declarant's Exemption: Declarant shall be exempt from paying any assessments, dues or expenses levied by the Association. Any Builder (meaning person or entity duly licensed as an Alabama homebuilder) who owns a lot and constructs a home on the same, shall be exempt such assessments, dues, fees and expenses for twelve months from the date they purchase a lot. After said time period, such dues, fees and expenses shall be

owed.

Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Common Areas. The Common Areas of the subdivision are considered to be the areas which are on the Plat of the subdivision but not platted as residential lots, including the detention pond areas. All such Common Areas and related improvements shall be maintained by the Association through the levy of assessments, dues and/or expenses.

ARTICLE XI

AMENDMENTS

These Bylaws may be amended by a majority vote of the Board of Directors or as long as Declarant owns at least one lot or other properties, the Declarant shall have the right to veto any proposed amendment.

Severability. Invalidation of any one of these by-laws by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

The foregoing are adopted as the Bylaws of Birchwood Owners Association, Inc., a non-profit corporation, at the first meeting of the Board of Directors held on the 15th day of March, 2019.



Billy Cotter, as Chairman of the Board of
Directors

Attest:


Norman Riley, Secretary