

BY-LAWS
OF
THE BACKWATERS PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE I

Name, Membership, Applicability and Definitions

Section 1. Name: The name of the Association shall be THE BACKWATERS PROPERTY OWNERS ASSOCIATION, INC. (the "Association").

Section 2. Membership: Membership shall be the unit owners in the subdivision known as "The Backwaters" (the "Subdivision"), as more fully set forth in the Declaration for the Subdivision (said Declaration, as amended, renewed, or extended from time to time (the "Declaration")), the terms of which pertaining to membership in the Association are specifically incorporated herein by this reference.

Section 3. Definitions: The words used in these By-Laws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

ARTICLE II

Association: Meetings, Quorum, Voting and Proxies

Section 1. Place of Meetings: Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the Board of Directors.

Section 2. Annual Meeting: The first meeting of the members, whether a regular or special meeting, shall be held within one (1) year from the date of the sale of the first unit in the Subdivision. Subsequent regular annual meetings of the members shall be held at a date and time as set by the Board of Directors.

Section 3. 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 a majority of a quorum of the Board of Directors or upon a petition signed by at least five percent (5%) of the total vote holders of the Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 4. Notice of Meetings: It shall be the duty of the Secretary to mail or to cause to be delivered to the owner of record of each unit a notice of each annual or special meeting of the Association stating the purpose

of the special meeting, as well as the time and place where it is to be held; if an owner wishes notice to be given at an address other than his or her unit, he or she shall have designated by notice in writing to the Secretary such other address. The mailing or delivering of a notice of meeting in the manner provided in this section shall be considered serving of notice. Notices shall be served not less than twenty (20) nor more than sixty (60) days before a meeting.

Section 5. Waiver of Notice: Waiver of notice of meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, wither before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, 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.

Section 6. 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 ten (10) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is

present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place of 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 any action taken shall be approved by at least a majority of the members required to constitute a quorum.

Section 7. Voting: The voting rights of the members shall be as set forth in the Declaration, and such voting rights provisions are specifically hereby incorporated herein.

Section 8. Proxies: At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting.

Section 9. Majority of Owners: As used in these By-Laws, the term majority shall mean those votes, owners,

or other group as the context may indicate totaling more than fifty percent (50%) of the total number.

Section 10. Quorum: Except as otherwise provided in these Bylaws or in the Declaration, the presence in person or by proxy of one-third (1/3) of the members shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

Section 11. 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 at such meeting.

Section 12. Action Without a Meeting: Any action which may be taken by the vote of members at a regular or special meeting, except the election of Board members, may be taken without a meeting as and to the extent permitted by West Virginia law.

ARTICLE III

Board of Directors, Number, Powers and Meetings

A. Composition and Selection

Section 1. Governing Body and Composition: The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 2 of this Article, the Directors shall be members or spouses of such members; provided, however, no person and his or her spouse may serve on the Board at the same time, unless selected by the Declarant.

Section 2. Directors During Declarant Control: The Directors shall be selected by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant, unless the Declarant shall earlier surrender its right to select Directors. The Directors selected by the Declarant need not be owners or residents in the Subdivision and they may be spouses. After the period of Declarant appointment, all Directors must be members of the Association.

Section 3. Number of Directors: The number of Directors in the Association shall not be less than two (2) nor more than five (5), as the Board of Directors may from time to time determine by resolution. The initial Board shall consist of two (2) members.

Section 4. Nomination of Directors: Except with respect to Directors selected by the Declarant, nominations for election to the Board of Directors shall be made by

Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more elected members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine but in no event less than the number of vacancies or terms to be filled. Nominations shall be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

Section 5. Election and Term of Office: At the initial meeting of the membership, and at each annual meeting of the membership thereafter, Directors shall be elected. The candidates receiving the highest number of votes shall be elected. Cumulative voting shall not be permitted.

The initial terms of the Directors shall be fixed at the time of their election as they among themselves shall

determine but not to exceed three (3) years. At the expiration of the initial term of office of each respective member of the Board of Directors, a successor shall be elected to serve for term of two (2) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

Section 6. Removal of Directors: At any regular or special meeting of the Association duly called, any one or more of the members of the Board of Directors may be removed, with or without cause, by a majority vote of the members, and a successor may then and there be elected to fill the vacancy thus created. Provided, however, only the Declarant may remove a Director selected by the Declarant. Additionally, any Director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than thirty (30) days may be removed by a majority vote of the Directors at a meeting, a quorum being present. A Director who was elected solely by the votes of members other than the Declarant may be removed from office prior to the expiration of his or her term by the votes of a majority of members other than the Declarant.

Section 7. Vacancies: Vacancies in the Board of Directors caused by any reason, excluding the removal of a Director by vote of the Association, shall be filled by a vote of the majority of the remaining Directors, even though less than a quorum, at any meeting of the Board. Each person so elected shall serve the unexpired portion of the vacated term.

Section 8. Voting Procedure for Directors: The first election of the Board shall be conducted at the first meeting of the Association. At such election, the members or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Voting for Directors shall be by secret written ballot.

B. Meeting

Section 9. Organization Meetings: The first meeting of the members of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board, and preferably will be held immediately following the annual meeting.

Section 10. 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, but at least two (2) such meetings shall be held during each fiscal year. Section 11. Special

Meetings: Special meetings of the Board of Directors shall be held when called by written notice signed by the President, Vice President, or Secretary of the Association, or by any two (2) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered.

Section 12. Waiver of Notice: The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes.

Section 13. Quorum of Board of Directors: At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue

to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 14. Compensation: No director shall receive any compensation from the Association for acting as such unless approved by a majority vote of the total vote of the Association.

Section 15. Conduct of Meetings: The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings.

Section 16. Action without a Formal Meeting: Any action to be taken at a meeting of the Directors may be taken without a meeting if consent, in writing, setting forth the action so taken, shall be signed by all the Directors.

C. Powers and Duties

Section 17. Powers. 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, may do all acts and things as are not by

the Declaration, Articles of Incorporation, or these By-Laws directed to be done and exercised exclusively by the members.

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

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may be hereafter adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

- (a) preparation and adoption of an annual budget in which there shall be established the contribution of each unit owner to the common expenses;
- (b) making assessments to defray the common expenses and limited common expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessments, which will initially be one installment annually;
- (c) providing for the operation, care, upkeep, and maintenance of the Common Areas;

- (d) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the unit owners concerning the Association;
- (e) paying the cost of all services rendered to the Association or its members and not chargeable directly to unit owners;
- (f) 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
- (g) permit utility suppliers to use portions of the Common Areas reasonably necessary to the ongoing development or operation of the Subdivision.

Section 18. Management Agent: The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize.

Section 19. Agreements, Contracts, Deeds, Leases, Checks: All agreements, contracts, deeds, leases, checks,

and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

ARTICLE IV
Miscellaneous

Section 1. Fiscal Year: The initial fiscal year of the Association shall be set by resolution of the Board of Directors.

Section 2. Parliamentary Rules: Except as may be modified by a Board resolution establishing modified procedures, Robert's Rules of Order (the then current edition) shall govern the conduct of the Association proceedings when not in conflict with West Virginia law, the Articles of Incorporation, the Declaration or these By-Laws.

ARTICLE V
Officers

Section 1. Officers: The officers of the Association shall be a President, Secretary and Treasurer. Any two or more offices may be held by the same person, except the offices of President and Secretary. The

President and Treasurer shall be elected from among the members of the Board of Directors, unless otherwise approved by the Board of Directors.

Section 2. Election and Term of Office: 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 members, as herein set forth in Article III.

Section 3. 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.

Section 4. Powers and Duties: The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board of Directors.

Section 5. Books and Records; Inspection of Members: The membership register, books of account, and minutes of meetings of the members, the Board, and committees shall be made available for inspection and copying by any member of the Association or by his or her duly appointed representative at any reasonable time and

for a purpose reasonably related to his or her interest as a member at the office of the Association.

Section 6. Notices: Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by registered or certified mail, return receipt requested, first class postage prepaid:

- (a) if to a member, at the address which the member has designated in writing and filed with the secretary or, if no such address has been designated, at the address of the unit of such owner, or
- (b) if to the Association or the Board of Directors at the principal office of the Association.

Section 7. Amendment: These By-Laws may be amended only by the affirmative vote (in person or by proxy) or written consent of members representing a majority of the total votes of the Association.

We, the undersigned, being all of the initial Directors of The Backwaters Property Owners Association, Inc., do hereby certify:

(A) That we are entitled to exercise all the voting power of the Association; and

(B) That we hereby assent to the within and foregoing By-Laws and hereby adopt the same as the By-Laws of the Association.

IN WITNESS WHEREOF, we have hereunto subscribed our names this ___ day of February, 2008.

R. Scott Summers, Initial Director

Leah L. Summers, Initial Director

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA, TO-WIT:

The foregoing instrument was acknowledged before me this ____ day of January, 2008, by R. Scott Summers and Leah L. Summers, the Initial Directors of The Backwaters Property Owners Association, Inc., a West Virginia non profit corporation, for and on behalf of said corporation.

Notary Public

(SEAL)

My Commission Expires: _____

This instrument was prepared by:

R. Scott Summers, Esquire
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WF/Windstar/By-Laws for The Backwaters POA-FINAL