

**BY-LAWS**  
**OF**  
**SPIVEY GLEN SUBDIVISION, INC.**

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**BY-LAWS**  
**OF**  
**SPIVEY GLEN HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**  
**Registered Office**

Spivey Glen Homeowners Association, Inc., a Georgia nonprofit corporation (the "Association"), shall have at all times within the State of Georgia a registered office and a registered agent. The Association may have other offices within the State of Georgia as may be determined from time to time by its Board of Directors (the "Board").

**ARTICLE II**  
**Membership in Association**

2.1 Eligibility. The Association membership shall consist of the owners of lots located on the real property described in Exhibit A to the Declaration of Supplemental Covenants, Conditions, Restrictions and Easements for Spivey Glen dated \_\_\_\_\_, 1995, and recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, Henry County, Georgia records (hereinafter the "Declaration").

2.2 Succession. The membership of each lot owner shall automatically terminate when he ceases to be a lot owner, and upon the conveyance, transfer or other disposition of a lot, said lot owner's membership in the Association shall automatically be transferred to the new lot owner.

2.3 Annual Meetings. The members shall regularly hold an annual meeting for the purpose of electing directors and transacting such other business as may properly be brought before the meeting. The first regular annual meeting of members may be held, subject to the terms hereof, on any date, at the option of the Board, within one year after the incorporation of the Association. Subsequent to the first meeting, there shall be a regular annual meeting of members held each year within fifteen (15) days of the anniversary of the first regular annual meeting. All such meetings of members shall be held at such place and at such time as is specified in the written notice of such meeting. Such notice shall be delivered to all members at least fifteen (15) days and not more than forty-five (45) days prior to the date of such meeting. Such notice shall also state the purpose of such meeting.

2.4 Special Meetings. Special meetings of the members may be called by the President or by a majority of the directors, or by 51% or more of the members. Special meetings shall be called by delivering written notice to all members not less than seven (7) days nor more than thirty (30) days prior to



the date of said meeting, stating the date, time, place and purpose of the special meeting.

2.5 Delivery of Notice of Meetings. Notices of meetings shall be delivered by or at the direction of the Secretary of the Association and may be delivered either personally or by mail to a member at the address given to the board by said member for such purpose, or to the member's lot, if no address for such purpose has been given to the Board. Upon written request, any holder of a first mortgage shall be entitled to written notice of all meetings and shall be permitted to designate a representative to attend and observe any such meetings.

2.6 Waiver of Notice. Waiver of notice of a 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, either 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. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted thereat unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

2.7 Voting. Each member shall be entitled to vote, which vote may be cast by the member, the member's spouse or by a lawful proxy as provided below. When more than one person owns a lot, the vote for such lot shall be exercised as they between or among themselves determine, but in no event shall more than one vote be cast with respect to such lot. In the event of disagreement among such persons and an attempt by two or more of them to cast the vote for such lot, such persons shall not be recognized and the vote for such lot shall not be counted. No member shall be eligible to vote, either in person or by proxy, or be elected to the Board, if that member is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association.

2.8 Voting List. A list of names and address of members entitled to vote shall be maintained at the registered office of the Association.

2.9 Quorum. A quorum of members for any meeting shall be deemed present throughout such meeting regardless of numbers present, provided notice was provided in accordance with Articles 2.3 and 2.4 and subject to waiver of notice provisions at Article 2.6.

2.10 Adjournment. Any meeting of the members may be adjourned from time to time for periods not exceeding forty-eight (48) hours by vote of the members holding the majority of the vote represented at such meeting, regardless of whether a quorum is present. Any business which could



be transacted properly at the original session of the meeting may be transacted at an adjourned session, and no additional notice of such adjourned session shall be required.

2.11 Proxy. Any member entitled to vote may do so by written proxy duly executed by the member setting forth the meeting at which the proxy is valid. To be valid, a proxy must be filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies must be dated and may be revoked only by written notice delivered to the Association. Presence in person at the meeting for which a proxy is given or transfer of ownership of a lot shall automatically revoke the proxy.

2.12 Consents. Any action which may be taken by a vote of the members may also be taken by written consent signed by all members.

2.13 Rules of the Meeting. The Board may prescribe reasonable rules for the conduct of all meetings of the Board and members.

### **ARTICLE III** **Board of Directors**

3.1 Composition. The affairs of the Association shall be governed by the Board. The Board shall be composed of at least three (3) but no more than eight (8) homeowners. All directors shall be members or spouses of such members; provided, however, that no member and his or her spouse may serve on the Board at the same time. The precise number of directors shall be fixed from time to time by resolution of the Board.

3.2 Term of Office. The directors shall be elected as provided in Section 3.7 of this Article. Each director, except in case of death, resignation, retirement, disqualification or removal, shall serve until the next succeeding annual meeting and thereafter until his successor shall have been elected and qualified.

3.3 Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the directors may be removed with or without cause by a majority vote of the members of the Association 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 ten (10) days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting.

3.4 Vacancies. Vacancies in the Board caused by any reason, including the addition of a new director or directors but 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 for the remainder of the term of the director being replaced. Said director shall serve until a successor shall be elected at the next annual meeting of the Association to fill the unexpired portion of the term.

**3.5 Compensation.** Directors shall not be compensated unless and to the extent the members of the Association authorize at any meeting duly called for that purpose.

**3.6 Nomination.** Nomination for election to the Board shall be made by a nominating committee which shall consist of three (3) members appointed by the President to serve from the close of one annual meeting to the close of the succeeding annual meeting. Such appointment shall be announced at the annual meeting. The nominating committee may nominate any number of qualified individuals, but no less than the number of directors to be elected. The nominations shall be made at least twenty-one (21) days prior to the annual meeting and a brief statement about the qualifications of each individual so nominated shall be included with the notice of annual meeting. Nominations shall also be allowed from the floor at the meeting. Failure to comply with the provisions hereof shall in no way invalidate the election of directors so nominated.

**3.7 Elections.** Directors to be elected by the members of the Association shall be elected, from among those nominated by a majority vote at the annual meeting.

**3.8 Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined from time to time by the Board, but such meetings shall be held at least once every four (4) months. The Board shall meet within ten (10) days after each annual meeting.

**3.9 Special Meetings.** Special meetings of the Board may be called by the President on three (3) days notice to each director given by mail, in person or by telephone, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the President, Secretary or Treasurer in like manner and on seven (7) days notice on the written request of at least two (2) directors.

**3.10 Waiver of Notice.** Any director may, in writing, waive notice of any meeting of the Board, either before or after such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board 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 meeting of the Board, no notice shall be required and any business may be transacted at such meeting.



3.11 Quorum. A quorum of directors shall be deemed present throughout any Board meeting where at least seven (7) days notice was given or at which at least three (3) of the directors (one of which must be the President or Vice President are present at the beginning of such meeting.

3.12 Conduct of Meetings. The President shall preside over all meetings of the Board and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings. Roberts Rules of Order (latest edition) shall govern the conduct of the meetings of the Board when not in conflict with these By-Laws.

3.13 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 Board.

3.14 Powers and Duties. The Board shall exercise for the Association all powers, duties and authority vested therein by the Declaration or these By-Laws, except for such powers, duties and authority reserved thereby to the members of the Association. The Board shall have the following powers and duties:

- (a) to elect and remove the officers of the Association as hereinafter provided;
- (b) to administer the affairs of the Association;
- (c) to engage the services of an agent (hereinafter sometimes referred to as the "Managing Agent"), to maintain, repair, replace, administer and operate the Common Area (as defined in the Declaration) or any part thereof, upon such terms and for such compensation as the Board may approve, including a Managing Agent which is affiliated with one or more directors;
- (d) to administer, manage and operate the Common Area and to formulate policies therefor;
- (e) to adopt rules and regulations, with written notice thereof to all members of the Association, governing the details of the administration, management, operation and use of the Common Area and any recreational facilities located thereon, and to amend such rules and regulations from time to time;
- (f) to provide for the operation, care, upkeep, maintenance, repair, replacement and improvement of the Common Area, any recreational facilities located thereon and those portions of the



Spivey Glen Subdivision for which the Association is responsible, and to approve payment vouchers or to delegate such approval to the officers of the Association or the Managing Agent;

- (g) to have access to each lot from time to time as may be necessary for the maintenance, repair, replacement and improvement of the Common Area therein or accessible therefrom and those portions of the lots for which the Association is responsible, or for making emergency repairs therein necessary to prevent damage to the Common Area or to one or more other lots;
- (h) to obtain adequate and appropriate kinds of insurance;
- (I) to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Common Area, any recreational facilities located thereon and those portions of Spivey Glen Subdivision for which the Association is responsible, and to delegate any such powers to a Managing Agent (and any employees or agents of a Managing Agent);
- (j) to appoint committees and to delegate to such committees the Board's authority to carry out certain duties of the Board;
- (k) to determine the fiscal year of the Association and to change said fiscal year from time to time as the Board deems advisable;
- (l) to estimate the amount of, prepare, adopt and distribute the budget for the Association not less frequently than annually, to provide the manner of assessing, levying on and collecting from the members the annual and special assessments, dues and fees, and to levy fines and individual assessments against one or more occupants or members in accordance with the provision of the By-Laws or the Declaration;
- (m) to keep detailed, accurate records of the receipts, if any, and expenditures affecting the use and operation of the Common Area and any recreational facilities located thereon;
- (n) to bid and purchase, for and on behalf of the Association, any lot, or interest therein, at a sale pursuant to a mortgage foreclosure, a foreclosure of the lien for annual assessments, special assessments, individual assessments, or any, or an order or direction of a court, or at any other involuntary sale, upon the consent or approval of members owning not less than 67% of the lots, provided that such consent shall set forth a maximum price



that the Board or its duly authorized agent may bid and pay for such lot or interest therein;

- (o) to make such mortgage arrangements and special assessments proportionately among the respective members, and other such financing arrangements, as the Board may deem desirable, in order to close and consummate the purchase or lease of a lot, or interest therein, by the Association; provided, however, that no such financing arrangement shall be secured by an encumbrance on any interest in the Property other than the lot, or interest therein, to be purchased or leased;
- (p) to act in a representative capacity in relation to matters involving the Common Area or more than one lot, on behalf of the members of the Association, as their interests may appear;
- (q) to enforce by legal means the provisions of the Declaration or these By-Laws with respect to the Property;
- (r) to renew, extend or compromise indebtedness owned to or by the Association;
- (s) at its discretion, to authorize members and occupants to use the Common Area and any recreational facilities located thereon for private parties and gatherings and, at its discretion, to impose reasonable charges for such private use;
- (t) unless otherwise provided herein or in the Declaration, to comply with the instructions of a majority of the members as expressed in a resolution duly adopted at any annual or special meeting of the Association; and
- (u) in addition to, and in furtherance of, the powers referred to in these By-Laws, the Association shall (i) have all the powers permitted to be exercised by a nonprofit corporation under the Georgia Nonprofit Corporation Code, as now in force or hereafter amended, and (ii) have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Association is organized, and to do every other act not inconsistent with law which may be appropriate to promote and attain the purposes set forth in the Declaration and By-Laws.

**3.15 Nondelegation.** Nothing in this Article or elsewhere in these By-Laws shall be considered to grant to the Board, the Association or to the officers of the Association any powers or duties which, by law, have been delegated to the members.

**ARTICLE IV**  
**Officers**

4.1 Designation. At each regular annual meeting of the Board, after the members elect the Board, the directors present at said meeting shall elect the following officers of the Association by a majority vote:

- (a) a President, who shall be a director and who shall preside over the meetings of the Board and of the members, and who shall be the Chief Executive Officer of the Association;
- (b) a Secretary, who shall keep the minutes of all meetings of the Board and of the members, and shall be designated as the officer to mail and receive all notices served by or upon the Board or the Association and execute amendments to the Declaration and these By-Laws, and shall, in general, perform all the duties incident to the office of Secretary;
- (c) a Treasurer, who shall be responsible for financial records and books of account and the manner in which such records and books are kept and reported; provided, however, that the duties of the Treasurer may be performed by an employee or independent contractor retained by the Board; and
- (d) such additional officers as the Board shall see fit to elect.

Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2 Powers. The respective officers shall have the general powers usually vested in such officers; provided that the Board may delegate any specific powers to any other officer or impose such limitations or restrictions upon the powers of any officer as the Board may see fit.

4.3 Terms of Office. Each officer shall hold office for the term of one year and until his successor shall have been appointed or elected and qualified.

4.4 Vacancies. Vacancies in any office shall be filled by the Board by a majority vote at a special meeting of said Board, as the case may be. Any officer so elected shall hold office for a term equal to the unexpired term of the officer replaced.



4.5 Compensation. The officers shall receive no compensation for their services as officers, unless expressly provided for in a resolution duly adopted by the members at a meeting called for that purpose.

4.6 Removal. Any officer elected by the Board may be removed from office, either with or without cause, by a majority vote of the Board.

## **ARTICLE V** **Contractual Powers**

No contract or other transaction between the Association and one or more of its directors or between the Association and any corporation, firm or association in which one or more of the directors are also directors, or are financially interested, is void or voidable because such director or directors are present at the meeting of the Board or a committee thereof which authorizes or approves the contract or transaction or because the vote or votes of such director or directors are counted toward such authorization or approval, if the circumstances specified in either of the following subparagraphs exists:

- (a) the fact of the common directorship or financial interest is disclosed or known to the Board or committee and noted in the minutes thereof, and the Board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient for the purpose, without counting the vote or votes of such director or directors; or
- (b) the contract or transaction is just and reasonable as to the Association at the time it is authorized or approved.

Such common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof which authorizes, approves or ratifies such a contract or transaction. They may not however vote on a matter that may be construed as a conflict of interest. The matter will be subject to a majority vote by remaining directors present.

## **ARTICLE VI** **Indemnification**

6.1 General. The Association shall indemnify and hold harmless each of its directors and officers, each member of any committee appointed pursuant to the By-Laws of the Association, and the Board against all contractual and other liabilities to others arising out of contracts made by, or other acts of, such directors, Board, officers or committee members, on behalf of the members, or arising out of their status as directors, Board, officers or committee members, unless any such contract or act shall have been made



fraudulently or with gross negligence or criminal intent. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including but not limited to counsel fees, amounts of judgments paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such director, officer, Board or committee member or Developer may be involved by virtue of such persons being or having been such director, officer, Board or committee member; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such director, officer, Board or committee member, or (b) any matter settled or compromised, unless in the opinion of independent council selected by or in a manner determined by the Board, there is not a reasonable ground for such persons being adjudged liable for gross negligence or fraud in the performance of his duties as such director, officer, Board or committee member.

6.2 Success on Merits. To the extent that the Board, a director, officer of the Association or member of any committee appointed pursuant to these By-Laws has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Paragraph 6.1, above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

6.3 Expenses in Advance of Disposition. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized in the specific case upon receipt of an undertaking by or on behalf of the director, officer, Board or committee member to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in the Article.

6.4 Non-Exclusive Remedy. The indemnification provided by this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Association or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. Such right to indemnification shall continue as to a person or entity who has ceased to be a director, an officer of the Association or a member of such committee, and shall inure to the benefit of the heirs, executors, administrators, personal representatives, successors and assigns of such person or entity.



**ARTICLE VII**  
**Use Restrictions and Rule Making**

7.1 Authority and Enforcement. The Property shall be used only for those uses and purposes set out in the Declaration. The Board shall have the authority to make and to enforce reasonable rules and regulations governing the conduct, use and enjoyment of lots and the Common Area and recreational facilities located thereon, provided that copies of all such rules and regulations be furnished to all members at least thirty (30) days prior to the effective date of such rules and regulations. The Board shall have the power to impose reasonable fines which shall constitute an equitable charge and a continuing lien upon a member's lot and to suspend a member's right to vote and/or any member's right to use the recreational facilities located on the Common Area for violation of any duty imposed under the Declaration or these By-Laws or any rules and regulations duly adopted hereunder.

7.2 Procedure. Except with respect to the failure of any member to pay assessments, dues or fees, the Board shall not impose a fine, suspend a members' right to vote or infringe upon any other rights of a member or other occupant for violation of any rules or regulations of the Association unless and until the following procedure is followed:

- (a) Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying: (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation of the same rule or regulation may result in the imposition of sanctions after notice and hearing, if the violation is not a continuing one.
- (b) Notice. Within six (6) months of such of demand , if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule or regulation is subsequently violated, the Board may serve the violator with written notice of a hearing to be held by the Board in executive session. The notice shall contain: (i) the nature of the alleged violation; (ii) the time and place of the hearing, which time shall be no less than ten (10) days from the giving of the notice; (iii) an invitation to attend the hearing and produce any statement, evidence and witnesses on his or her behalf; and (iv) the proposed sanction to be imposed.
- (c) Hearing. The hearing shall be held in executive session pursuant to the notice affording the violator a reasonable opportunity



to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer, director or other individual who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

## **ARTICLE VIII** **Amendments**

These By-Laws may be amended, modified or rescinded, from time to time, in the following manner:

8.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

8.2 Adoption. The Board shall have the power to alter, amend or repeal any of these By-Laws or to adopt new by-laws by the affirmative vote of a majority of all of the directors, but any by-laws adopted by the Board may be altered, amended or repealed and new by-laws adopted by the affirmative vote of at least two-thirds (2/3) of the members of the Association. The members may prescribe in any by-law adopted by them that such by-law shall not be altered, amended or repealed by the Board.

## **ARTICLE IX** **Miscellaneous**

9.1 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 delivered personally or if sent by United States mail, first class postage prepaid;

- (a) If to a member of the Association, at the address which such member has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the lot of such member; or
- (b) If to the Association, the Board or the Managing Agent, at the principal office of the Association or the Managing Agent, if any, or at



such other address as shall be designated by the notice in writing to the members pursuant to this Paragraph.

9.2 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.

9.3 Captions. 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.

9.4 Gender and Grammar. 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.

9.5 Fiscal Year. The fiscal year of The Association shall be the calendar year.

9.6 Audit. An audit of the accounts of the Association shall be made annually as a common expense by a public accountant, and a copy of the report shall be furnished to each member who requests a copy in writing. Upon written request of any holder of a first mortgage, such holder shall be entitled to receive a copy of the annual audited financial statement within ninety (90) days after the end of each fiscal year.

9.7 Mortgagees' Notice. A first mortgagee, upon written request, will be entitled to written notification from the Association of any default by a member, who is the mortgagee's mortgagor, in the performance of his obligations under the By-Laws or the Declaration which is not cured within thirty (30) days.

9.8 Conflicts. In the event of conflicts between the Declaration, Articles of Incorporation and these By-laws, the By-Laws, Declaration and Articles of Incorporation shall control, in that order.

9.9 Conflicts with Original Declaration. The Lots more particularly described in the Declaration are further encumbered by and subject to certain "Original Covenants" (as defined in the Declaration). It is intended that Lots shall be subject to the Original Covenants and the Declaration and that, to the fullest extent possible, each and every provision of the Original Covenants and the Declaration, the Articles of Incorporation and these By-Laws shall be interpreted so as to be given its full effect. In the event of a conflict between or among any provision or provisions of the Original Covenants and any provision or provisions of the Declaration, the Articles of Incorporation or these By-Laws, the provision or provisions of the Original Covenants shall control.