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BYLAWS 1/14

EXHIBIT "D"  
TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF

**OLD IVY**

**BY-LAWS**

These By-Laws of OLD IVY HOMEOWNER'S ASSOCIATION, INC. are promulgated for the purpose of governing OLD IVY HOMEOWNER'S ASSOCIATION, INC., a not-for-profit corporation, organized under the provisions of the Alabama Nonprofit Corporation Act, Section 10-3A-1 et seq., as amended, as an association of members of OLD IVY, A SUBDIVISION ("Subdivision"). The provision of these By-Laws are applicable to the Property of the Subdivision.

As used herein, the term "Association" shall be the equivalent of "Association" as defined in the Declaration of Covenants, Conditions and Restrictions of OLD IVY (herein "Declaration"), and all words as used herein shall have the same definitions as attributed to them in said Declaration. The provisions of these By-Laws shall automatically become applicable to Property which may be added to the subdivision pursuant to the Declaration upon the recording of an amendment to the Declaration submitting such additional Property to its provisions.

All present and future owners, mortgagees, lessees and occupants of the Lots in the Subdivision and their employees, and any other persons who may use the facilities of the Property in any manner are subject to these By-Laws, the Declaration and all covenants, agreements, restrictions and easements of record ("title conditions"). The acceptance of a deed or the occupancy of a home constructed on a Lot shall constitute an agreement that these By-Laws and the title conditions, as they may be hereafter amended, are accepted and ratified, and will be complied with.

The address of the Office of the Association shall be 1560 Montgomery Highway, Suite 215, Hoover, Alabama 35216.

**ARTICLE I - MEMBERSHIP AND MEMBERSHIP MEETINGS**

SECTION 1.01. QUALIFICATIONS. The members of the Association shall consist of all of the record owners of Lots in the Subdivision.

SECTION 1.02. CHANGE OF MEMBERSHIP. Change of membership in the Association shall be established by the recording in the public records of Shelby County, Alabama, of a deed or other instrument establishing a record title to a Lot in the Subdivision, and the delivery to the Secretary of the Association of a certified copy of such instrument, thereby becoming a Member of the Association. The membership of the prior owner shall be thereby terminated.

SECTION 1.03. VOTING RIGHTS. The vote for a Lot shall be cast by the owner thereof, or by his proxy designated in the manner hereinafter provided. The number of votes to which an owner is entitled is provided in the Declaration.

SECTION 1.04. DESIGNATION OF VOTING REPRESENTATIVE AND ELIGIBILITY TO VOTE. In the event a Lot is owned by one (1) person, his right to vote shall be established by the record title to his Lot. If a Lot is owned by more than one (1) person, the person entitled to cast the vote for the Lot shall be designated by a certificate signed by all of the record owners of the Lot and filed with the Secretary of the Association. If a Lot is owned by a corporation, partnership, trust or other legal entity, the officer or agent thereof entitled to cast the vote for the Lot shall be designated by a certificate of appointment signed by the duly authorized representative of the Board of Directors or other governing body of such entity and filed with the Secretary of the Association. If such a certificate is not filed with the Secretary of the Association for a Lot owned by more than one (1) person, or by a corporation, partnership, trust or other legal entity, the membership, or vote of the Lot Owner concerned shall not be considered in determining the requirement for a quorum nor for any purpose requiring the approval of the person entitled to cast the vote for the Lot. Such certificate shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Lot concerned is effected. A certificate designating the person entitled to cast the vote of a Lot may be revoked by any owner thereof. In the event any Lot Owner shall be in default of any Assessments against his Lot and shall fail to cure such default at least two (2) days prior to the date fixed for the meeting, the membership or vote of the Lot Owner concerned shall not be considered in determining the requirement for a quorum nor for any proposal requiring the approval of the person entitled to cast the vote for the Lot.

SECTION 1.05 ANNUAL MEETINGS. The Declarant shall call the first annual Homeowner's meeting not later than ninety (90) days after the date by which the last lot in the last phase of real property subject to the Declaration of Covenants, Conditions and Restrictions for OLD IVY has been conveyed by Declarant. Until such first annual meeting, it shall be Declarant's obligation and expense to maintain any common areas to be conveyed to the Association, or to be granted to such Association which will be created no later than immediately prior to the first annual meeting. Thereafter, annual meetings shall be held within thirty (30) days of the anniversary of such date each succeeding year at a day and time determined by the Board of Directors. The annual meeting shall be held for the purpose of electing Directors and of transacting any other business authorized to be transacted by the Members.

SECTION 1.06. SPECIAL MEETINGS. Special meetings of the Members may be called by a majority of the Board of Directors or the President for any purpose or purposes, and shall be called by the Secretary at the request, in writing, of one-third (1/3) of the Members. Business transacted at all special meetings shall be confined to the object(s) stated in the notice thereof.

SECTION 1.07. NOTICE OF MEETINGS. Notice of all Members' meetings stating the date, time, place and purpose for which the meeting is called shall be mailed to each Member not less than ten (10) nor more than sixty (60) days prior to the date of such meeting. The mailing of a notice in the manner provided in these By-Laws shall be considered notice served. Notice of meetings may be waived either before or after meetings.

SECTION 1.08 VOTING IN PERSON OR BY PROXY. A Member may vote in person or by proxy executed in writing by the Member or his duly authorized attorney-in-fact. No proxy shall be valid except for the particular meeting designated therein, and no proxy shall be honored unless filed with the Secretary of the Association before the appointed time of the meeting. No person other than the Declarant shall act as proxy for more than one (1) Lot in addition to his own Lot.

SECTION 1.09. QUORUM. Lot Owners holding more than fifty (50%) percent of the votes entitled to be cast represented in person or by proxy shall constitute a quorum at all meetings of the Lot Owners.

SECTION 1.10. VOTE REQUIRED TO TRANSACT BUSINESS. When a quorum is present at any meeting, the vote of a majority of the votes cast shall be necessary for the adoption of any matter voted upon by Lot Owners, unless the question is one upon which, by express provision of the Act, the Declaration, the Articles of Incorporation, or these By-Laws, a different number is required, in which case the express provision shall govern and control the decision in question.

SECTION 1.11. ADJOURNED MEETINGS. If any meeting of the Lot Owners cannot be organized because a quorum has not attended, the Lot Owners who are present, either in person or by proxy, may adjourn the meeting for at least ten (10) days, and adequate notice of the new date shall be given as described in Section 1.07 of these By-Laws. The Lot Owners present and entitled to vote at such reconvened meeting shall constitute a quorum, regardless of number.

SECTION 1.12. THE ORDER OF BUSINESS. The order of business at annual Members' meetings and, as far as practical, at all other Members' meetings shall be:

- (a) Call to order;
- (b) Calling of the roll and certifying of proxies;
- (c) Proof of notice of meeting or waiver of notice;
- (d) Reading and disposal of any unapproved minutes;
- (e) Reports of officers;
- (f) Reports of committees;
- (g) Election of Directors;
- (h) Unfinished business;
- (i) New business;

(j) Adjournment.

SECTION 1.13. PLACE OF MEETING. Meetings of the Lot Owners shall be held at such place convenient to the Lot Owners as may be designated by the Board of Directors.

## ARTICLE II - BOARD OF DIRECTORS

### SECTION 2.01. NUMBER AND TERM.

(a) The first Board of Directors shall consist of three (3) members who shall be designated by the Declarant, or its Assignee.

(b) At the first annual meeting of the Lot Owners of the Association, five (5) persons shall be elected to serve as the Board of Directors, and the term of office of those elected shall be as follows: the term of the office of the two (2) persons receiving the highest number of votes shall be fixed at three (3) years; the term of office of the two (2) persons receiving the next highest number of votes shall be fixed at two (2) years; the term of office of the one (1) person receiving the least number of votes shall be fixed at (1) year. The election shall be by ballot and by a plurality of votes cast. Each Lot Owner voting must cast his vote (or votes) for as many nominees as there are vacancies to be filled, but there shall be no cumulative voting. Notwithstanding the foregoing, the right of the Lot Owners to elect Directors shall be subject to the right reserved to the Declarant under subparagraph (c) of this Section 2.01 to designate one Director. However, notwithstanding any provisions of these By-Laws, the Articles, or the Declaration, at the first annual meeting of the Lot Owners of the Association, at least one Member and not less than twenty-five (25%) percent of the Members of the Board of Directors must be elected by Lot Owners other than Declarant. Not later than ninety (90) days after conveyance of fifty (50%) percent of the Lots which may be created to Lot Owners other than Declarant, not less than thirty-three and one-third (33 1/3%) percent of the Members of the Board of Directors must be elected by Lot Owners other than Declarant. Not later than the termination of any period of Declarant control, the Lot Owners shall elect a Board of Directors of at least three (3) Members, a majority of whom must be Lot Owners other than Declarant.

(c) So long as the Declarant owns one or more Lots, the Declarant shall be entitled to designate one member of the Board of Directors. The Declarant may remove the Director so designated by it from time to time and replace him with another Director of its own choosing; provided, however, that it shall file with the secretary a designation of the member of the Board designated to serve pursuant to the provisions of this Section 2.01. In the event the Declarant exercises the right herein provided to designate one Director, then the total number of Directors shall consist of five (5) elected Directors and the Director appointed by the Declarant. Any period of Declarant control of the Association or the Board of Directors shall terminate no later than the earliest of (a) sixty [60] days after conveyance of seventy-five [75%] of the Lots which may be created to Lot Owners other than Declarant, or its assignee (b) two [2] years after Declarant has ceased to offer Lots for sale in the ordinary course of business; or (c) two [2] years after any development right to add new Lots was last exercised.

SECTION 2.02. REMOVAL. Any Director other than the one designated by Declarant may be removed, either with or without cause, by an affirmative vote of sixty-six and two-thirds (66 2/3%) percent of the votes eligible to be cast by Lot Owners in person or by proxy at a meeting of Lot Owners duly held for such purpose.

SECTION 2.03. VACANCY AND REPLACEMENT. If the office of any Director or Directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining Directors, though less than a quorum, at a Special Meeting of Directors duly called for this purpose, shall choose a successor, who shall hold office for the un-expired term in respect to which such vacancy occurred.

SECTION 2.04. REGULAR MEETINGS. The Annual Meeting of the Board of Directors shall be held immediately after the adjournment of the Annual Members' meeting, provided a quorum shall be present, or as soon thereafter as may be practicable. The Directors may, by resolution duly adopted, establish regular monthly, quarter-annual or semi-annual meetings. If such resolution is adopted, no notice of such regular meetings of the Board of Directors shall be required.

SECTION 2.05. SPECIAL MEETINGS. Special meetings of the Board of Directors for any purpose may be called by the President or upon the written request of any two (2) Directors upon at least five (5) days notice to each Director.

SECTION 2.06. WAIVER OF NOTICE. Any member of the Board of Directors may at any time waive notice of any meeting of the Board of Directors in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Directors at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all the members of the Board of Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

SECTION 2.07. QUORUM AND TRANSACTION OF BUSINESS. At all meetings of the Board, a majority of the Directors shall be necessary and sufficient to constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by the Act, the Declaration or by these By-Laws. If a quorum shall not be present in any meeting of Directors, the Directors present may adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum shall be present.

SECTION 2.08 POWERS AND DUTIES. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Subdivision and may do all such acts and things except as by law or by the Declaration or by these By-Laws may not be delegated to the Board of Directors by the Lot Owners. The Board of Directors shall have the power to enforce obligations of the Lot Owners and to do anything and everything necessary and proper for the sound management of the Subdivision. The Board shall have the power to levy fines against the Lot Owners for violations of reasonable rules and regulations established by it to govern the conduct of the Lot Owners. No fine may be levied for more than Ten (\$10.00) Dollars for any one violation but for each day a violation continues after written notice it shall be considered a separate violation.

Collection of fines may be enforced against the Lot Owner or Lot Owners involved as if the fines were Common Expenses owed by the particular Lot Owner or Lot Owners. In addition to and not in limitation of the power of the Board of Directors to levy fines against the Lot Owners for violations of its rules and regulations by a Lot Owner, the Board of Directors shall have the power to seek injunctive relief to require such Lot Owner to adhere to the rules and regulations. All expenses in connection with any proceedings for injunctive relief, including the attorney's fees of the Board of Directors, shall be charged to the particular Lot Owner or Lot Owners involved and collection of same may be enforced against the Lot Owner or Lot Owners involved as if same were Common Expenses owed by the particular Lot Owner or Lot Owners.

SECTION 2.09. COMPENSATION. No Director shall be compensated for his services as such. This provision shall not prohibit a Director from receiving compensation as an employee of the Association, nor preclude the contracting with a Director or any firm or corporation in which a Director may own an interest, for the management of the Subdivision for which such Director or Directors may receive compensation.

SECTION 2.10. MANAGING AGENT. The Board of Directors shall be authorized to employ the services of a manager or managing agent, who may either be a Director, officer, or employee of the Association, or a firm or corporation in which a Director owns an interest, or any other firm, to manage the Property and the affairs of the Subdivision under the supervision of the Board of Directors. The compensation paid to any such managing agent shall be in the amount established from time to time by the Board of Directors.

While in control of the project, the Declarant cannot directly or indirectly bind the Association unless the management contract includes a Right of Termination Without Cause that the Association can exercise at any time after the transfer of control. This Right of Termination shall not require the payment of any penalty or an advance notice of more than 90 days.

SECTION 2.11. INSURANCE. The Board of Directors shall obtain to the extent reasonably available insurance for the Property which shall include the following:

(1) property insurance insuring against all risks of direct physical loss commonly insured against insuring the Common Elements and Buildings containing the Lots and covering the interests of the Subdivision, the Board of Directors and all Lot Owners and their mortgagees, as their interests may appear, in the amount determined by the Board of Directors, but in no event less than 100% of the current replacement cost with a maximum deductible amount of Ten Thousand (\$10,000.00) Dollars or 1% of the policy face amount, whichever is less, and payable to the Association as Trustee for each of the Lot Owners and their mortgagees, in accordance with the requirements set forth in the declaration;

(2) public liability insurance in such amounts and with such coverage as the Board of Directors may determine, but in no event should such coverage be less than One Million (\$1,000,000.00) Dollars for injury and property damage for any single occurrence; and

(3) fidelity bond coverage in an amount (based upon the estimated annual budget) not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond; provided, however, in no event may the aggregate amount of such funds be less than a sum equal to three months' aggregate assessments on all Lots plus reserve funds; and

(4) such other insurance as the Board of Directors determine.

The premiums shall be Common Expenses. All such policies shall provide that adjustment of loss shall be made by the Board of Directors and that the net proceeds thereof shall be payable to the Board of Directors. The shares and disposition of the proceeds of insurance shall be as set forth in the Declaration. All policies of physical damage insurance shall contain waivers of subrogation and waivers of any reduction of pro rata liability of the insurer as a result of any insurance carried by Lot Owners or of invalidity arising from any acts of the insured or any Lot Owners, and shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days prior written notice to all of the insureds, including all mortgagees of Lots.

SECTION 2.12. LIABILITY OF THE BOARD OF DIRECTORS. The members of the Board of Directors shall not be liable to the Lot Owner for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Subdivision. The Lot Owners shall indemnify and hold harmless each of the members of the Board of Directors on behalf of the Subdivision unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of these By-Laws. It is understood and permissible for the Board of Directors, whether stockholders of or employed by the Declarant, to contract with the Declarant or affiliated firms or corporations, without fear of being charged with self-dealing. It is also intended that the liability of any Lot Owner arising out of any contract made by the Board of Directors or out of the aforesaid indemnity in favor of the members of the Board of Directors shall be limited to such proportion of the total liability thereunder as his interest in the Common Elements bears to the interests of all the Lot Owners in the Common Elements.

### ARTICLE III - OFFICERS

SECTION 3.01. ELECTION. At each annual Meeting of the Board of Directors, the following officers of the Association shall be elected:

(a) A President, who shall be a Director and who shall preside over the meetings of the Board of Directors and of the Members, and who shall be the chief executive officer of the Association.

(b) A Vice-President, who shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. If the Board so determines, there may be more than one vice-president.

(c) A Secretary, who shall be responsible for the minutes of all meetings of the Board of Directors and of the Members, and the minute book wherein resolutions enacted at such meetings shall be recorded, and who shall, in general, perform all the duties incident to the office of secretary.

(d) A Treasurer, who shall supervise the financial records and books of account.

(e) Such additional officers as the Board of Directors shall deem necessary.

SECTION 3.02. POWERS. The respective officers shall have the general powers usually vested in such officer of a not-for-profit corporation; provided that the Board of Directors may delegate any specific powers to any other officer or impose such limitations or restrictions upon the powers of any officer as the Board of Directors may see fit.

SECTION 3.03. TERM. Each officer shall hold office for the term of one (1) year and until his successor shall have been elected and qualified.

SECTION 3.04. REMOVAL. Any officer elected or appointed by the Board may be removed, with or without cause, by the majority vote of the whole Board of Directors at any regular meeting of the Board or at a special meeting of the Board called for such purpose.

SECTION 3.05. RESIGNATIONS. Any officer may resign his office at any time, such resignation to be made in writing, and to take effect from the time of its receipt by the Association, unless some time is fixed in the resignation, and then from that date. The acceptance of a resignation shall not be required to make it effective.

SECTION 3.06. VACANCIES. If the office of the President, Vice-President, Secretary, Treasurer, or one or more becomes vacant by reason of death, resignation, disqualification or otherwise, the Directors by a majority vote of the whole Board of Directors may choose a successor or successors who shall hold office for the un-expired term.

SECTION 3.07. COMPENSATION. The officers shall receive no compensation for their services.

#### **ARTICLE IV - RESPONSIBILITY FOR MAINTENANCE AND REPAIRS**

The responsibility for maintenance and repair of the Property shall be as set forth in the Declaration.

#### **ARTICLE V - ASSESSMENTS**

SECTION 5.01. ACCOUNTING RECORDS. The Board of Directors shall provide for the maintenance of accounting records for the Association, such records to be maintained in accordance with generally accepted accounting principles, and such records shall include all records provided for under Alabama law.

SECTION 5.02. BUDGET. The Board of Directors shall cause to be prepared an estimated annual budget for each fiscal year of the Association. Such budget shall take into account the estimated Common Expenses, and cash requirements for the year, including salaries, wages, payroll taxes, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power and other expenses. The Common Expenses shall be those expenses designated by the Board of Directors pursuant to these By-Laws and the Declaration. The Common Expenses may also include such amounts as may be required for the purchase or lease by the Board of Directors, on behalf of the Association, of any Lot which is sold at a foreclosure or other judicial sale. The annual budget shall provide for an adequate reserve fund for maintenance, repairs and replacement of those Common Elements that must be replaced on a periodic basis. To the extent that the assessments and other cash income collected from the Lot Owner during the preceding year shall be more or less than the expenditures for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account. Within 30 days after adoption of any proposed budget for the Subdivision, the Board shall provide a copy of the budget to all the Lot Owners and shall set a date for a meeting of the Lot Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after delivery or mailing of the budget to the Lot Owners. Unless at that meeting a majority of all the Lot Owners present in person or by proxy reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board.

SECTION 5.03. ASSESSMENTS. On or before the first day of the first month and of each succeeding month of the year covered by the annual budget, each Lot Owner shall pay, as his respective monthly Assessment for the Common Expenses, one-twelfth (1/12) of his share of the Common Expenses for such year as shown by the annual budget. The Board of Directors, at their option, may require the payment of Assessments on an annual basis. The Assessment of the Common Expenses shall be as set forth in the Declaration. The failure to send or to receive monthly statements shall not relieve any Lot Owner of his obligation to pay his monthly Assessments on or before the first day of each month. Each Lot Owner shall pay his monthly Assessment on or before the first day of each month to the manager or managing agent or as may be otherwise directed by the Board. No Lot Owner shall be relieved of his obligation to pay his Assessment by abandoning or not using his Lot or the Common Elements. For the purpose of this Assessment, the Declarant is the Lot Owner of all unsold Lots. All unsold Lots shall be allocated full Assessments no later than three hundred sixty (360) days after the first Lot is sold.

SECTION 5.04. PRORATION OF ASSESSMENTS. For the first fiscal year, the annual budget shall be as approved by the first Board of Directors. If such first year, or any succeeding year, shall be less than a full year, then the monthly Assessment for such Lot Owner for the Common Expenses shall be proportional to the number of months and days in such period covered by such budget. Commencing with the date of closing of his Lot by each Lot Owner, he shall pay his Assessment for the current month or fraction of a month.

SECTION 5.05. ANNUAL STATEMENTS. Within ninety (90) days after the end of each year covered by annual budget, or as soon thereafter as shall be practicable, the Board of Directors shall cause to be furnished to each Lot Owner a statement for such year so ended, showing a summary of the receipts and expenditures and such other information as the Board may deem desirable. Any holder of a first mortgage on a Lot shall be entitled, upon written request, to obtain a copy of the financial statement for the immediately preceding fiscal year.

SECTION 5.06. ACCOUNTS. The Board of Directors shall cause to be kept a separate account record for each Lot Owner showing the Assessment charged to and paid by such Lot Owner, and the status of his account from time to time. Upon fifteen (15) days notice to the Board of Directors, any Lot Owner shall be furnished a statement of his account setting forth the amount of any unpaid Assessments or other charges due and owing from such Lot Owner.

SECTION 5.07. SUPPLEMENTAL BUDGET AND ASSESSMENTS. If during the course of any year, it shall appear to the Board of Directors that the monthly Assessments, determined in accordance with the estimated annual budget for such year, are insufficient or inadequate to cover the estimated Common Expenses for the remainder of such year, then the Board shall prepare a supplemental budget covering the estimated deficiency for the remainder of such year, copies of which supplemental budget shall be furnished to each Lot Owner for ratification in the same manner as set forth in Section 5.02, and thereupon a supplemental Assessment shall be made to each Lot Owner for his proportionate share of such supplemental budget.

SECTION 5.08. PAYMENT OF ASSESSMENTS. It shall be the duty of every Lot Owner to pay his proportionate share of Common Expenses assessed in the manner herein provided. If any Lot Owner shall fail or refuse to make any such payments when due, the Board of Directors shall have the authority to exercise and enforce any and all rights and remedies as provided for in the Act, the Declaration or these By-Laws, or otherwise available at law or in equity, for the collection of all unpaid assessments.

SECTION 5.09. RECORDS. The Board of Directors shall cause to be kept detailed and accurate records in chronological order of the receipts and expenditures affecting the Common Elements, specifying and itemizing the expenses incurred. Such records and financial statements together with current copies of the Declaration and By-Laws concerning the Subdivision, and vouchers authorizing the payments of such expenses, shall be available upon reasonable prior notice for examination by the Lot Owners during normal business hours at the office of the Association.

SECTION 5.10. RESERVE FUND. To insure that the Association will have the funds to meet unforeseen expenditures or to purchase any additional equipment or services, the Declarant will establish a working capital fund in an amount equal to one (1) month assessment for common expenses for each Lot. Amounts paid into this fund shall not be considered an advance payment of the regular monthly assessment. Each Lot's share of the working capital fund shall be collected from the purchaser at the time the sale of the Lot is closed or when control of the project is transferred to the Association, whichever is earlier. When control of the project is transferred to the Association, the working capital fund will be transferred to the Association for deposit to a segregated reserve fund.

While in control of the Association, the Declarant cannot use any of the working capital funds to defray its expenses, reserve contributions, or construction costs or to make up any budget deficits. After transfer of control to the Association, the Declarant shall make the required payment to the reserve fund for each unsold Lot. However, when unsold Lots are sold, the Declarant may use funds collected from the purchaser at closing to reimburse itself for funds it paid the Association for each unsold Lot's share of the working capital fund.

## ARTICLE VI - DEFAULT

SECTION 6.01. DEFAULT IN PAYMENTS. In the event a Lot Owner does not pay any sums, charges or Assessments required to be paid to the Association within thirty (30) days from the due date, the Association, acting through its Board of Directors, may foreclose the lien encumbering the Lot created by non-payment of the required monies in the same fashion as mortgage liens with a power of sale are foreclosed. The Association shall be entitled to the appointment of a Receiver if it so requests. The Association shall have the right to bid on the Lot at a foreclosure sale and to acquire, hold, mortgage and convey the same. In lieu of foreclosing its lien, the Association may, through its Board of Directors, bring suit to recover a money judgment for sums, charges or Assessments required to be paid to the Association without waiving its lien securing same.

If an action of foreclosure is brought against a Lot Owner for the non-payment of monies due the Association, and as a result thereof the interest of the said Lot Owner in and to the Lot is sold, then, at the time of such sale, the Lot Owner's membership shall be cancelled and membership shall be issued to the purchaser at the foreclosure sale.

If the Association becomes the owner of a Lot by reason of foreclosure, it shall offer said Lot for sale and at such time as a sale is consummated, it shall deduct from such proceeds all sums of money due it for monthly assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, and any and all expenses incurred in the resale of the Lot, which shall include, but not be limited to advertising expenses, real estate brokerage fees and expenses necessary for repairing the Lot or any improvements thereon in question. All monies remaining after deducting the foregoing items of expense shall be returned to the former Lot Owner of the Lot in question.

SECTION 6.02. VIOLATION OF DECLARATION OF PLANNED UNIT DEVELOPMENT. In the event of violation of the provisions of the enabling Declaration, Articles and/or By-Laws, as the same are now or may hereafter be constituted, the Association, on its own behalf, may bring appropriate action to enjoin such violation or to enforce the provisions of the documents just hereinabove enumerated, or sue for damages, or take all such courses of action at the same time, or pursue such other legal remedy it may deem appropriate.

SECTION 6.03. COSTS AND ATTORNEY'S FEES. In any action either to foreclose its lien, to recover a money judgment or for injunctive relief brought by or on behalf of the Association against a Lot Owner, the Association, in the event it is the prevailing party, shall be entitled to recover the costs of such proceeding and such reasonable attorney's fees, including those incurred on appeal, as may be awarded by the Court.

## ARTICLE VII - MORTGAGES

SECTION 7.01. NOTICE TO BOARD OF DIRECTORS. A Lot Owner who mortgages his Lot shall notify the Secretary of the Association who shall maintain a record of such information.

SECTION 7.02. LENDER'S NOTICES. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any mortgage holder, insurer or guarantor of a Lot will be entitled to timely written notice of:

(a) Any condemnation or casualty loss that affects either a material portion of the Property or the Lot securing its mortgage;

(b) Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Lot on which it holds the mortgage;

(c) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action that requires the consent of a specified percentage of mortgage holders.

SECTION 7.03. EXAMINATION OF BOOKS. The holder, guarantor, or insurer of a mortgage on any Lot shall have the same right to examine the books and records of the Association afforded a Lot Owner pursuant to Section 5.09 of these By-Laws.

## ARTICLE VIII - USE AND OCCUPANCY RESTRICTIONS

SECTION 8.01. USE AND OCCUPANCY RESTRICTIONS. No part of the property shall be used for other than residential use and the related common purposes for which the Property was designed. The foregoing restrictions as to use shall not, however, be construed in such manner as to prohibit a Lot Owner from:

(a) Maintaining his personal or professional library therein.

(b) Keeping his personal business or professional records or accounts therein.

(c) Handling his personal business or professional telephone calls or correspondence therefrom.

Such uses are expressly declared customarily incident to the principal residential use and not in violation of said restrictions.

SECTION 8.02. USE OF COMMON ELEMENTS. The Common Elements shall be used only for access, ingress and egress to and from the respective Lots by the persons residing therein and their respective guests, household help, and other authorized visitors, and for such other purposes which are incidental to the residential use of the respective Lots. The use, maintenance, and operation of the Common Elements shall not be obstructed, damaged, or interfered with by any Lot Owner.

SECTION 8.03. NUISANCES. No unlawful, immoral, noxious, or offensive activities shall be carried on in any Lot or elsewhere on the Property, nor shall anything be done therein or thereon which shall constitute a nuisance or which shall in the judgment of the Board of Directors cause unreasonable noise or disturbance to others.

SECTION 8.04. MAINTENANCE AND REPAIRS. Each Lot Owner shall perform promptly, and at his own risk, cost and expense, all maintenance and repair work with respect to his Lot. Each Lot Owner shall be obligated to reimburse the Association for the expenses incurred in maintaining or repairing any part of the Subdivision Property damaged by the negligence or misuse by the Lot Owner, his tenants, agents, guests, or licensees.

SECTION 8.05. TRASH. Trash, garbage, and other waste shall be kept only in sanitary containers, as prescribed from time to time in the administrative Rules and Regulations of the Board of Directors, and shall be disposed of in a clean and sanitary manner.

SECTION 8.06. RIGHTS OF DECLARANT. Until all of the Lots have been sold by the Declarant, the Declarant may from time to time use and show one or more of such unsold Lot(s), and may use and maintain customary signs in connection therewith notwithstanding anything herein to the contrary.

## ARTICLE IX - MISCELLANEOUS -

SECTION 9.01. SEAL. The seal of the Association shall be circular in form and shall contain the name of the Association and the year of its creation. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

SECTION 9.02. FISCAL YEAR. The fiscal year of the Association shall be set by the Board of Directors.

SECTION 9.03. BANK ACCOUNTS. The Board of Directors may, from time to time, by resolution authorize the maintenance of one or more deposit accounts by the Association. All checks, drafts, or other orders for the payment of money issued in the name of the Association shall be signed by such officer or officers, agent or agents of the Association, and in such manner as shall be determined from time to time by resolution of the Board of Directors.

SECTION 9.04. NOTICE. Whenever any notice or demand is required to be given by these By-Laws or the Declaration, any notice or demand so required shall be deemed sufficient if given by depositing the same in the United States mail, postage prepaid, addressed to the person entitled thereto at his last known post office address according to the records of the Association, and such notice shall be deemed given on the day of such mailing.

SECTION 9.05. WAIVER OF NOTICE. Whenever any notice whatsoever is required to be given under the provisions of any law, or under the provisions of the Articles of Incorporation, these By-Laws or the Declaration, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto.

### ARTICLE X - AMENDMENTS

These By-Laws may be modified or amended by the vote of Sixty Six and Two Thirds (66 2/3%) percent of the votes eligible to be cast by Lot Owners in person or by proxy at any regular or special meeting of Lot Owners provided that notice of said meeting has been given in accordance with these By-Laws, and that the notice as aforesaid contained a full statement of the proposed amendment. No modification or amendment to the By-Laws shall be valid unless set forth or annexed to a duly recorded amendment to the Declaration of Covenants, Conditions and Restrictions.

### ARTICLE XI - CONSTRUCTION

Whenever the masculine singular form of the pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine, or neuter, singular or plural, whenever the context so requires. Should any of the covenants herein imposed be void or become unenforceable at law, or in equity, the remaining provisions of this instrument shall, nevertheless, be and remain in full force and effect.

The foregoing were adopted as the By-Laws of OLD IVY HOMEOWNER'S ASSOCIATION, INC., at the meeting of the Board of Directors on the 16th day of March, 2020.



President



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
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