

Hot Springs Village  
Property Owners' Association  
April 20<sup>th</sup>, 2020; 2:00 p.m.  
Special Meeting Called:  
Chair Diana Podawiltz Presiding

Item 9: Bylaws Article IX "Board"

Action: To Approve and Adopt

Motion: I move to amend Article IX as presented on this day of April 20<sup>th</sup>,2020.

Foundation:

"Board Authority" is a direct lift from HSV POA Bylaws, 2011. It is important that the continuum of authority between Management and The Board of Directors comes back into balance. This insertion does just that, creating a more collaborative relationship and the introduction back into a working Board.

Including the "Corporate officers" item explains that Board Directors are elected by the membership whereas the Corporate Officers are elected by the Board. It still needs to be clear that the Corp Officers are as bound by the duties of fiduciary responsibility (FR) as the Directors are.

Section 3 is redundant and unnecessary and is also written from the corporate angle, implying that the board has a FR only to the corporation, not the property owners.

The FR we are bound by *is not* because it is in our bylaws, but because it is a Federal and State mandate of our positions (as Directors and Corporate Officers)

It is also cumbersome and a waste to have all that jargon in the bylaws (analogous to cleaning up the Articles of Incorporation by removing the 8 pages of the legal description - they were already in the Declaration (a document above in the hierarchy).

Likewise, is the portion of Conflict of Interest - (1) it is required of us by documents and laws that are higher in rank than the bylaws (Federal Law, State Law); and (2) will sign a conflict of interest document when installed and again annually.

Paragraph "a." under "Board Responsibilities" sums it up by simply saying our FR is always present and comes from up above our bylaws.

Likewise, Conflict of Interest is summed up in "p."

Red-line pages attached

Election results will be made public per policy Chapter 8, Article 8. .

Section 7. Any member, in good standing, shall have the right to request a recount of the ballots returned. That request must be made in writing within three (3) working days after the election date. The recount will be done by an outside firm selected by the CEO, at the expense of the individual requesting the recount. An upfront fee must be paid by the requesting member to cover all costs to perform the recount at a charge to be determined by the chosen firm. If the recount changes the outcome of the election, the member will be reimbursed all fees paid.

## ARTICLE IX

### Board Authority and Responsibility

#### ~~Board Responsibilities, Authority, and Accountability~~

##### ~~Section 1. Board Responsibilities~~

~~The Board's mission is to govern consistently with the Declaration and Protective covenants, to assure the viability of Hot Springs Village by establishing and managing goals and objectives, and to ensure that the voice of the member is represented.~~

~~The board of directors is responsible for governing the affairs of the Property Owners Association by managing the legal and financial matters of Hot Springs Village. Specifically, this responsibility includes:~~

~~a) Selecting and hiring the Chief Executive which includes~~

- ~~1. Establishing and evaluating the Chief Executive's duties and performance, and~~
- ~~2. Determining whether to retain or dismiss the executive~~

~~b) Providing effective directional planning for the organization including:~~

- ~~1. Establishing the mission, vision and goals~~
- ~~2. Ensuring there are appropriate governing principles in place for providing and utilizing resources that guide management's day to day operating strategies~~

~~e) Set and oversee the articles of governance and ensure compliance.~~

~~d) Protecting the organization's assets and owner's investment (fiduciary responsibility).~~

~~e) Assess its own performance~~

##### ~~Section 2. Board Authority~~

~~I. Authority Over Assessment Practices~~ \*\*\*Board Authority To appoint and remove at pleasure officers

agents, and employees of the Association, preecribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these Bylaws shall be construed to prohibit the employment of any Member, Officer, or Director of the association in any capacity whatsoever, such duties as are provided in this paragraph and the one below may be delegated by t he Directors to the GM/CEO, who shall reporty his/her actions to the Board of Directors. To hire, supervise and terminate all officers, agents and employees of this Association, through the GM/CEO and to see that their duties are properly performed.

#### Board Responsibilities

a. To uphold Our Fiduciary Responsibility to All Members of and as the Association, mandated by Federal and State law regrading the Elected

Position of Board Director and Corporate Officer:

(b). To protect the Organization's assets and owns' interests/investments;

(c). To be knowledgeable of and govern consistently with Federal and State Laws, the Declaration and the Covenants and Restrictions of HSV POA; (d). To create, maintain and govern Bylaws and Policies that promote the viability of HSV POA; (e). To establish annual, mid-term and long-term Goals for the Board and Staff including review and/or restatement of the Annual Village Goals, from year to year; (f). To co-create [with staff] their Objectives, Strategies and Tactics for the successful achievement of the Annual Village Goals, which shall be represented in, but not limited to, the Budget, Policies, and day-to-day operations; (g). to cause to be kept a complete record of all its acts and corporate affairs.

(h). To ~~(a) The Board shall have the responsibility to~~ levy and provide for collection of annual assessments from members and associate members to be used for the construction, improvement and maintenance of properties, service and facilities devoted exclusively to promoting the recreation, health, safety and welfare of the membership pursuant to Article X of the Declaration. The use of the assessments may include but shall not be limited to:

(1) Payment of all taxes assessed against the property owned by the Association;

(2) Payment of all premiums of all insurance policies required, in the reasonable judgment of the Board of Directors, for the protection of the Association, its directors, officers, employees, and its property;

(3) Maintenance, repair, replacement or additions to the facilities and supplies and equipment of the Association;

(4) Maintenance, repair and replacement of roads and streets even though they may have been dedicated to the public;

(5) Furnishing or providing municipal services as deemed necessary and prudent in the reasonable judgment of the Board of Directors; and

(6) Providing for the repair, maintenance, or replacement of those amenities deemed necessary to properly promote the recreation, health, safety, and welfare of the membership.

(i). To Manage

~~(b)~~ The annual assessment may be increased each year above the annual assessment for the previous year by a two-thirds (2/3) vote of the Board of Directors, provided, however, that such increase may be no greater than the consumer price index for the twelve-month period ending June 30 of the preceding year using the "Consumer Price Index, South Region All Items" as promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor or, if such is not available, any other reliable governmental or non-partisan publication evaluating similar information. Unless the annual assessment shall be increased as provided in this paragraph, it shall remain at the rate prevailing for the previous year

(j). ~~(c) The Board shall have the responsibility to~~ levy and collect from members and associate members, in any assessment year, a special assessment provided such assessment has been approved by the members as set forth in Article X of the Declaration.

## II. ~~Authority over Governances and Resources~~

~~The Board shall have the authority to:~~

(k). ~~(a)~~ Adopt and publish rules and regulations and enact and publish resolutions and policies which the Board shall deem necessary for the efficient operation of the Association,

including, but not limited to, the use of the Properties, and all facilities thereon, and the personal conduct of the members, associate members, assigned members, and guests on the Properties;

- (l). To ~~(b)~~ Borrow money for the purpose of promoting the recreation, health, safety, and welfare of the membership as well as managing and maintaining said properties, equipment, supplies, and affairs of the Association, and shall have the power to mortgage Common Properties or amenities in aid thereof;
- (m). To ~~(c)~~ Own, operate, lease, dedicate or transfer the Common Properties, and the facilities thereon, and any other real estate or the improvements thereon necessary for the efficient operation of the Association, provided any such dedication or transfer has been approved by the members as set forth in Article VIII of the Declaration;
- (n) To ~~(d)~~ Levy service or use charges and admissions or other fees for the use and enjoyment of the Common Properties;
- (o). To ~~(e)~~ Conduct any business authorized and perform all acts required by the Declaration, Articles of Incorporation, elsewhere herein, or by law which, in the opinion of the Board, will promote the common benefit and enjoyment of the membership;

### Section 3. Board Accountability

~~The Board is accountable to the members and to one another for enforcing all rights, covenants, restrictions, and agreements applicable to the Properties and the owners thereof, and to Common Properties, as provided for in the Declaration or which now or may hereafter be contained in or authorized by the Articles of Incorporation, the Bylaws, or laws of the state of Arkansas.~~

#### ~~I. Duty of Obedience~~

~~Among the fiduciary obligations of an officer or director of a community association and not for profit corporation is a duty of obedience. This includes supporting, and not opposing directly or indirectly or taking any other stance against the policies and positions duly adopted by HSVPOA's Board of Directors. Board members are allowed to communicate their views while still upholding their adopted policies. As representatives of HSVPOA, officers and directors are obligated to maintain this duty of obedience in all manner of activities during their terms of office.~~

~~This duty of obedience is not intended to, nor should it, discourage debate. Informed debate is encouraged and is part of the individual's responsibility in the deliberation process.~~

#### ~~H. Duty of Loyalty and Care~~

~~The duty of care requires performing responsibilities, in a manner each director or officer believes to be in the best interest of the association and with such care, including reasonable inquiry, as a prudent person in a like position would ordinarily use under similar circumstances. This standard of care has also been adopted in most jurisdictions and is often cited as the "prudent person standard" or the "business judgment rule." Stated succinctly~~

~~directors owe a duty of loyalty and care to the association and its members and will not be liable for mere mistakes in judgment so long as they were acting in good faith and had a rational basis for their decision.~~

- ~~a) Conflicts of Interest. A “conflicting interest transaction” could be a contract, transaction or other financial relationship between the association and (a) a board member, (b) a party related to a board member, or (c) an individual or entity in which the board member has an interest. A board member need not own a company or receive direct benefit for there to be a conflicting interest transaction and should therefore exercise their powers for the good of all members rather than individual gain.~~

~~Board members are expected to disclose any conflict, or appearance of a conflict of interest to fellow board members. If the board then determines that a board member has a conflict of interest, the association may still enter into arrangement if the details between the association and the conflicted board member are disclosed to the board, a majority of the disinterested board members vote in good faith to accept the arrangement, and all of the following criteria are met:~~

- ~~1. The conflict of interest results in better overall value when weighted against competitive bidding submitted by like contractors for the same work.~~
- ~~2. The Board shall disclose all the details and carefully document the conflict disclosure in the minutes.~~
- ~~3. Once the conflict has been disclosed and while the board is discussing whether the contract should be adopted, the conflicted board member shall be available to answer questions about the conflict and the contract.~~
- ~~4. The conflicted board member shall recuse him/herself from voting, and the conflicted board member shall leave the meeting during the remaining discussion and vote.~~

- ~~b) Confidentiality and Transparency. As further described in Chapter 8, Article 3 of the Board of Directors policies, both confidentiality and transparency must be balanced to prevent harm to HSVPOA or frustrate the deliberations of those individuals elected to govern the organization. Executive sessions are not intended to, nor should they be used to hide important and appropriate information from the members, but to protect the innocent, assure confidentiality about sensitive matters, and avoid unnecessary legal expense or action.~~

- ~~1. Private board deliberations are permitted, and their confidentiality required in these matters:~~

- ~~i. Discussions regarding employment, appointment, promotion, demotion, disciplining, or resignation of the CEO, as well as all other personnel authority delegated to the CEO;~~
- ~~ii. Discussions regarding board member conduct and conflicts of interest;~~

- iii. Discussions regarding legal matters;
  - iv. Discussions regarding the purchase, lease, exchange, or value of real property;
  - v. Discussions regarding prospective gifts to HSVPOA;
  - vi. Discussions regarding security issues;
  - vii. Discussions regarding economic development negotiations;
  - viii. Discussions of other confidential matters as reasonably expected to protect the organization and its interests.
2. Public deliberation is otherwise recommended to build member trust and support. Board members should not use private deliberations for the sole purpose of circumventing prudent transparency.
  3. A Board vote, whether taken privately or publicly and as documented and allowed within these bylaws, shall be binding on the organization. Board actions taken privately shall be communicated during the next public board meeting.

Individual board members shall use their professional experiences and personal circles of influence to equip themselves prior to deliberations and refrain from undermining board actions following a vote. Each individual shall uphold the spirit of Board member deliberation and decision-making processes, along with their resulting duties of care and loyalty.

(p). to follow the Generally accepted Federal and State Laws and practices regarding "Conflict of interest for Board Members" as signed by each Director and Corporate Officer upon installation and every new year.

## ARTICLE X

### Director's Meeting

Section 1. Regular Meetings. An annual meeting of the Board of Directors shall be held each year for the purpose of highlighting prior year accomplishments and communicating future areas of focus. The Board shall meet at least once each month on a day and time to be set by the Board in order to address general business and take action as necessary; however, any such monthly meeting may be dispensed with by the Chair for good and sufficient reason. The Board shall publish an annual schedule of its meetings before the 1<sup>st</sup> day of the new year; no further notice is required except when changed from the day or time previously set.

Section 2. Special Meetings. Each year the Board shall conduct a board orientation meeting in Executive Session, where no votes are to be taken. Other special meetings, both public and executive session, may be called by the Chair, at the request of any Association officer or any two (2) Directors. Notice of any special meeting, shall include an agenda for the meeting. Motions at a special meeting should be limited to the subject(s) for which the meeting has been called.

Section 3. Notice. Notice of the time and place of any meeting of the Board of Directors shall be given at least three (3) days prior thereto by written notice delivered personally or sent by mail, facsimile or other electronic transmission to each Director at his or her mailing or electronic