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Caldwell County North Carolina  
Wayne L. Rash, Register of Deeds

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**BY-LAWS**  
**OF**  
**HAWK'S HILL DEVELOPMENT COMMUNITY ASSOCIATION, INC.**  
**ARTICLE I**

**NAME AND LOCATION**

The name of the corporation is **HAWK'S HILL DEVELOPMENT COMMUNITY ASSOCIATION, INC.**, hereinafter referred to as the "Association". The principal office of the corporation shall be located at 2726 Pheasant Run Street, Hawk's Hill, Lenoir, North Carolina 28645. Meetings of members and directors may be held at such places within the State of North Carolina, County of Caldwell, as may be designated by the Board of Directors. The Association shall be governed by these By-Laws, the Articles of Incorporation of the Association filed on May 30, 1997 with the North Carolina Secretary of State's Office and the Deed of Restrictions recorded January 30<sup>th</sup>, 1990 in Book 1011, Page 747, Caldwell County Registry ("Restrictions"), and amendments thereto. To the extent that these By-Laws are silent as to a particular subject matter, the provisions of the North Carolina Nonprofit Corporation Act (Chapter 55A) shall govern.

**ARTICLE II**

**DEFINITIONS**

Section 1. "Articles" shall mean and refer to the Articles of Incorporation for the Association filed on May 30, 1997 with the North Carolina Secretary of State's office.

Section 2. "Assessments" shall mean and refer to dues assessed in accordance with Article X below by the Board of Directors of the Association based on the allocation to the Members of their proportionate share of costs of the maintenance, repair and/or improvement of the Common Areas and other charges, costs, expenses, reserves for future expenses, and the like that are related to the purposes of the Association as set forth in the Articles, as determined by the Board of Directors annually.

Section 3. "Association" shall mean and refer to Hawk's Hill Development Community

Association, Inc., its successors and assigns.

Section 4. "Board" shall mean and refer to the Board of Directors of the Association.

Section 5. "Common Area" shall mean and refer to all real property owned or leased by the Association for the common use and enjoyment of the Owners or property and any improvement thereto which has been constructed or otherwise made available for the use and enjoyment of the members of the Association and accepted by the Association, including, without limitation, the property described in deeds recorded in Book 1210, Page 1682; Book 1435, Page 1294; and Book 1425, Page 2158, all of the Caldwell County Registry.

Section 6. "Declarant" shall mean and refer to **HAWK'S HILL DEVELOPMENT CORPORATION, INC.**, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Declaration" shall mean and refer to the Deed and any other Declaration of Covenants, Conditions and Restrictions which may hereafter become applicable to the Properties recorded in the Office of the Register of Deeds of Caldwell County, North Carolina and executed by those parties to be charged therewith.

Section 8. "Eligible Votes" shall mean and refer to those votes available to be made by Active Members at a duly called meeting or Referendum.

Section 9. "Improved Lot" shall mean and refer to a Lot on which a dwelling has been constructed and for which there is either (i) a certificate of occupancy or completion from the applicable Caldwell County agency or (ii) is otherwise occupied or used.

Section 10. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties which is designated with an individual number and intended for a single family residential dwelling.

Section 11. "Member" shall mean and refer to those persons who own lots in Hawk's Hill Development. "Active" Members shall have one vote per Lot owned. As specified in Article VII below, Members may be considered active or inactive depending on the

status of being current on Assessments or violations of the Declaration or rules and regulations.

Section 12. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 13. "Properties" shall mean and refer to that certain real property shown on the various plats of Hawk's Hill Subdivision, Caldwell County, North Carolina, including, without limitation, Plat Book 14, Page 140; Plat Book 15, Page 111; Plat Book 15, Page 118; Plat Book 15, Page 188; Plat Book 16, Page 243; Plat 22, Page 221; Plat Book 24, Page 143; .and Plat Book 24, Page 223.

Section 14. "Referendum" shall mean and refer to the vote of Active Members by mailed or emailed written ballot on certain actions submitted to the Members by the Board of Directors, as more particularly set forth herein.

Section 15. "Unimproved Lot" shall mean and refer to a Lot that does not satisfy the definition of "Improved Lot."

### ARTICLE III

#### MEETING OF MEMBERS

Section 1. Annual Meetings. The annual meeting of the Members shall be held on the third Saturday in April of each year at the hour of 10:00 o'clock, A.M. at such place as is designated by the Board. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday. Notwithstanding the above, the Board may, in its discretion, assign a different date and time for the Annual Meeting by written notification to the Members; provided, however said rescheduled meeting shall be held no later than April 30<sup>th</sup> of every year.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the

Active Members who are entitled to vote one-fourth (1/4) of all of the eligible votes of the membership.

Section 3. Notice of Meetings. Written or e-mailed notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing, postage prepaid, or e-mailing a copy of such notice, or by hand-delivery at least fifteen (15) days before such, meeting to each Member (active or inactive), addressed to the Member's mailing and/or email address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and time of the meeting and in the case of a special meeting, the purpose of the meeting. For purposes of these By-laws, "Notice" shall mean any communication from the Association to the Members by way of mailing, emailing or personal delivery. The meeting notice will include any anticipated issues to be voted on to allow for planning attendance and/or proxy votes.

Section 4. Votes. Subject to the Voting Cap defined below, a Member is entitled to cast one vote per Lot so long as said property owner is an Active member. A Member owning multiple lots may cast a vote for each Lot, developed or undeveloped, so long as the Member's voting privileges are not suspended; provided, however, a Member will only be allowed to vote a maximum of five (5) Lots owned by said member on the date determined for eligibility to vote ("Voting Cap"). When any Lot is owned of record in the name of two or more persons, other than husband and wife, either of whose vote will bind both, by an entity, or in any other manner of joint or common ownership, the Owner who is present at said meeting of the Association is entitled to vote on behalf of such Lot. If more than one Owner is present at an Association meeting, the vote for such Lot will be exercised by a designated Voting member for said Lot. A Lot with multiple Owners or one owned by an entity may designate in writing a Voting member whose vote would be binding in advance of any meeting and submit same to the secretary.

**Section 5. Quorum; Majority Vote.** The presence at the meeting, either in person or via real time electronic means, of Active Members entitled to cast, or of proxies entitled to cast, one-fourth (1/4) of the Eligible Votes of the membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Active members entitled to vote thereof shall have power to adjourn the meeting from time to time, with an announcement at the meeting until a quorum as aforesaid shall be present or be represented, followed by a notice to members via email or other electronic means. For purposes of taking any action, the consent of a majority of Active Members who are in person, real time electronic means, or by proxy at a meeting with a quorum (or by ballot where applicable) is required.

**Section 6. Proxies.** At all meetings of Members, each active Member may vote in person, real time electronic, or by proxy. All proxies shall be in writing and filed with the secretary and shall be valid until cancelled in writing by the Member, an expiration date on the proxy, or in one year whichever occurs first. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot. All proxies will have an option for specific purpose or general authorization as described by the proxy writer. No member may have more than 2 (two) proxies total for any given purpose.

**Section 7. Referendum.** Any vote of Active Members on a matter that would be cast at an annual or special meeting may be taken, without a meeting, by written ballot delivered by the Board of the Association to every Active Member. The ballot shall set forth the matter to be voted upon and provided thereon a place to vote for or against such matter. Approval by written ballot without a meeting shall be effective only when the number of votes cast by ballot equals or exceed the quorum required to be present had the matter been considered at a meeting, and the number voting for the matter equals or exceeds the number of votes required to approve it had the matter been considered at a meeting at which the requisite quorum is present. A ballot once

delivered to the secretary or any other authorized officer noted on the ballot may not be revoked. Unless stated otherwise on the ballot, a Member's ballot shall be delivered to the Secretary by hand delivery, by U.S. mail, by e-mail transmission, or by such other means as shall be permitted under North Carolina law, provided in every such case the sender retains proof of transmission and receipt.

Section 8. Record Date. Prior to any vote, the Board may establish a Record Date to determine eligibility for voting, which Record Date, if established, shall be included in the notice of a meeting or Referendum, if no meeting is held.

Section 9. Attendance at Meetings. Only Active members as herein defined shall have a right to attend any meeting of the Association and receive notice of said meeting. The Board may exclude any Inactive member from accessing or participating in any Association meeting. The Board may also invite specific inactive member(s) to a meeting for a specific purpose, after which the inactive member(s) would be dismissed from the meeting. The board may also decide to include inactive members in specific announcements and reports as it deems appropriate.

Section 10. Meeting Agenda. A meeting agenda will be provided with the meeting notice or at least 3 days prior to the meeting. Any agenda changes during the meeting must be voted on by all in attendance, either in person or real time electronic with majority carrying the propose change. Proxy voting will not be permitted for agenda changes.

Section 11. Meeting minutes. Within 5 calendar days after any member or board meeting, a meeting summary will be sent to all active members, followed my formal meeting minutes within 15 days. Inactive members may be sent summaries and minutes at the discretion of the Board.

#### ARTICLE IV

##### BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

Section 1. Number. The affairs of the Association shall be managed by a Board of, at least, three (3) Directors, who must be Active members of the Association.

Section 2. Term of Office. The Active members shall elect one Director for a term of one year and two directors for a term of two years; and at such annual meeting thereafter, the Active members shall elect one director for a term of two years. Directors may be elected to consecutive terms.

Section 3. Removal. Any director may be removed from the Board with or without cause by a two thirds (2/3) majority vote of the Active members of the Association. In the event of death, resignation or removal of a director, his successors shall be selected by the remaining members of the Board of Directors and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties. Reimbursements must be approved by all other board members and recorded in the meeting minutes.

Section 5. Action Taken Without Meeting. The directors shall have the right to take any action in the absence of a meeting which they could have taken at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors. Notification of that action must be sent to all active members within 5 calendar days of the decision. The action must be recorded in the meeting minutes, and written approvals of each director attached to the report.

## ARTICLE V

### NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. A nomination committee is for the purpose of drafting valuable members to run for the board positions becoming available at the next annual meeting. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and one (1) or more members of the Association. The

Nominating Committee shall be appointed by the Board of Directors prior to each 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 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 not less than the number of vacancies that are to be filled. Such nominations will be made from among Active members only.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the Active members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of these By-laws. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## ARTICLE VI

### MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two (2) directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A quorum of board directors will be all three (3) if a three person board, and four (4) if a 5 person board. Attendance includes in person or via real time electronic. Attendance shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.



**Section 4. Minutes.** The Board will record and make available minutes of all meetings, regular or special. Minutes on hardcopy will be held in the place of business. Electronic copies are held with the secretary and/or posted on the HOA web site if available or a shared drive/server for access by all active members.

## ARTICLE VII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

**Section 1. Powers.** The Board of Directors shall have power to:

a. adopt and publish rules and regulations governing the use of the Common Areas and facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

b. suspend the right to access and/or use the Common Area (not including the roads) by a Member during any period in which such Member shall be in default in the payment of any Assessment levied by the Association or for any infraction of the Declaration or rules or regulations authorized by G.S. 55A-6-20 related to the Common Area. Such right to access and use the Common Area may be suspended only after ten (10) days notice is provided to the Member to cure the default or infraction. All other privileges of membership, including voting rights, shall be deemed automatically suspended without notice in the event that a Member is more than thirty (30) days past due on any Assessment, unless the Board agrees, in its discretion, to waive in writing such suspension for hardship reasons. Unless there is a waiver, voting rights will be restored only upon payment of all past due amounts, including any late charges established by the Board, and the costs of collection, if any, including attorney's fees allowed by 6-21.5 or any other applicable provision of law. During the period of time of any suspension, a Member shall be considered an Inactive member of the Association and not an Active member as provided for in these By-laws.;

c. exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions

of these By-Laws or the Articles of Incorporation, including, without limitation, the authority to establish Assessments;

d. declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

e. employ a manager, an independent contractor, or such other employees as they deem necessary, to perform functions within the association, such as grounds maintenance, road repair, etc. and to prescribe their duties;

f. pursue any type of enforcement action (either civil or criminal) related to these By-laws, the Articles or the Declaration, and to collect from the offending party any and all costs of enforcement, including attorney's fees, as allowed by law. The Board shall have the discretion to manage, mediate, and/or to settle any such action as it determines to be in the best interests of the Association, and, in doing so, the Board may take into account considerations of costs, likelihood of success and impact on the social welfare of the community.

g. exercise all powers afforded a Board in Chapter 55A.

Section 2. Duties. It shall be the duty of the Board of Directors to:

a. cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Active members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Active members who are entitled to vote;

b. supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

c. Fix the amount of the annual assessment for each Member at least 30 days in advance of each annual assessment period; provided, however, the Board shall have the right to re-assess Members to cover any shortfalls, including those arising from delinquent or Inactive member accounts.

d. send written notice of each assessment to every Member subject thereto at

least thirty (30) days in advance of each annual assessment period;

e. issue, or to cause an appropriate officer to issue, upon written request by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

g. procure and maintain adequate liability and hazard insurance on property owned by the Association and errors & omissions coverage for Directors.

h. cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

i. cause the Common Areas to be maintained at such qualitative levels as determined by the Board in its discretion, taking into account, among other things, the adequacy of funding provided by the Members. Notwithstanding, the Board has the authority to limit access to Common Area (not including the roads) based on perceived concerns with the condition of same.

## ARTICLE VIII

### COMMITTEES

The Board of Directors shall appoint an Architectural Control Committee and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

## ARTICLE IX

### BOOKS AND RECORDS

The books, records and papers of the Association shall at all times during reasonable business hours, be subject to inspection by any Active member. The Minutes, the Rules and Regulations, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association where copies may be purchased at reasonable cost.

## ARTICLE X

## ASSESSMENTS; BUDGET; SURPLUS

All Members are required to pay Assessments in a timely manner.<sup>1</sup> Any Assessments which are not paid when due as indicated on the written invoice shall be delinquent. If the Assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%), and a one-time late fee of \$25. The Association, acting through the Board of Directors, may bring an action at law against the Owner personally obligated to pay the same. No Member may waive or otherwise escape liability for the Assessments provided for herein by non use of the Common Area or abandonment of his Lot. A Member may be suspended as a result of any delinquency as provided for in Article VII above. A delinquent member becomes inactive after 30 days beyond the date dues are due and forfeits all rights and privileges within the association and access to all association property and assets (except roads). An inactive member wishing to become active must make current all past and current unpaid dues including any interest and penalties to gain status and restore access to facilities and assets. If a property is sold with unpaid assessments, the buyer will be notified of the amount due to be an active member after closing.

To determine any annual Assessment, the Board shall prepare and adopt every year a budget that establishes the financial needs of the Association to carry out its purposes, and within said budget, the Board shall identify separately (i) the projected costs and expenses of maintaining, repairing and/or improving the roads and road rights of way within the Hawk's Hill development; (ii) the projected costs and expenses of maintaining, repairing and/or improving all other Common Area; (iii) all other projected common expenses, including those to administer the affairs of Association or

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<sup>1</sup> Authority for Assessments levied on the membership of the Association is provided in G.S. 55A-6-20 and G.S. 55A-3-02(14). Alternatively, pro rata responsibility for the costs of caring for the assets of the Hawk's Hill community is established by unjust enrichment, estoppel, implied contract or easement contribution principles as defined in North Carolina case law.

conduct any other lawful activity. The Board may establish a different level of Assessments depending on whether or not property is an Improved Lot or Unimproved Lot; provided, however, a Member owning multiple Unimproved Lots shall only be responsible for paying assessments for up to five Unimproved Lots. The Board may at its discretion create a reserve account to be budgeted and funded with dues and to retain any surplus funds remaining after all expenses are paid during any fiscal year in that account, or apply it as a credit to future assessments.

#### ARTICLE XI

##### CORPORATE SEAL

The Corporate seal of the Association shall consist of two concentric circles, between which is the name of the Association and in the center of which is inscribed "SEAL" and such seal, as impressed on the margin hereof, is hereby adopted as the Corporate Seal of the Association.

#### ARTICLE XII

##### AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the Members, by a vote of two-thirds or more of the total number of active members in person, by proxy, or real time electronic, at a meeting with a quorum. Notices of any changes will be sent to all active members within 5 days of change. The Board, at its option, may send bylaw changes to inactive members as information exchange.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control.

#### ARTICLE XIII

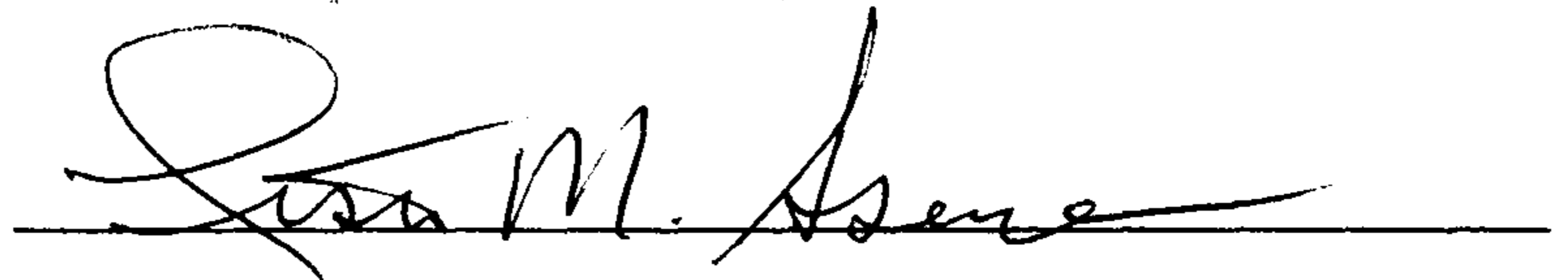
##### MISCELLANEOUS

The fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December of every year.

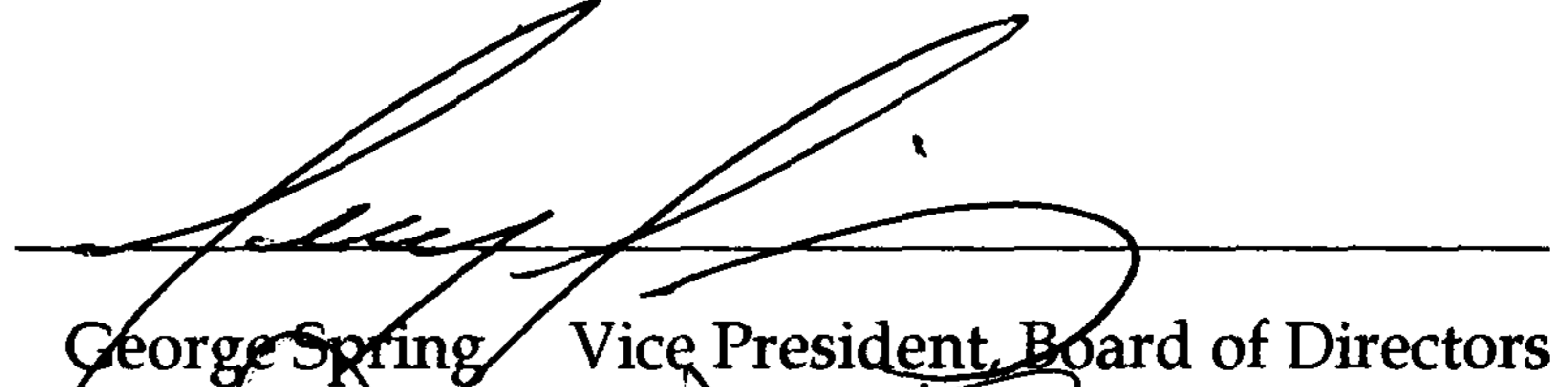
#### CERTIFICATION

## CERTIFICATION

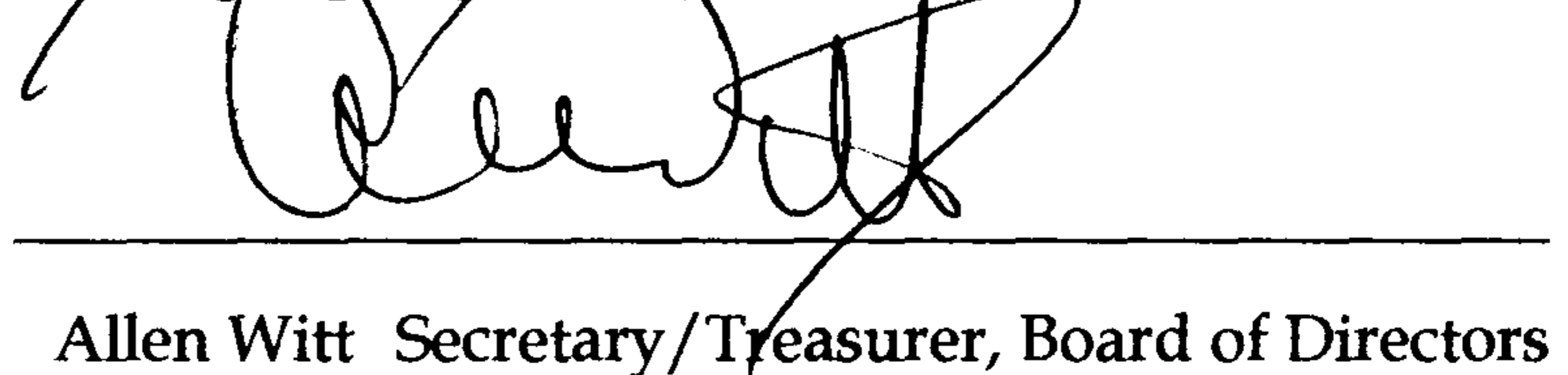
We, the undersigned, do hereby certify that we are the duly-elected and acting President, Vice President, and Secretary/Treasurer of **HAWK'S HILL DEVELOPMENT COMMUNITY ASSOCIATION, INC.**, a North Carolina non-profit corporation, and, that the foregoing By-Laws constitute the By-Laws adopted pursuant to G.S. 55A-2-06 and G.S. 55A-3-02(3) as duly adopted at a meeting of the Board of Directors thereof, held on the 13<sup>th</sup> day of September, 2013.



Lester M Aseere      President, Board of Directors



George Spring      Vice President, Board of Directors



Allen Witt      Secretary/Treasurer, Board of Directors