

## BY-LAWS OF ADAMS CROSSING HOMEOWNERS ASSOCIATION, INC.

### ARTICLE I: NAME, MEMBERSHIP, APPLICABILITY

#### Section 1. Name.

The name of this corporation shall be Adams Crossing Homeowners Association, Inc. (hereinafter sometimes referred to as the "Association").

#### Section 2. Membership.

The membership of this Association shall be limited to Owners of Lots in the Development known as "Adams Crossing" in Fulton County, Georgia, as more fully set forth in that certain Declaration of Covenants, Conditions, Restrictions and Easements for Adams Crossing recorded in Deed Book 28150, pages 001 to 041, Fulton County, Georgia Records, (said Declaration, as amended, renewed or extended from time to time, is hereinafter sometimes referred to as "said Declaration").

#### Section 3. Applicability.

These by-laws are applicable to the property located within the Development as provided in this Articles of Incorporation and said Declaration, and are binding on all present or future owners, tenants, residents, or other persons occupying or using the facilities of the Development in any manner. The mere acquisition, rental, or act of occupancy of any part of the property included within the Development shall signify that these by-laws are accepted, ratified and will be complied with. These by-laws are subject to the provisions of said Declaration.

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### ARTICLE II: MEETINGS, QUORUM, VOTING, PROXIES

#### Section 1. Place of Meeting.

Membership meetings of the Association shall be held at the Development at such suitable place as may be designated by the Board of Directors, or at such other suitable place convenient to the members as may be designated by the Board of Directors.

#### Section 2. Annual Meeting.

Annual membership meetings of the Association shall be held on the third Saturday in October of each year if not a legal holiday; and, if such is a legal holiday, then on the next following day not a legal holiday. Notwithstanding the foregoing, the Board of Directors may cause the annual meeting of Lot Owners to be on such other date in any year as they shall determine to be in the best interests of the Association and any business transacted at said meeting shall have the same validity as if transacted on the day designated herein. At the annual meeting, comprehensive reports of the affairs, finances and budget projections of the Association shall be made to the Lot Owners.

#### Section 3. Special Meetings.

The President shall be required to call a special meeting of the members as directed by resolution of the Board of Directors, or upon a petition signed by a majority of the Lot Owners presented to

the Secretary. The call of a special meeting shall be by notice stating the time, place, the purpose, and the order of business of such special meeting. Unless by consent of at least seventy-five percent (75%) of the voting weight of the Lot Owners present in person or by proxy, only the business stated in the notice may be transacted at a special meeting.

#### **Section 4. Notice of Meetings.**

It shall be the duty of the Secretary to give notice to each Lot Owner of each annual or special membership meeting, stating the purpose thereof as well as the time and place where it is to be held. Except as may be otherwise required by law or said Declaration, notice shall be given to each Lot Owner at least fifteen (15) days in advance of any annual or regularly scheduled meeting, and at least seven (7) days in advance of any other meeting. Notices shall be given in the manner provided in Section 5 of Article VI of these by-laws. Any Lot Owner (or any mortgagee of any Lot Owner or other party entitled to notice) may waive the notice of the meeting by doing so in writing before or after the meeting. Attendance at a meeting, either in person or by proxy, shall of itself constitute a waiver of notice. A recitation in the minutes of any membership meeting that notice of such meeting was properly given shall be prima facie evidence that such notice was so given.

#### **Section 5. Order of Business.**

The order of business at all annual membership meeting shall be as follows:

- (a) Roll call and certification of proxies;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers, if any;
- (e) Reports of committees, if any;
- (f) Election of inspectors of election;
- (g) Election of directors;
- (h) Unfinished business;
- (i) New business.

#### **Section 6. Quorum.**

At all membership meetings, annual or special, a quorum shall be deemed present throughout any meeting until adjourned if Lot Owners entitled to cast more than one-half (1/2) of the votes of the Association are present in person or by proxy at the beginning of such meeting. If a quorum is present, the affirmative vote of Lot Owners in attendance in person or by proxy holding at least a majority of the votes of the Lot Owners represented at the meeting shall be the act of the Lot Owners. For purposes of these By-laws, "majority" shall mean more than fifty (50%) percent. Provided, however, the foregoing provisions of this by-law to the contrary notwithstanding, any action, which by law or pursuant to the provisions of said Declaration requires the assent of a special percentage of the votes of the Lot Owners greater than that herein specified, shall not be considered the act of the Lot Owners unless such requisite percentage so prescribed by law or by said Declaration is obtained. No Lot Owner shall be counted for a quorum or permitted to vote who is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payments due the Association.

**Section 7. Adjourned Meetings.**

Any meetings of the membership which cannot be organized because a quorum has not attended, may be adjourned from time to time by the vote of a majority of the Lot Owners present in person or represented by proxy. When any membership meeting, either annual or special, is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Except as aforesaid, it shall not be necessary to give any notice of any adjournment or of the business to be transacted at an adjourned meeting, other than by an announcement at the meeting at which such adjournment is taken.

**Section 8. Voting.**

Voting by the membership shall be as provided in said Declaration and as herein provided. Each Lot Owner shall have one vote. Any vote duly called may be by voice or by ballot; provided, however, that all votes must be by ballot upon demand made by a member prior to the commencement of the voting.

**Section 9. Proxy.**

The vote appertaining to any Lot may (and shall, in the case of any Lot Owner not a natural person or persons) be exercised pursuant to a proxy or proxies duly executed by or on behalf of the Lot Owner, or, in cases where the Lot Owner is more than one person, by or on behalf of all such persons. Any proxy shall be void if it is not dated or if it purports to be revocable without notice as aforesaid. The transfer of title to any Lot shall void any outstanding proxy pertaining to the voting rights appurtenant to that Lot.

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**ARTICLE III: BOARD OF DIRECTORS, NUMBER, POWERS, MEETINGS****Section 1. Number.**

So long as the Declarant shall have the right to appoint and remove members of the Board of Directors as provided in said Declaration, the affairs of the Association shall be governed by a Board of Directors composed of three (3) persons who shall be appointed by and serve at the pleasure of the Declarant. Such persons may be officers, agents, employees or representatives of the Declarant. Except with respect to Directors appointed by the Declarant, Directors must be Lot Owners in the Development at all times during their service as Directors, and any such Director who ceases to be a Lot Owner shall not be eligible to serve as a Director.

**Section 2. Powers and Duties.**

The Board of Directors shall have the powers and duties necessary to administer the affairs of the Association, including, but not necessarily limited to, those powers and duties specifically assigned to the Board of Directors in said Declaration.

**Section 3. Other Duties.**

In addition to other duties which the Board of Directors may have, it shall be responsible for the following matters:

- (a) Care, upkeep and surveillance of the Common Property and facilities;
- (b) Collection of assessments levied by the Association;

- (c) Designation and dismissal of the personnel necessary for the maintenance and operation of the Common Property and Facilities;
- (d) Subject to the provisions of said Declaration, the promulgation of rules and regulations governing the use and enjoyment of the Common Property and facilities.

#### **Section 4. Management.**

Subject to the provisions of said Declaration, the Board of Directors may employ for the Association a management agent under such terms, compensation, and duties as the Board may authorize.

#### **Section 5. Nomination of Directors.**

The Declarant in said Declaration shall appoint and remove at the pleasure to the Declarant any member or members of the Board of Directors of the Association until such right shall be relinquished by Declarant or until such right shall otherwise terminate as provided in said Declaration. Thereafter, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. 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 total number of Directors to be elected. Also, additional nominations may be made from the floor of the meeting, provided that any candidate nominated from the floor and not by the Nominating Committee, must have filed with the Secretary of the Association prior to the meeting, a petition, signed by at least 10% of all Lot Owners in the Development, in support of such candidate's nomination.

#### **Section 6. Election and Term of Office.**

Subject to the right of the Declarant to appoint Directors as provided in said Declaration, persons nominated for the Board of Directors shall be elected by secret written ballot (unless dispensed by unanimous consent) cast by the Lot Owners at the annual membership meeting. At such election the Lot Owners or their proxies may cast, in respect to each vacancy, on a non-cumulative basis, the vote assigned to their respective Lot. The persons receiving the largest percentage of votes shall be elected. Such Directors shall be elected for a term of one year; provided, however, incumbent Directors shall hold office until the election and qualifications of their successors.

#### **Section 7. Vacancies.**

Subject to the right of Declarant to appoint Directors as provided in said Declaration, vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Lot Owners shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and, each person so elected shall be a Director until a successor is elected and qualified at the next annual meeting of the Lot Owners.

#### **Section 8. Removal of Directors.**

Subject to the right of the Declarant to appoint and remove Directors as provided in said Declaration, at any regular or special membership 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 total authorized vote of the Lot Owners in the Development and a successor may then and there be elected by the Lot Owners to fill the vacancy thus created. Any Director whose removal has been proposed by any Lot Owner or Owners shall be given an opportunity to be heard at the meeting.

**Section 9. Fees and Compensation.**

No fee or compensation shall be paid by the Association to Directors for their services as Directors unless such fee or compensation is first fixed by a resolution adopted by a majority vote of the Lot Owners (other than Declarant) and by the Declarant so long as the Declarant shall have the right to appoint and remove Directors, present in person or by proxy, at a meeting duly called and held for such purpose.

**Section 10. Organizational Meeting.**

The first meeting of a Board of Directors newly elected by the Lot Owners shall be held without other notice than this by-law immediately after, and at the same place as, the annual meeting of the Lot Owners.

**Section 11. Regular Meetings.**

The Board of Directors may provide, by resolution, the time and place the holding of regular meetings, in addition to the organizational meeting, without notice other than such resolution.

**Section 12. Special Meetings.**

Special meetings of the Board of Directors may be called by the Chairman on three (3) days notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least a majority of the Directors. Unless otherwise agreed by a majority of the Directors, the place of any such special meeting shall be at the residence of the Chairman.

**Section 13. Waiver of Notice.**

Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of 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 be a waiver of notice by him at the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

**Section 14. Entry of Notice.**

Whenever any Director has been absent from any special meeting of the Board of Directors, an entry in the minutes to the effect that notice has been duly given shall be conclusive and incontrovertible evidence that due notice of such special meeting was given such Director, as required by law and the by-laws of the Association.

**Section 15. Board of Directors Quorum.**

At all meetings of the Board of Directors, a quorum shall be deemed present throughout any meeting if persons entitled to cast a majority of the votes in that body are present at the

beginning of such meeting. The acts of a majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**Section 16. Executive Committee.**

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors, if composed of more than three (3) Directors, may establish an Executive Committee of three (3) or more Directors, constituted and appointed by the Board of Directors from their number who shall meet when deemed necessary. They shall have authority to exercise all the powers of the Board which may be lawfully delegated and not inconsistent with these by-laws and said Declaration, at any time and when the Board is not in session. The Committee shall elect a chairman, and a majority of the whole Committee shall constitute a quorum; and, the act of a majority of Committee members present at a meeting at which a quorum is present shall be the act of the Committee, provided, all members of the Committee have had notice of such meeting or waived such notice. Notice of meetings of the Executive Committee shall be the same as required for a regular or special meeting of the Board of Directors as outlined above in this Article III.

**Section 17. Action Without Formal Meeting.**

Any action required or permitted to be taken at any meeting of the Board of Directors or any Committee appointed by the Board of Directors may be taken without a meeting if, prior to such action, written consent thereto is signed by all members of the Board of Directors or of such Committee, as the case may be, and such written consent is filed with the minutes of the proceedings of the Board or Committee.

**Section 18. Special Committees.**

The Board of Directors or the Executive Committee, if one shall have been established, shall the power and authority to create special committees, consisting of two or more Directors, including but not necessarily limited to, an Architectural Control Committee, a Recreation Committee, a Maintenance Committee, and an Audit Committee, which shall advise the Board of Directors or Executive Committee on matters pertaining to the purpose for which any such special committee shall have been created. The members, including the chairman, of any special committee shall be appointed by and shall serve at the pleasure of the Board of Directors, or Executive Committee, as the case may be.

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**ARTICLE IV: OFFICERS**

**Section 1. Generally.**

So long as the Declarant in said Declaration shall control the Association, the officers of the Association shall be appointed by and serve at the pleasure of the Declarant. After the Declarant shall relinquish control of the Association, at its organizational meeting after each annual membership meeting, the Board of Directors shall elect from among the Board of Directors the following officers: a President, one (1) or more vice-presidents, a Secretary and a Treasurer. The

Board of Directors at any time and from time to time may appoint from among the Board of Directors such other officers as it shall deem necessary, including one (1) or more Assistant Secretaries, who shall hold their offices for such terms as shall be determined by the Board of Directors and shall exercise such powers and perform such duties as are specified by these by-laws or as shall be determined from time to time by the Board of Directors. Any person may hold two (2) or more offices, except that no person may hold the office of President and Secretary simultaneously.

### **Section 2. Tenure.**

Each officer of the Association shall hold office until his successor is chosen or until his earlier resignation, death, disqualification or removal, or the termination of his office. Any person, unless appointed by Declarant, shall not be qualified to be an officer of the Association during any time in which he is not also a Director of the Association. Any officer may be removed by the Board of Directors whenever in its judgment the best interest of the Association will be served hereby.

### **Section 3. Vacancies.**

A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

### **Section 4. President.**

The President shall be a Director and shall be Chairman of the Board of Directors. The President shall be the chief executive officer of the Association and, subject to the control of the Board of Directors, shall in general manage, supervise, and control all of the business and affairs of the Association. He shall, when present, preside at all membership meetings. He may sign, with the Secretary or any other proper officer of the Association thereunto authorized by the Board of Directors, any contracts, deeds, mortgages, bonds, policies of insurance, or other instruments which the Board of Directors has authorized to be executed, except in cases where signing or the execution thereof shall be expressly delegated by said Declaration or by the Board of Directors or these by-laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and, in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

### **Section 5. Vice-Presidents.**

In the absence of the President, or in the event of his death or inability or refusal to act, the Vice-President (or in the event there be more than one (1) Vice-President, the vice-presidents in the order designated at the time of their election, or in the absence of any designation, in the order of election) shall perform the duties of the President and, when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice-President may perform such duties as shall from time to time be assigned to him by the President or by the Board of Directors.

### **Section 6. Secretary.**

The Secretary shall: (a) attend and keep the minutes of the membership meetings and of the Board of Directors meetings in one (1) or more books provided for that purpose; (b) see that all

notices are duly given in accordance with said Declaration, the provisions of these by-laws, or as required by law; (c) be custodian of the Association records; (d) keep a register of the post office address of each Lot Owner and the post office address of the holder of any mortgage on such Owner's lot, which shall be furnished to the Secretary by such Owner; and (e) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board of Directors.

#### **Section 7. Treasurer.**

The treasurer shall: (a) have charge and custody of and be responsible for all funds, securities and financial records of the Association; receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such banks, trust companies, or other depositories as shall be selected by the Board of Directors; (b) authorize vouchers and sign checks for moneys payable by the Association; and (c) in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the Board of Directors.

#### **Section 8. Assistant Secretaries and Assistant Treasurers.**

The Assistant Secretaries and Treasurers, in general, shall perform such duties as shall be assigned by the Secretary or Treasurer, respectively, or by the Board of Directors.

### **ARTICLE V FISCAL MATTERS**

#### **Section 1. Assessments.**

Lot Owners shall pay assessments imposed pursuant to the provisions of said Declaration. In any year in which there is an excess of assessments over expenditures, the Board of Directors, by resolution and without the necessity of a vote of the Lot Owners, shall determine either to apply such excess or any portion thereof against and reduce the subsequent year's assessments, or to allocate the same to one or more reserve accounts.

#### **Section 2. Fidelity Bonds.**

The Board of Directors may require that any manager, contractor or employee of the Association handling or responsible for Association funds shall furnish an adequate fidelity bond. The premium for any such bond may be paid by the Association from the common expense fund.

### **ARTICLE VI OBLIGATIONS OF LOT OWNERS**

#### **Section 1. Complaint Procedure.**

Prior to taking any other action with respect thereto, Lot Owners shall be obligated to adhere and abide by the following procedure in the case of any complaint a Lot Owner may have against the Association or Declarant in the Declaration for the Development: Any complaint by a Lot Owner concerning the maintenance, operation, repair, and replacement of the Development or any portion thereof, shall be presented in writing to the Board of Directors of the Association, or to

Declarant if the complaint is directed to the Declarant. Within thirty (30) days after such complaint is presented to the Board or to the Declarant, as the case may be, a representative of the Board (who shall be the manager of the Association, if one has been appointed) or of the Declarant, as the case may be, shall meet with the Lot Owner for the purpose of resolving such complaint. If the complaint is not resolved, at such meeting, then, the Board's or Declarant's representative, as the case may be, or the Lot Owner may elect to have a second meeting. In such event, the parties shall arrange for a second meeting, to be held within fifteen (15) days after the first meeting. Unless otherwise mutually agreed, such meeting shall be held at the Development at a place selected by the Board or Declarant, as the case may be. If the complaint is not resolved at the first meeting and neither of the parties elects to have a second meeting, or if a second meeting is held and the complaint is not resolved at such meeting, then, in either such events the complaining Lot Owner shall be deemed to have complied with the provisions of this Section.

### **Section 2. Conduct.**

All Lot Owners, their guests, tenants, or occupants of a Lot shall at all times observe the rules of conduct which may from time to time be established by the Association or its Board of Directors. Said rules shall be kept in the office of the Association as a matter of record, and copies furnished to any Lot Owner or other party entitled to inspect the same on request as provided in said Declaration.

### **Section 3. Notices to Association.**

A Lot Owner who mortgages his Lot, or executes and delivers, or assumes or purchases his Lot subject to any mortgage which shall be or become a lien on his Lot, shall notify the Secretary of the Association of the name and address of the holder of any such mortgage, and thereby authorize the Association to furnish such information as such mortgagee may request respecting unpaid assessments, taxes, or other information concerning such Lot or as may be provided by said Declaration.

### **Section 4. Notices by Association.**

Whenever any notice by the Association to a member is required or permitted under these by-laws, such notice shall be given by personally delivering the same to any individual designated by such Lot Owner to the Secretary of the Association, or by mailing a copy thereof by US Certified Mail, postage prepaid, return receipt requested, to the last known place of residence or to such other address as may be furnished by such member to the Secretary of the Association. Notice shall be considered given when personally delivered to any such designated individual or when delivered by mail at such address, as the case may be.

## **ARTICLE VII MISCELLANEOUS**

### **Section 1. Fiscal Year.**

The fiscal year of the Association shall be the calendar year.

### **Section 2. Parliamentary Rules.**

Unless waived by majority vote of the Lot Owners in attendance in person or by proxy at any duly called membership meeting, or unless waived by a majority of the Directors present at any

duly called meeting of the Board of Directors, Robert's Rules of Order (latest edition) shall govern the conduct of the Association proceedings when not in conflict with Georgia law, said Declaration, or these By-Laws.

**Section 3. Conflicts.**

If there are conflicts or inconsistencies between the provisions of Georgia law or said Declaration and these By-Laws, the provisions of Georgia law and said Declaration (in that order) shall prevail.

**Section 4. Definitions.**

Unless the context shall otherwise require, words or phrases used herein which are defined in said Declaration shall have the same meaning as therein set forth.

**Section 5. Amendment.**

These By-Laws may be amended by the Lot Owners of the Association at any regular or special meeting duly called for that purpose. If a quorum is present, the affirmative vote a majority of the votes of Lot Owners represented at the meeting shall be the vote of the Lot Owners. Notwithstanding the foregoing, those provisions of these By-Laws which are governed by said Declaration or by Georgia law may not be amended, repealed or altered except as provided in said Declaration or by applicable law. Provided, further, any provision in these By-Laws or said Declaration to the contrary notwithstanding, written notice of any meeting being called for the purpose of amending these By-Laws shall be sent, upon written request, therefore, to the holders of any and all first mortgages affecting any of the Lots included in the Development not less than thirty (30) days in advance of the meeting setting forth the purpose of the meeting. No amendment to these By-Laws shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage affecting any Lot or the Common Property unless such holder shall consent in writing thereto. Further, no amendment shall be made to these By-Laws without the consent of Declarant so long as Declarant has the unexpired option to annex additional property to the terms of said Declaration and/or the right to control the Association.

**ARTICLE VIII  
INDEMNIFICATION**

**Section 1. Action By Persons Other Than The Corporation.**

Under the circumstances prescribed in Sections 3 and 4 of this Article, the Corporation shall indemnify and hold harmless any person who was or is a party or is threatened to be made a party of any threatened, pending or contemplated action, suit or proceeding, or investigation, whether civil, criminal, or administrative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a Director, Officer, employee or agent of the corporation, or is now serving at the request of the corporation as a Director, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in a manner which he reasonably believed to be in or not opposed to the best interest of the corporation, and, with respect to criminal action or proceeding, he had not reasonable cause to

believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in a manner which he reasonably believed to be in or not opposed to the best interest of the corporation, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

### **Section 2. Actions By Or In The Name Of The Corporation.**

Under the circumstances prescribed in Sections 3 and 4 of this Article, the corporation shall indemnify and hold harmless any person who was or is a party or is threatened to be made a party of any, threatened, pending or completed action, suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a Director, Officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a Director, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the corporation; except that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expense which the court shall deem proper.

### **Section 3. Successful Defense.**

To the extent that a Director, Officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 1 and 2 of this Article, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith.

### **Section 4. Authorization of Indemnification.**

Except as provided in Section 3 of this Article and except as may be ordered by a court, any indemnification under Sections 1 and 2 of this Article shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the Director, Officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 1 and 2. Such determination shall be made:

- (1) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding; or
- (2) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Directors so directs, by the firm of independent legal counsel then employed by the corporation, in a written opinion.

### **Section 5. Prepayment of Expenses.**

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Director, Officer, employee or agent to repay such amount

if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized in this Section.

**Section 6. Non-Exclusive Right.**

The indemnification and advancement of expenses provided by this Article shall not be deemed exclusive of any other right to which the person seeking indemnification or advancement of expenses hereunder shall be entitled under any resolution or agreement approved by a majority of the shareholders entitled to vote thereon and shall inure to the benefit of the heirs, executors or administrators of such persons; provided, however, a person shall not be entitled to indemnification or advancement of expenses under any such agreement or resolution for any liability of such person to the extent indemnification or advancement of expenses for such liabilities is prohibited by law particularly including, but without limitation, the liabilities described in divisions (b)(3)(A)(i) through (b)(3)(A)(iv) of Code Section 14-2-171.

**Section 7. Insurance.**

The corporation may purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a Director, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

**Section 8. Information to Shareholders.**

If any expense or other amounts are paid by way of indemnification, otherwise than by court order or by an insurance carrier pursuant to insurance maintained by the corporation, the corporation shall, not later than the next annual meeting to the shareholders, unless such meeting is held within three months from the date of such payment, and, in any event, within fifteen months from the date of such payment, send in accordance with the manner specified in Section 14-2-113 of the Georgia Business Corporation Code to its shareholders of record at the time entitled to vote for the election of Directors, a statement specifying the persons paid, the amount paid, and the nature and status at the time of such payment of the litigation or threatened litigation.