

**AMENDED AND RESTATED BYLAWS OF THE
MOSS CREEK OWNERS ASSOCIATION, INC.**

**Article I
Definitions**

The terms used in these Bylaws having an initial capital letter shall have the meanings given to them in the definitions section of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Moss Creek of May 1, 2018 (approved March 1, 2018), which is recorded in the Office of the Register of Deeds for Beaufort County in Record Book 3657 at Page 1029 (the "Covenants"). When necessary for proper construction, the masculine form of any word used herein shall include the feminine or neuter gender; the singular form of any word shall include the plural; and words used in the present tense shall include the future tense.

**Article II
Membership**

Section 1. Requirements for Membership in the Association and incidents of such membership, including voting rights, are stated in the Covenants.

**Article III
Board of Directors: General**

Section 1. The Board of Directors shall consist of nine (9) Voting Members of the Association.

Section 2. The Board of Directors shall carry out the purposes of the Association as stated in the Articles of Incorporation and in the Covenants.

Section 3. Vacancies in the Board of Directors occurring for any reason other than the normal expiration of a Director's term shall, at the discretion of the Board, remain vacant, or may be filled within sixty (60) days. The replacement member's term for the Board of Directors shall expire at the end of the calendar year in which he is appointed. The replacement member of the Board must be appointed by the Board of Directors by a vote of not less than five (5) of the remaining members of the Board of Directors.

**Article IV
Board of Directors: Nomination and Election**

Section 1. Nominations for election to the Board of Directors shall be made by the Nominating Committee, which shall be a standing committee of the Association. Additional nominations may be made by petition to the Nominating Committee and signed by 50 or more Voting Members of the Association. Petitions must be filed with the Nominating Committee not later than 30 days after the Nominating Committee has announced its slate publicly to the Membership through standard means of communication, including but not limited to the monthly newsletter.

Section 2. The Nominating Committee shall have seven (7) members, five (5) of whom shall be: a) the President of the Moss Creek Golf Club or their designee (1 member); b) the President of the Moss Creek Tennis Club or their designee (1 member); c) the Commodore of the Moss Creek Yacht Club or their designee (1 member); d) the President of the Moss Creek Boat Owners Association or their designee (1 member); and, e) a former member of the Board of Directors appointed by the President of the Board of Directors (1 member). The remaining two (2) members

to be selected from the general Moss Creek membership by majority vote of the five (5) members identified above. The members of the Nominating Committee will be announced at the February meeting of the Board of Directors of the Association and will serve on such Committee for a term of one (1) year each. The Chairman of the Committee will be chosen by majority vote of the members of the Committee at its first meeting. If, by the March Board of Directors meeting all of the Nominating Committee members have not been appointed or selected, then the Board of Directors shall appoint the remaining members thereof. Notwithstanding the foregoing, only one (1) member of the Nominating Committee is allowed per household, and in the event of the dissolution or disbanding of any of the organizations whose official is allowed to appoint a member of the Nominating Committee, the Board of Directors of the Association may appoint the member of the Committee to represent the group formerly comprising such defunct organization.

Section 3. The Nominating Committee shall nominate at least as many candidates for the Board as vacancies on the Board to be filled and not more than twice as many as the number of positions to be filled.

Section 4. In October of each year, three (3) members of the Board shall be elected for a term beginning the following January first and expiring at the end of the third calendar year. Written and/or electronic notice of the election date set by the Board shall be provided to each Voting Member in accordance with Article IX, Section 3 of these Bylaws.

Section 5. Election to the Board of Directors shall be by printed and/or electronic ballot as hereinafter provided. At such election, Members or their proxies may cast votes in respect of each vacancy, as many votes as they are entitled to exercise under the provisions of the Covenants. Members must cast votes on each ballot equal to the number of vacancies to be filled. Ballots which contain votes for fewer or more than the number of vacancies will be invalid. Candidates receiving the highest number of votes shall be elected.

Section 6. Balloting shall be concluded at the meeting by printed and/or electronic ballot. The names of the candidates on the ballots shall be run in lots to ensure that candidates' names are listed randomly. Each ballot form shall contain space for write-in votes.

Section 7. Voting for members of the Board of Directors shall not be cumulative.

Section 8. If the voting process is administered directly by MCOA vote counting shall be conducted by the administrative staff of the Association and shall be observed and verified by the Audit Committee, which shall perform an oversight function, in accordance with procedures established by the Board of Directors to ensure accuracy and confidentiality and in accordance with the South Carolina Corporate Code, as amended. The committee shall not open Ballots for counting until the morning of the day the meeting is to be held. The voting process may also be administered online by an independent third party. If an online process is utilized a paper balloting option must also be made available to Members.

Article V

Board of Directors: Powers and Duties

Section 1. The Board of Directors shall have such power as stated in: the Articles of Incorporation, the Covenants, and South Carolina law. These include but are not limited to the following.

- a. To appoint and remove, at their pleasure, all officers, agents and employees of the Association; prescribe their duties; fix their compensation; and require of them such security or fidelity bond as indicated. Nothing contained in these Bylaws shall be construed

to prohibit employment by the Association of any Member, or officer of the Association in any capacity whatsoever, except that it is specifically prohibited for a Board member to be employed by or to provide contract goods or services to the Association.

- b. To establish, levy, assess, and collect all assessments and charges referred to in the Covenants.
- c. To call Special Meetings of the Members of the Association.
- d. To adopt and publish rules and regulations governing the use of the properties and facilities and personal conduct of the members and their guests thereon. The Board shall consult with affected community organizations before any changes prior to adopting any Rules and Regulations affecting their members. Nothing contained herein shall delay the Board from taking any action which it deems necessary to protect the safety, security, or liability of the Association or its Members.

Section 2. The Board of Directors shall carry out the duties of the Association as stated in the Articles of Incorporation and in the Covenants. These duties include but are not limited to the following:

- a. To supervise and require proper performance of all officers, agents, and employees of the Association.
- b. As more fully provided in the Covenants: 1) to prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member, and 2) to send written notice of each assessment and charges to the Owner subject thereto.
- c. To cause to be kept a complete record of all of its acts and corporate affairs and to make such records available for inspection by Owners, except for the records of executive sessions of the Board.
- d. To issue, upon demand by any Owner or his representative, a certificate setting forth any assessments or charges that have been paid or are owed by the Owner.

Section 3. The interest rate to be applied to all delinquent accounts shall be determined by the Board of Directors from time to time.

Section 4. Indemnification of Directors, Officers and authorized Committee Members. Unless otherwise provided in the Articles of Incorporation, the Association shall indemnify any individual made a party to a proceeding because he is, or was, a Director or officer of the Association or a member of an authorized Committee of the Association, against liability incurred in the proceeding, but only if such indemnification is both (i) permissible under the South Carolina Business Corporation Act and (ii) authorized, as defined in subsection a. of this Section 4. (Such indemnification is further subject to the limitation specified in subsection c.)

- a. Determination of Authorization. The Association shall not indemnify a Director or Committee member under this Section 4 of Article V unless:
 - 1) Determination. A determination has been made in accordance with the procedures set forth in Section 33-8-550 (b) of the South Carolina Business Corporation Act that the Director met the standard of conduct set forth in subsection b. below, and

- 2) Authorization. The Board of Directors (as specified in Section 33-8-550 (c)) authorizes payment after they have concluded that the expenses are reasonable, the Association has the financial ability to made the payment, and that the financial resources of the Association should be devoted to this use rather than some other use by the Association.

b. Standard of Conduct. The individual shall demonstrate that:

- 1) he conducted himself in good faith; and
- 2) he reasonable believed:
 - (i) In the case of conduct in his official capacity with the Association, that his conduct was in its best interests; and
 - (ii) in all other cases, that his conduct was at least not opposed to its best interests; and
 - (iii) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

The Association shall not indemnify a Director or authorized Committee member under this Section 4 of Article V:

- 1) in connection with a proceeding by, or in the right of the Association, in which the Director or authorized Committee member was adjudged liable to the Association; or
 - 2) in connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.
- c. Indemnification in Derivative Actions Limited - Indemnification permitted under this Section 4 of Article V in connection with a proceeding by or in the right of the Association is limited to reasonable expenses incurred in connection with the proceeding.

Section 5. Advance Expenses for Directors - If a determination is made, following the procedures of Article V., Section 4.a., that the Director has met the following requirements; and if an authorization of payment is made, also following the procedures and standards set forth in Article V., Section 4.a.; then unless otherwise provided in the Articles of Incorporation, the Association shall pay for, or reimburse, the reasonable expenses incurred by a Director who is a party to a proceeding in advance of final disposition of the proceeding, if:

- 1) the Director furnishes the Association a written affirmation of his good faith belief that he has met the standard of conduct described in subsection (b) of Section 4 of this Article V.
- 2) the Director furnishes the Association a written undertaking, executed personally, or on his behalf, to repay the advance, if it is ultimately determined that he did not meet the standard of conduct (which undertaking must be an unlimited general obligation of the Director, but need not be secured, and may be accepted without reference to financial ability to make repayment); and

- 3) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 4 of this Article V. or Section 338-500 through Section 33-8-580 of the South Carolina Business Corporation Act.

Section 6. Indemnification of Officers, Agents and Employees Who Are not Directors. Unless otherwise provided in the Articles of Incorporation, the Board of Directors may indemnify and advance expenses to any officer, employee or agent of the Association, who is not a Director of the Association, to any extent, consistent with public policy, as determined by the general or specific action of the Board of Directors.

Article VI Board of Directors: Meetings

Section 1. Regular Meetings. Regular Meetings of the Board of Directors shall be held monthly with notice of the agenda to be posted in a public place at least five (5) days prior to such meetings, at such place and hour as may be fixed from time-to-time by resolution of the Board. Regular meetings shall be open to the Members for observation. Those wishing to address the Board must file with the Secretary, at least seven (7) days prior to the meeting, the questions or issues to be the subject of their presentation to the Board. The Board has the right to limit the number of Members who may address the Board to five (5), on a first-come, first-heard basis, and to place a time limit of five (5) minutes on each speaker.

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 Directors, after not less than three (3) days notice to each Director.

Section 3. Quorum. Every act or decision done, or made, by at least five (5) of the members of the Board of Directors shall be regarded as an act of the Board of Directors.

Section 4. Action by Unanimous Written Consent. Any action by the unanimous written consent of all of the Board of Directors shall have the same legal effect as action taken by the Board of Directors at a duly held meeting at which a quorum was present.

Article VII Officers

Section 1. The officers shall be a president, vice-president, secretary, treasurer, and the Board of Directors may appoint assistant treasurers and assistant secretaries who shall serve at the pleasure of the Board of Directors and who shall perform all duties assigned by the President or Board of Directors incident to those duties of the Treasurer and Secretary as provided in the Bylaws. The General Manager of the Association shall be an assistant secretary.

Section 2. Officers shall hold office at the pleasure of the Board of Directors.

Section 3. The President shall: a) preside at meetings of the Board of Directors; b) cause orders and resolutions of the Board of Directors to be executed; c) be authorized to sign all notes, checks, leases, mortgages, deeds, and all other written instruments; d) oversee the performance of the duties of the General Manager, and e) have power and authority to conduct the day-to-day administration of the business of the Association.

Section 4. The Vice President, or, in the Vice President's absence, any other officer designated by the President, shall perform all of the duties of the President in his absence, and is authorized to take such other steps as may be reasonably required to conduct the business of the Association, as may be authorized by the Board of Directors.

Section 5. The Secretary shall: a) record votes and keep minutes of all proceedings in a book kept for the purpose, b) keep the records of the Association, and c) record in a minute book kept for that purpose the names of all Members of the Association together with their addresses.

Section 6. The Treasurer shall cause the audited financial statements to be mailed to Members with the notice of the Annual Meeting, together with other financial statements which the Board determines to be pertinent.

Section 7. The Vice President, Secretary, Treasurer, Assistant Secretary and Assistant Treasurer of the Corporation shall perform all duties assigned by the President or Board of Directors, and additionally may, in lieu of the President, sign on behalf of the Association a) such documents as he may be directed to sign by the President or Board of Directors, and b) all notes, checks, leases, mortgages, deeds, and other written instruments and documents as may be ordinary in the day-to-day administration of the business of the Association.

Article VIII Committees

Committees are an important link between the Board/management team and the membership. They should actively solicit input from all sectors of membership, and provide feedback to the Board and management regarding member interests and attitudes.

Section 1. Standing Committees of the Association shall be:

- Finance Committee
- Audit Committee
- Nominating Committee
- Architectural Review Board Committee
- Long Range Planning Committee
- Water Oak Utility Committee
- Green & Grounds Committee
- House Committee
- Bostwick Recreation Committee
- Marketing Committee

Standing Committees will be constituted as follows with the exception of the Nominating Committee, which is to be constituted as set forth in Article IV, Section 2, and with the exception of the Audit Committee, which is covered in Section 2 below. The President shall appoint a chairperson of each committee annually at a Special Board meeting in early January at which time the Corporate Officers are also formally selected. The chairperson shall be a director, and a second director may be appointed as vice-chairperson of a committee at the discretion of the President. The chairperson and vice-chairperson are in addition to the committee members appointed pursuant to the following paragraph.

The chairperson shall select the members of the committee, consistent with the guidelines in the Bylaws, subject to ratification by the Board of Directors at the regular January meeting. Committees will be comprised of up to six (6) members, in addition to the chairperson, vice chairperson, and any ex-officio members as identified below. Committee members shall be

appointed to a two (2) year term and may be reappointed for up to two additional consecutive two-year terms. The initial appointments for a committee shall be staggered with half of the members appointed for a one-year term, and half appointed for a two-year term.

Ex-officio members of Standing Committees will include:

- Bostwick Recreation Committee – One representative each from the Boat Owners' Association and the Yacht Club.
- House Committee – Representative from the Moss Creek Ambassadors.
- Green & Grounds Committee – Chairpersons of the Golf Club and the Women's Golf Association
- Water Oak Utility Committee – MCOA Treasurer
- Finance Committee – MCOA President
- Long Range Planning Committee – MCOA President and Treasurer

In addition, the Board of Directors or the President may appoint special committees as required.

Each committee shall be selected so as to represent, as much as practicable, the broad diversity of the membership of the Association.

All members of committees must be in good standing with the Association at the time of their appointment to a committee and at all times during membership on a committee.

Section 2. The Audit Committee shall be appointed by the Board of Directors and the term of office of each member of the Audit Committee shall commence on April 1 and end on March 31 of the following year. The Audit Committee shall supervise the annual audit of the Association's books and approve the resulting audited financial statements. In addition, this committee will perform other appropriate financial reviews assigned by the Board and reviews which the Committee deems appropriate of items of concern found during the audit. The Audit Committee shall, as stated in Article IV, Section 8, observe and verify the counting of votes in connection with the election of members of the Board of Directors. The Treasurer will be an ex-officio member of this Committee.

Section 3. The Nominating Committee shall have the duties and functions described in Article IV above.

Section 4. Committees serve as an extension of the Board in monitoring and evaluation the performance of the association in the specific areas assigned; and recommend to the Board changes in policy and procedure to more effectively achieve the goals for the association. Committees review policy initiatives from management that pertain to their areas of responsibility, and recommend to the Board regarding such initiatives. All committee actions shall be in the form of recommendations to the Board, except in those areas where authority to act independently has been specifically delegated by the Board.

Section 5. Standing committees serve in an advisory role to the Board and management. As such, they have no command or supervisory function over personnel, except through the General Manager, the President, or the Board of Directors. Committees provide input to management in preparation of annual operating and capital budgets; however, they do not exercise spending authority except as specifically designated by the Board. Insofar as practical, committees of the Association shall coordinate activities with other entities in the community to avoid conflict and enhance cooperation.

Article IX Meetings of Members

Section 1. The Annual Meeting of the Members shall be held during the month of April, with the date and time set by the Board of Directors.

Section 2. A Special Meeting of the Members shall be held during the month of October, with the date and time set by the Board of Directors. Such meeting shall be for the purpose of election of members of the Board pursuant to Article IV above and any other purpose. Additional special meetings of the Members for any purpose may be called at any time by the president or the Board of Directors, or upon written request of the Members having rights to cast twenty-five percent (25%) of the votes of the Association.

Section 3. Written and/or electronic notice of each meeting of the Members shall be given by, or at the direction of, the secretary by providing a copy of such notice to each Member at least thirty (30) days before the date of the meeting. Notices either shall be mailed to each Member at their address appearing on the books of the Association, or sent by electronic means to an email address provided by the Member to MCOA. Any person who becomes an Owner and a Member following the first day in the calendar month in which said notice is provided shall be deemed to have been given notice if a notice had been given to his predecessor-in-title. It is the obligation of each Member of the Association to promptly notify the Secretary of the Association of any change of the Member's address.

Section 4. A quorum for the purpose of any meeting of Members shall be as stated in Article III, Section 5 of the Covenants.

Section 5. The order of business at meetings of Members will be determined based on the nature of the meeting and actions to be voted on, and, will include, but not be limited to:

- a. Call the meeting to order.
- b. Receive the Secretary's proof of providing the Notice of the meeting.
- c. Receive the report of the tellers that a quorum is present.
- d. Minute approval.
- e. Adjournment

Section 6. Other than the Annual and Special Meetings referenced in Article IX, Sections 1 and 2 of these Bylaws, additional meetings of the membership will only be called by the Board of Directors on an as needed basis and as may be called by any Member of the Association as provided in the Covenants.

Article X Proxies

Section 1. At all meetings of members, each member may vote electronically, in person, or by written or electronic proxy filed with the Secretary.

Article XI Corporate Seal

Section 1. The Association shall have a seal in circular form having within its circumference the words MOSS CREEK OWNERS ASSOCIATION, INC., South Carolina Seal, 1974.

**Article XII
Fiscal Year**

Section 1. The fiscal year of the Association shall be the calendar year.

**Article XIII
Amendments**

Section 1. These Bylaws may only be amended in accordance with the provisions of Article XVIII, Section 2, paragraph 4, of the Covenants.

**Article XIV
Controlling Authorities**

Section 1. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control, and in the case of any conflict between the Covenants and these Bylaws, the Covenants shall control.

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting Secretary of Moss Creek Owners Association, Inc., a South Carolina non-profit corporation; and

2. The Amended and Restated Bylaws of the Moss Creek Owners Association, Inc. comprising pages including this page constitute the Bylaws of Moss Creek Owners Association, Inc., duly amended by referendum vote of the Moss Creek Owners Association, Inc. held on March 1, 2018.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of Moss Creek Owners Association, Inc., this 5 day of April, 2018.



Douglas D. Hill, Secretary