

## **RESTATED BY-LAWS**

### **OF**

## **MARSHALL HEIGHTS HOMEOWNERS ASSOCIATION, INC.**

### ARTICLE I

**NAME AND LOCATION.** The name of the corporation is MARSHALL HEIGHTS HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as the "Association." The principal office of the corporation shall be located as provided in the records of the State Corporation Commission, but meetings of the members and Directors may be held at such places within the Commonwealth of Virginia, County of Fairfax, as may be designated by the Board of Directors.

### ARTICLE II

Section 1. "Association" shall mean and refer to MARSHALL HEIGHTS HOMEOWNERS ASSOCIATION, INC., its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real Property containing 8.7± acres, and as more particularly described in the Declaration of Covenants, Conditions, and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

Section 4. "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 5. "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 part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Declarant" shall mean and refer to ROCKY GORGE BUILDER, INC., a Maryland Corporation, their 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 Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Office of the Circuit Court, Fairfax County, Virginia.

Section 8. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

### ARTICLE III

#### MEMBERSHIP

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to covenants of record to assessment by the Association, including contract sellers, shall be members of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessments by the Association. Ownership of such Lot shall be the sole qualification for membership.

Each member shall be entitled to one vote, subject to the provisions of Article VI of the Articles of Incorporation as to the vote of Class B members, and any member owning more than one Lot shall be entitled to one vote for each Lot owned. In the event that the ownership in the said subdivision is held in more than one name, any joint owner present shall have the right to exercise the membership vote for the respective Lot.

Section 2. Suspension of Membership. During any period in which a member shall be in default in the payment of any assessment levied by the Association, or any installment thereof, the voting rights of such member shall be suspended by the Board of Directors until payment has been made. Such rights of a member may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days, for violation of any rules and regulations established by the Board of Directors or the Declaration of Covenants, Conditions and Restrictions.

### ARTICLE IV

#### PROPERTY RIGHTS – RIGHT OF ENJOYMENT

Section 1. Each member shall be entitled to use and enjoyment of the Common Area in accordance with rules and regulations adopted by the membership. Any member may delegate his rights of enjoyment of the Common Area to the members of his family,

his tenants or contract purchasers, who reside on the property. Each member shall notify the secretary in writing of the name of such delegee. The rights and privileges of such delegee are subject to suspension to the same extent as those of the member.

## ARTICLE V

### MEETING OF MEMBERS

Section 1. Annual Meetings. The annual meeting of the members shall be held on a weekday in April of each year in the evening hours at a time and place determined by the Board of Directors.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the President or the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all the votes of the membership.

Section 3. Notice of Meetings. Written 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 a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each member entitled to vote thereat, addressed to the member's 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 hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, these By-Laws, or the statutes of the Commonwealth of Virginia. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

## ARTICLE VI

### BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1.     Number. The affairs of this Association shall be managed by a Board of Directors of five (5) directors, who shall at all times be current Marshall Heights' Owners.

Section 2.     Term of Office. Directors shall be elected for two-year terms. However, if the Bylaws are changed to a fixed number of five (5) directors, the terms of the directors elected at the first election following the change shall be staggered for terms of 1 to 3 years so that the terms of no more than two (2) directors are expiring at any single annual meeting. At the expiration of those varied terms, directors shall serve 2-year terms.

Section 3.     Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a Director, his successor shall be selected by the remaining members of the Board 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 expense incurred in the performance of his duties.

Section 5.     Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take 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 meeting of the Directors.

## ARTICLE VII

### NOMINATION AND ELECTION OF DIRECTORS

Section 1.     Nomination. Nominations for election to the Board of Directors may be made by any member of the Association. Nominations shall be submitted in writing to the Board of Directors at the Board of Director's monthly meeting preceding the annual meeting, or such other date specified by the Board of Directors, which will enable the Board to include the nominees in notice of the annual meeting. Nominations may also be made from the floor at the annual meeting provided the nominee is present or has consented, in writing, to his or her nomination. No member may serve as a director, or be elected to serve as a director, if he or she is in default in the payment of assessments and related charges to the Association and such default has existed for thirty-days after notice. The Board of Directors may also appoint a Nominating Committee to make nominations for election to the Board of Directors. 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 may be appointed by the Board of Directors prior to each annual 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 the 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.

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

## ARTICLE VIII

### MEETING OF DIRECTORS

Section 1. Regular meetings. Regular meeting of the Board of Directors shall be held at least quarterly, upon the notice specified below, at such place and hour as may be fixed from time to time by 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. Notice of regularly scheduled Board meetings shall be published (e.g., postings, newsletter, website, etc.) where it is reasonably calculated to be available to a majority of the lot owners and shall be sent by first-class mail or email to any lot owner requesting such notice. Notice of special or emergency meetings shall be given contemporaneously with the notice provided to the directors.

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. A majority of the number of Directors shall constitute a quorum for the transaction of business except that for the purposes of filling vacancies on the Board of Directors, a majority of the number of Directors then serving shall constitute a quorum for such purposes. 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.

## ARTICLE IX

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1.     Powers. The Board of Directors shall have the powers to:

(a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

(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, the Articles of Incorporation, or the Declaration, including, but not limited to, the power to grant and receive easements over the Common Areas and adjacent properties for the benefit of the membership and best interests of the Association;

(d) remove a member of the Board of Directors in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors or if such member is in default in the payment of assessments and related charges due the Association and if such default has existed for 30 days after notice; and

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

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 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 members who are entitled to vote;

(b) supervise all Officers, agents and employees of the Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.

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

(e) procure and maintain adequate liability and hazard insurance on property owned by Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Area to be maintained;

(h) approve an annual budget; and

(i) enforce compliance with all provisions of the Declaration of Covenants, Conditions and Restrictions.

Section 3. Each member of the Board of Directors shall be bonded in the performance of his duties by a Fidelity Bond and the cost of said bond shall be paid for by the Association.

## ARTICLE X

### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The Officers of the Association shall be a president, and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other Officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of Officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The Officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period,

have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation or Removal. Any Officer may be removed from office with or without cause by the Board. Any Officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein; unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the Officers are as follows:

President

(a) The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds, and other written instruments and shall co-sign all checks and promissory notes. The President shall make appointments of Committee Chairmen of all standing Committees.

Vice President

(b) Vice-President shall act in the place and stead of the President in the event of his absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

(c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer



(d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse funds as directed by resolution of the Board of Directors; shall co-sign all promissory notes and checks of the Association, as the Board may from time to time determine; keep proper books of account; cause an annual audit of the Association books to be made by a certified public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement at its regular annual meeting, and deliver a copy of each to the members.

## ARTICLE XI COMMITTEES

The Association shall appoint an Architectural Review Committee, as provided in the Declaration. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

## ARTICLE XII

### 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 member. The Declaration, 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 a reasonable cost.

## ARTICLE XIII

### ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due 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 a percentage rate no greater than the statutory maximum, such rate to be set by the Board for each assessment period, and the Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount

of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

#### ARTICLE XIV

##### LIABILITY, INDEMNIFICATION AND INSURANCE OF DIRECTORS

Section 1.     Liability. No Director or Officer shall be liable for transacting business for the simultaneous benefit of the Association and himself or herself whether directly or indirectly, provided that at least two-thirds (2/3) of the Board of Directors of the Association approves the transaction(s) following full disclosure by said Director or Officer.

Section 2.     Indemnification. The Association shall indemnify the Directors, Officers, employees or agents, and may insure any such party upon approval of the Board of Directors in accordance with Section 13.1-205.1, Code of Virginia as amended.

#### ARTICLE XV

##### CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: "MARSHALL HEIGHTS HOMEOWNERS ASSOCIATION, INC., a Virginia Corporation."

#### ARTICLE XVI

##### AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto any such amendments while there is Class B membership.

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

ARTICLE XVII

MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December every year, except that the first year shall begin on the date of incorporation.

IN WITNESS WHEREOF, the President of the MARSHALL HEIGHTS HOMEOWNERS ASSOCIATION, INC., has set his/her hands this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_

By: Dori W. Brady, President

Subscribed, acknowledged and sworn to before me, the undersigned Notary Public in and for the County of \_\_\_\_\_, in the Commonwealth of Virginia, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_

Notary Public

My Commission Expires:

\_\_\_\_\_

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting President of the MARSHALL HEIGHTS HOMEOWNERS ASSOCIATION, INC. a Virginia Corporation; and,

THAT the foregoing Restated By-Laws constitute the approved and Restated By-Laws of said Association, being duly adopted by the requisite number of members at a validly convened meeting of the Association held on the 19th day of April, 2004.

\_\_\_\_\_  
Dori Brady, President

Subscribed, acknowledged and sworn to before me, the undersigned Notary Public in and for the County of \_\_\_\_\_, in the Commonwealth of Virginia, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_