



## Brighton Association, Inc.

### By-Laws

Established 1997

*Amendment History*

Article	Section	As Amended
III	6, 7, 9	May 11, 2009
IV	1	May 11, 2009
V	1, 11, 13, 14	May 11, 2009
VI	1, 6	May 11, 2009
XII	1	May 11, 2009
XIII	4	May 11, 2009
X	4, 5, 6	October 12, 2010
X	7	November 8, 2010
X	5	May 16, 2011
XIII	6	August 15, 2016
XIII	5	June 9, 2014 & September 7, 2016
XV	2	September 7, 2016

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## ARTICLE I – OFFICES

1. The registered office of the Corporation shall be at 2130 Marietta Avenue, Lancaster, PA 17603
2. The Corporation may also have offices at such other places as the Board of Directors may from time to time appoint or the activities of the Corporation may require.

## ARTICLE II – SEAL

1. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Pennsylvania."

## ARTICLE III – MEMBERS

1. The members of this Corporation (the "Owners") shall be those persons owning Lots in a residential real estate development known as Brighton (the "Development") located in Manheim Township, Lancaster County, Pennsylvania, which Owners are subject to a certain Declaration of Covenants, Conditions, Easements and Restrictions imposed upon the Development, the provisions of which are incorporated herein by reference.
2. The Corporation will have two classes of members, designated as "Class A Members" and "the Class B Member". Class A Members shall be all Owners with the exception of the Class B Member (only until such time as the Class B membership is extinguished). All Class A Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any lot, all such persons shall be members of the Corporation. The vote for such Lot shall be exercised as such persons among themselves may determine, but in no event shall more than one vote be cast with respect to any Lot.
3. The Class B Member shall be Brighton Land Company, L.P. (hereinafter referred to as "the Developer") and shall be entitled to one vote for each Lot owned, subject to the following limitations:
  - a) At such time as the Developer has sold 25% of the Lots in the Development, the number of votes to which the Class B Member shall be entitled shall not exceed the total number of votes which may be cast by Class A Members.
  - b) At such time as the Developer has sold 50% or more of the Lots in the Development, the number of votes to which the Class B Member shall be entitled shall not exceed 33 1/3% of the total number of votes which may be cast by Class A Members; and
  - c) At such time as the Developer has sold 75% of the Lots in the Development, the Class B Membership shall cease to exist and any Lots retained by the Developer shall be converted to Class A Membership.

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4. For the purposes of this Article III, and specifically in making the calculations contemplated by Paragraphs 3 (a), (b), and (c), above, the term "Lot" shall include all single-family residential lots contemplated by Developer in all phases of the Development as that number is stated in and depicted on the Sub-Division and Land Development Plan recorded for the Development, and subsequent Plans recorded for future phases of the Development.
  - a) An Owner who is a member of the Association may assign his or her membership voting rights to a tenant residing in the house constructed on that Owner's Lot. Such assignment shall be effected by filing with the secretary of the Association a written notice of assignment signed by the Owner.
5. Members will be assessed as set forth in Article IV - Maintenance Assessments of the aforesaid Declaration of Covenants, Conditions, Easements and Restrictions.
6. The annual meeting of the members will be held during the month of September each year. Special meetings of the Members may be called by any of the following: (1) the Board of Directors; and (2) the President. <sup>(1)</sup>
7. Written or printed notice, stating the place, day and hour of the meeting and in the case of a special meeting, the purpose or purposes for which the meeting is called, must be delivered not less than five (5) nor more than forty (40) days before the date of the members meeting, either personally or by first class mail at the last known address of each member. If mailed, the notice will be deemed to be delivered when deposited in the United States Mail addressed to the member. If emailed, the notice will be deemed to be delivered based upon the date and time stamp on the email. <sup>(2)</sup>
8. A Member may vote either in person or by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy will be recognized as valid after eleven (11) months from the date of its execution unless expressly provided otherwise in the proxy.
9. There shall be a quorum for any meeting of the Members if at least fifty (50%) percent of the members entitled to vote are represented in person or by proxy at any given meeting. The assent of at least fifty (50%) percent of the entire membership entitled to vote in person or by proxy at any meeting at which a quorum is present is necessary for the adoption of any matter voted on by the members, unless a greater proportion is required by the Non-Profit Corporation Law of 1988, as amended, the Articles of Incorporation of this Corporation, any provision in these By-Laws, or any provision of the Declaration of Covenants, Conditions, Easements and Restrictions. <sup>(3)</sup>

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1 Article III 6 amended May 11, 2009

2 Article III 7 amended May 11, 2009

3 Article III 9 amended May 11, 2009

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## ARTICLE IV - ANNUAL MEETING

1. The annual meeting of the Board of Directors of the Corporation shall be held during the month of November. At such annual meeting, officers shall be elected in accordance with the requirements of Article V and VI of these By-Laws. <sup>(4)</sup>

## ARTICLE V - DIRECTORS

1. The business and affairs of this Corporation shall be managed by its Board of Directors, at least 3 in number but not more than 5, who shall be natural persons of full age. <sup>(5)</sup>
2. The initial Board and Officers thereof shall be designated by the incorporator of the organization.
3. In addition to the powers and authorities by these By-Laws expressly conferred upon them, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things.
4. The meetings of the Board of Directors may be held at such times and at such place or places within this Commonwealth, or elsewhere, as a majority of the directors may from time to time appoint.
5. Written or personal notice of every meeting of the Board of Directors shall be given to each director at least five <sup>(5)</sup> days prior to the day named for the meeting.
6. A majority of the directors in office shall be necessary to constitute a quorum for the transaction of business and the acts of a majority of the directors present at a meeting at which quorum is present shall be the acts of the Board of Directors. Any action which may be taken at a meeting of the directors may be taken without a meeting, if consent or consents in writing setting forth the action so taken shall be signed by all of the directors in office and shall be filed with the Secretary of the Corporation.
7. Directors may participate in and hold a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.
8. A meeting of the Board of Directors, whether or not a quorum is present, may be adjourned by a majority of the Directors present to reconvene at a specific time and place. It shall not be necessary to give notice of the reconvened meeting or of the business to be transacted, other than by announcement at the meeting which was adjourned. At any such reconvened meeting at which a quorum is present, any business may be transacted which could have been transacted at the

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4 Article IV amended May 11, 2009

5 Article V 1 amended May 11, 2009

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meeting which was adjourned.

9. The Board of Directors may, by resolution adopted by a majority of the directors in office, establish one or more committees to consist of one or more directors of the Corporation. Any such committee, to the extent provided in the resolution of the Board of Directors or in the By-Laws, shall have and may exercise all of the powers and authority of the Board of Directors, except that no such committee shall have any power or authority as to the following:
  - a. The filling of vacancies in the Board of Directors.
  - b. The adoption, amendment or repeal of the By-Laws.
  - c. The amendment or repeal of any resolution of the Board.
  - d. Action on matters committed by the By-Laws or resolution of the Board of Directors to another committee of the Board.
10. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member of any meeting of the committee. In the absence of disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another director to act at the meeting in the place of any such absent or disqualified member. Each committee of the Board shall serve at the pleasure of the Board.
11. The Board of Directors may declare vacant the office of a director if he or she is declared of unsound mind by an order of court or is convicted of a felony; if within thirty (30) days after notice of selection, he or she does not accept such office either in writing or by attending a meeting of the Board of Directors; or if he or she fails to attend three (3) consecutive meetings of the Board without cause; and fulfill such other requirements of qualifications as the By-Laws may specify. <sup>(6)</sup>
12. The Board may provide for such other committees and advisory groups, consisting in whole or in part of non-directors, as it deems desirable, and discontinue these committees and groups at its pleasure. Each such committee and group shall be advisory to the Board and shall have such powers and perform such duties or functions, not inconsistent with law, as may be set forth for it by the Board. Appointments to and the filling of vacancies on such committees and groups shall be the responsibility of the President unless the Board provides otherwise. Any action by any such committee or group shall be reported to the Board at its next meeting after such action. Actions taken by such committees or groups shall be subject to control, revision and alteration by the Board, provided that no rights of third persons shall be prejudicially affected.
13. No director of the Corporation shall receive, directly or indirectly, any salary, compensation or emolument. <sup>(7)</sup>
14. Commencing in the fall of 2009 and each year thereafter, the Members of the Board of Directors

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6 Article V 11 amended May 11, 2009

7 Article V 13 amended May 11, 2009

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will be determined by a process of self-nomination and voting by the Members of the Association, when necessary. Any Member of this Corporation as defined in Article III who is current in all of his/her annual and special assessments and in compliance with all provisions of the Declaration of Covenants, Conditions, Easements and Restrictions may self-nominate himself/herself for election to the Board of Directors by giving written notification (emails are acceptable) in the month of August of his/her self-nomination to the current President of the Board. The election process is as follows:

- a. Candidates as specified above will be given a maximum of five (5) minutes at the annual membership meeting to address the members present.
- b. If the number of Candidates is equal to or less than the number of vacancies on the Board of Directors, then the individuals will be proclaimed new members of the Board of Directors. If the number of Candidates exceeds the number of vacancies, then ballots will be mailed to each member's address of record so the member can cast a vote for as many candidates as there are vacancies on the Board. A member must return the ballot within three (3) weeks of the date on the ballot. The votes will be counted by a committee comprised of all of the current Members of the Board plus all Candidates. The vacancies will then be filled by the appropriate number of individuals who received the most votes. In case of ties, the individual(s) who has been a Member of the Association the longest will become the Member(s) of the Board of Directors.
- c. If the ballot process is not required in the fall of 2009, the two (2) Candidates who have been a Member of the Association the longest will be elected to the Board of Directors for a term of two (2) years and the others will be elected for a term of one (1) year. If the ballot process is required, then the two (2) candidates who receive the most votes will be elected for two (2) year terms and the remaining candidates will be elected for one (1) year terms. In 2010 and each year thereafter, the term for those joining the Board of Directors will be two (2) years.
- d. The newly constituted Board of Directors will take office on November 1 of each year. <sup>(8)</sup>

### ARTICLE VI – OFFICERS

1. The initial officers of the Corporation shall be designated by the Developer, and shall be a President, Secretary, Treasurer and such other officers and assistant officers as the needs of the Corporation may require. The President and Secretary shall be natural persons of full age; the Treasurer, however, may be a corporation, but if a natural person, shall be of full age. They shall hold their offices for a term of one (1) year and shall have authority and shall perform such duties as are provided by the By-Laws and as shall from time to time be prescribed by the Board of

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Directors. Each year during the annual meeting of the Board of Directors in November, the officers of the Corporation shall be chosen by the Board of Directors. It shall not be necessary for the officers to be directors and any number of offices may be held by the same person. The Board of Directors may secure the fidelity of any or all such officers by bond or otherwise. <sup>(9)</sup>

2. Any officer or agent may be removed by the Board of Directors whenever in its judgment the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights of any person so removed.
3. The President shall be the chief executive officer of the Corporation and shall preside at all meetings of the Board. The President shall have general and active management of the affairs of the Corporation and shall see that all orders and resolutions of the Board are carried into effect, subject, however, to the right of the directors to delegate any specific powers, except such as may be by statute exclusively conferred on the President, to any other officer or officers of the Corporation. He or she shall execute bonds, mortgages and other documents requiring a seal, under the seal of the Corporation. The President shall be EX-OFFICIO a member of all committees and shall have the general powers and duties of supervision and management usually vested in the office of President.
4. The Secretary shall attend all sessions of the Board and act as clerk thereof, and record all the votes of the Corporation and the minutes of all its transactions in a book to be kept for that purpose; and shall perform like duties for all committees of the Board of Directors when required. The Secretary shall give, or cause to be given, notice of all meetings of the Board of Directors, and shall perform other duties as may be prescribed by the Board of Directors or President, under whose supervision he or she shall be. The Secretary shall keep in safe custody the corporate seal of the Corporation, and when authorized by the Board, affix the same to any instrument requiring it.
5. The Treasurer shall have custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, and shall keep the moneys of the Corporation in a separate account to the credit of the Corporation. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and directors, at the regular meetings of the Board, or whenever they may require it, an account of all transactions as Treasurer and of the financial condition of the Corporation.
6. No Officer shall receive compensation. <sup>(10)</sup>

### ARTICLE VII - EXECUTIVE COMMITTEE

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<sup>9</sup> Article VI 1 amended May 11, 2009

<sup>10</sup> Article VI 6 amended May 11, 2009

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1. There shall be an Executive Committee which shall consist of the officers of the Corporation and any other member or members of the Board of Directors appointed by the Officers. The Executive Committee shall have the right to act on matters requiring immediate attention, subject to the later approval of the Board of Directors.

### **ARTICLE VIII – VACANCIES**

1. If the office of any officer or agent, one or more, becomes vacant for any reason, the Board of Directors may choose a successor or successors, who shall hold office for the unexpired term in respect of which such vacancy occurred.
2. Vacancies in the Board of Directors, including vacancies resulting from an increase in the number of directors shall be filled by the Board of Directors.

### **ARTICLE IX - BOOKS AND RECORDS**

1. The Corporation shall keep an original or duplicate record of the proceedings of the directors and the original or a copy of its By-Laws, including all amendments thereto to date, certified by the Secretary of the Corporation. The Corporation shall also keep appropriate, complete and accurate books or records of account. The records provided for herein shall be kept at either the registered office of the Corporation in this Commonwealth, or at its principal place of business wherever situated.

### **ARTICLE X - TRANSACTION OF BUSINESS**

1. The Corporation shall make no purchase of real property nor sell, mortgage, lease or otherwise dispose of its real property, unless authorized by a vote of two-thirds of the members in office of the Board of Directors.
2. Whenever the lawful activities of the Corporation involve among other things the charging of fees or prices for its real or personal property, services or products, it shall have the right to receive such income and, in so doing, may make an incidental profit. All such incidental profits shall be applied to the maintenance and operation of the lawful activities of the Corporation, and in no case shall be divided or distributed in any manner whatsoever among the directors or officers of the Corporation.
3. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers as the Board of Directors may from time to time designate.
4. By vote of the Members at the 2010 Annual Meeting, the following items have been endorsed for inclusion or elimination of future funding by Brighton Association and guidelines for assent or decline by lot category established:

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- a. The practice of displaying decorative street banners along Brighton Avenue will be continued as long as there are sufficient banners and hardware. However, no additional purchases of banners or hardware will be authorized.
  - b. After the 2010 Labor Day event, Social Events must be financially self supporting because no Brighton Association funds will be authorized for social events.
  - c. Association budgets will not provide funds for snow removal services for snow falls of less than 2 inches but will include snow removal to clear snow from mail boxes so the mail carrier has access to deliver mail.
  - d. The mulching and pruning <sup>(18)</sup> of trees in the strips abutting a lot owner's property will be considered as Association projects and included in the budget.
  - e. It was agreed topics and services which primarily affect members living in a certain lot category may vote to assent or decline said items rather than the entire membership.
  - f. The Re-Color of Bituminous Walkways and Spraying Sidewalks Abutting Lot Owners were declined.
5. Lot Owners are responsible for the maintenance, repairs, and replacements of the grass and trees, as well as the sidewalks abutting his/her/their lot(s). Also, Lot Owners must maintain their lawn and landscaping in a manner which conforms to township and/or generally acceptable standards. If any Lot Owner fails to properly fulfill any such responsibilities as determined by and, at the sole discretion of the Board of Directors, an attempt to notify the Lot Owner(s) of the needed actions and associated time limits will be made by sending written notification to the Lot Owner(s)'s address of record, a phone call to the phone number on record, and/or an email to the email address on file. If the Lot Owner fails to take acceptable actions within the specified time frame, the Board of Directors may authorize actions be taken and charge the Lot Owner for the respective costs and/or assess a fine as outlined in 7 below. Thereafter, the Board of Directors will send notice to the Lot Owner's address of record stating the amount and date due. If the Lot Owner fails to make full payment by the due date, then the Lot Owner will be subject to late fees as outlined in 6 and/or fines as outlined in 7 below. <sup>(11)</sup>
6. The following outlines the late fees and filing of liens associated with payments, or absence thereof, of annual and/or special assessments on each Lot and costs for items referenced in 5 above:
- a. If any payment due is not received within 15 days of the date due, an initial late fee of thirty dollars (\$30.00) will be assessed. Thereafter, on the first business day of each month in which full payment of the total amount due has not been received, an additional fifteen dollars (\$15.00) will be assessed.
  - b. The above assessment schedule for late fees shall apply to each and all payments due. For

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11 Article X 5 amended May 16, 2011

18 The pruning of strip trees has been limited to the removal of branches interfering with sidewalk or vehicular traffic or blocking visibility of signs, since the 2010 vote. November 2018 vote results did not approve a change to this practice.

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example, if a first quarter assessment is not paid within 15 days of the due date, a thirty dollar (\$30.00) late fee will be assessed and subsequent fifteen dollar (\$15.00) additions as appropriate. Then, if the Lot Owner does not make the second quarterly dues payment within fifteen days of the due date, then an initial thirty dollar (\$30.00) late fee will be assessed for the second quarter dues as well as any additional fifteen dollar (\$15.00) assessments for failure to make full payments by the first business day of subsequent months.

- c. If any late fees accrue for six (6) consecutive months a lien may be filed against said Lot Owner. The total cost to satisfy said lien will be calculated based upon items a. and b. above. <sup>(12)</sup>

7. The following outlines the process for levying fines and filing of liens against Lot Owners for any infringement or violation of the Articles of Incorporation; Declaration of Covenants, Conditions, Easements and Restrictions; By-Laws and/or any other official document provisions of the Association:

- a. If there is deemed to be anything which constitutes an infringement or violation of any aspect or provision of the Articles of Incorporation; Declaration of Covenants, Conditions, Easements, and Restrictions; By-Laws and/or any other pertinent provisions of the Association by a Lot Owner(s), an attempt to notify the Lot Owner(s) of the need to correct the infringement or violation within a specified time frame will be made by sending written notification to the Lot Owner(s)'s address of record, a phone call to the phone number on record, and/or an email to the email address on file.
- b. If the infringement or violation is not corrected within said time frame, the Lot Owner(s) will be subject to an initial fine levied at the discretion of the Board of Directors in an amount ranging from thirty dollars (\$30.00) to one hundred dollars (\$100.00). Written notification will be sent to the Lot Owner(s)'s address of record specifying the amount of the initial fine and outlining the following process for levying additional fines and filing of a lien if the infringement or violation is not corrected.
- c. If the infringement or violation continues, then an additional fine of fifteen dollars (\$15.00) will be levied on the first business day of each subsequent month the infringement or violation continues.
- d. If any fine(s) remains unpaid in full and/or the infringement or violation exists six (6) months subsequent to the date of the initial written notification referenced in (b) above, a lien may be filed against said Lot Owner(s) <sup>(13)</sup>

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<sup>12</sup> Article X 4, 5, 6 added October 12, 2010

<sup>13</sup> Article X 7 added November 8, 2010

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## ARTICLE XI - ANNUAL REPORT

1. The Board of Directors shall prepare annually a report, verified by the President and Treasurer or by a majority of the directors, showing in appropriate detail the following:
  - a. The assets and liabilities, including the trust funds, of the Corporation as of the end of the fiscal year immediately preceding the date of the report.
  - b. The principal changes in assets and liabilities including trust funds, during the year immediately preceding the date of the report.
  - c. The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the year immediately preceding the date of the report, including separate data with respect to each trust fund held by or for the Corporation.
  - d. The expenses or disbursements of the Corporation, for both general and restricted purposes, during the year immediately preceding the date of the report, including separate data with respect to each trust fund held by or for the Corporation.
  - e. This report shall be filed with the minutes of the meeting of members.

## ARTICLE XII – NOTICES

1. Whenever written notice is required to be given to any person, it may be given to such person, either personally or by sending a copy thereof by first class mail, postage prepaid, or by telegram, charges prepaid, or by FAX transmittal to the person's address appearing on the books of the Corporation, or by email, or, in the case of directors, supplied by such person to the Corporation for the purpose of notice. <sup>(14)</sup>
2. If the notice is sent by mail or by telegraph, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail or with a telegraph office for transmission to such person. If the notice is sent by FAX transmittal, it shall be deemed given when transmission is completed. A notice of meeting shall specify the place, day and hour of the meeting and any other information required by statute or these By-Laws. When a special meeting is adjourned it shall not be necessary to give any notice of the adjourned meeting, other than by announcement at the meeting at which such adjournment is taken.
3. Whenever any written notice is required to be given under the provisions of a statute or the Articles or By-Laws of this Corporation, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Except as otherwise required by statute, neither the business to be transacted at nor the purpose of a meeting need be specified in the waiver of notice of such meeting. Attendance of a person at any meeting shall constitute a waiver of notice

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14 Article XII 1 amended May 11, 2009

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of such meeting, except where a person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened.

### ARTICLE XIII - MISCELLANEOUS PROVISIONS

1. The fiscal year of the Corporation shall begin on the first day of January.
2. One or more persons may participate in a meeting of the Board by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.
3. The Board of Directors, by resolution, may authorize the Corporation to accept subventions on terms and conditions not inconsistent with the provisions of section 5542 of the Nonprofit Corporation Law of 1988, and to issue certificates therefore.
4. Attendance by Members of the Association at regular and special meetings of the Board of Directors may be restricted due to the planned activities and/or location of a given meeting. If a Member of the Association who is not a member of the Board desires to attend a given meeting of the Board, then the individual must receive approval in advance of the meeting from a Member of the Board to be permitted to attend said meeting. If the individual's purpose for attendance is to address the Board, then the individual must so specify and, if approved, will be given ten (10) minutes to address the Board. In any event, at least one individual will be permitted to address the Board and/or observe a given meeting. <sup>(15)</sup>
5. In accordance with the authority delegated by the Developer to the Executive Board of Brighton and in keeping with the unanimous recommendation of the Architectural Review Committee (ARC), all types of sheds and outbuildings such as, but not limited to, workshops, pool houses, entertaining cabanas, offices, and storage sheds are not permitted within the Brighton Development. <sup>(16)</sup>
6. Brighton Association has a practice of scheduling an annual development garage/yard sale on the first Saturday in May. In addition to the annual garage/yard sale, a Brighton Association Member may have a one day garage/yard sale provided the Member's residence is listed For Sale and is under contract and the Member will be moving out of Brighton Development within ninety (90) calendar days. In advance of the garage/yard sale, the Member must contact the Board of

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15 Article XIII 4 amended May 11, 2009

16 Article XIII 5 amended September 7, 2016

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Directors and establish he/she/they meet the above required conditions and to get written approval from the Board to have said garage/yard sale. The prohibition against signs cannot be waived. Therefore, the Member must not display any sign(s) within Brighton Development. <sup>(17)</sup>

### ARTICLE XIV - LIMITED LIABILITY AND INDEMNIFICATION

#### 1. Limited Liability

- a. Except as provided in paragraph b, no Director (or former Director) of the Corporation shall be personally liable for monetary damages for any action taken as a director or any failure to take any action unless the Director has breached or failed to perform the duties of his or her office in accordance with Section 5712 of the Nonprofit Corporation Law of 1988 (the "NCL") and the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.
- b. This limitation of liability shall not apply to responsibility or liability of a Director pursuant to a criminal statute or the liability of a Director for the payment of taxes pursuant to local, State, or Federal law.

#### 2. Indemnification:

The Corporation shall indemnify every member of the Board of Directors, every member of every committee and subcommittee of the Board of Directors (each a "committee member"), and every officer of the Corporation (collectively the "Indemnities"), and may indemnify any other employee or agent, who was or is a party to, or is threatened to be made a party to or who is called as a witness in connection with any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, including without limitation an action by or in the right of the Corporation, by reason of the fact that such person is or was a Director, committee member, 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 entity, partnership, joint venture, trust or other enterprise, against expenses, including, without limitation, attorney's fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding unless the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness.

#### 3. Rights not exclusive:

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article shall not be deemed exclusive of any other rights to which those seeking indemnification or

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<sup>17</sup> Article XIII 6 added August 15, 2016

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advancement of expenses may be entitled under any By-law, agreement, contract, vote of members or disinterested Directors or pursuant to the direction of any court of competent jurisdiction or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. It is the policy of the Corporation that indemnification of, and advancement of expenses to, Indemnities of the Corporation shall be made to the fullest extent permitted from time to time by law. To this end, the provisions of this Article shall be deemed to have been amended for the benefit of Indemnities of the Corporation effective immediately upon any modification of the NCL that expands or enlarges the power or obligation of corporations organized under the NCL to indemnify, or advance expenses to, Indemnities of the Corporation.

### 4. Advancement of expenses:

The Corporation shall pay expenses incurred by an Indemnitee, and may pay expenses incurred by any other employee or agent, in defending a civil or criminal action, suit or proceeding in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation.

### 5. Continuation of rights

- a. The indemnification and advancement of expenses provided by or granted pursuant to this Article shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a Director, committee member, officer, employee or agent of the Corporation and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of such person.
- b. The indemnification and advancement of expenses provided by this Article shall not depend upon whether such person is a member of the Board of Directors, a committee member, an officer, employee or agent at the time such claim, action, suit, or proceeding is begun, prosecuted, or threatened.

### 6. Funding:

The Corporation shall have the authority to create a fund of any nature, which may, but need not be, under the control of a trustee, or otherwise secure or insure in any manner its indemnification obligations, whether arising under the By-Laws or otherwise. This authority shall include, without limitation, the authority to (a) deposit funds in trust or in escrow; (b) establish any form of self-insurance; (c) secure its indemnity obligations by grant of a security interest, mortgage or other lien on the assets of the Corporation; or (d) establish a letter of credit, guaranty or surety arrangement for the benefit of such persons in connection with the anticipated indemnification or advancement of expenses contemplated by this Article. The provisions of this Article shall not be deemed to preclude the indemnification of, or advancement of expenses to, any person who is not specified in Section 2 of this Article but whom the Corporation has the power or obligation to

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indemnify, or to advance expenses for, under the provisions of the NCL or otherwise. The authority granted by this Section 6 shall be exercised by the Board of Directors of the Corporation.

### 7. Notice and Representation:

As soon as practicable after receipt of any person specified in Section 2 of this Article of notice of the commencement of any action, suit or proceeding specified in Section 2 of this Article such person shall, if a claim with respect thereto may be made against the Corporation under this Article notify the Corporation in writing of the commencement or threat thereof. Failure to so to notify the Corporation shall not relieve the Corporation from any liability under this Article unless the Corporation shall have been prejudiced thereby or from any other liability that it may have to such person other than under this Article. With respect to any such action as to which such person notifies the Corporation of the commencement or threat thereof, the Corporation may participate therein at its own expense and, except as otherwise provided below, to the extent that it desires, the Corporation jointly with any other indemnifying party similarly notified shall be entitled to assume the defense thereof, with counsel selected by the Corporation to the reasonable satisfaction of such person. After notice from the Corporation to such person of its election to assume the defense thereof, the Corporation shall not be liable to such person under this Article for any legal or other expenses subsequently incurred by such person in connection with the defense thereof other than as otherwise provided below. Such person shall have the right to employ his or her or its own counsel in such action, but the fees and expenses of such counsel incurred after notice from the Corporation of this assumption of the defense thereof shall be at the expense of such person unless: (a) the employment of counsel by such person shall have been authorized by the Corporation; (b) such person shall have reasonably concluded that there may be a conflict of interest between the Corporation and such person in the conduct of the defense of such proceeding; or (c) the Corporation shall not in fact have employed counsel to assume the defense of such action. The Corporation shall not be entitled to assume the defense of any proceeding brought by or on behalf of the Corporation or as to which such person shall have reasonably concluded that there may be a conflict of interest.

### 8. Payment

- a. In each instance in which the right to indemnification hereunder is asserted, determination of the time, manner, and amount of payment thereof, shall be made by the Board of Directors. Such indemnification shall be deemed to be an expense of the Corporation.
- b. If indemnification under this Article or advancement of expenses are not paid or made by the Corporation, or on its behalf, within ninety (90) days after a written claim for indemnification or a request for an advancement of expenses has been received by the Corporation, then such person may, at any time thereafter, bring suit against the Corporation to recover the unpaid amount of the claim or the advancement of expenses. The right to indemnification and advancement of expenses provided hereunder shall be enforceable by such person in any court of competent jurisdiction. The burden of proving that indemnification is not

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appropriate shall be on the Corporation. Expenses reasonably incurred by such person in connection with successfully establishing the right to indemnification or advancement of expenses, in whole or in part, shall also be indemnified by the Corporation.

### 9. Insurance

The Board of Directors is empowered to carry such insurance as is reasonably required to provide adequate coverage for the persons mentioned in Section 2 of this Article, for the acts or omissions mentioned in Section 2 of this Article. Such insurance shall be deemed to be an expense of the Corporation.

### 10. Limitation

Anything to the contrary notwithstanding, the Corporation shall not indemnify trustees, officers or other persons or entities, pay their expenses in advance or pay insurance premiums on their behalf if such indemnification payment, advance expense payment or payment of insurance premiums shall constitute a violation of any of the provisions of the Internal Revenue Code of 1986 applicable to a private foundation described in Section 509(a) of said Code (or the corresponding provisions of any applicable future United States internal revenue law).

## ARTICLE XV – AMENDMENTS

1. By-Laws may be adopted, amended or repealed by the vote of the Board of Directors entitled to cast at least a majority of the votes which all Directors present are entitled to cast thereon at any regular or special meeting duly convened after notice to the Directors of that purpose. However, until the Class B Membership has been terminated as set forth in Article VI of the Articles of Incorporation, the U.S. Department of Housing and Urban Development and/or the Veterans Administration of the United States shall have the right to veto all amendments to these By-Laws.
2. Effective October 1, 2016, all amendments to these By-Laws must be approved by the assent of 55 percent (55%) of the entire membership. Therefore, these By-Laws can no longer be adopted, amended or repealed by the vote of the Board of Directors as stated in Article XV, Section 1 above.

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Article XV 2. Added September 7, 2016

# Brighton Association By-Laws