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**Cross-Reference:**

**Clearbrook Park, Section 1 (Plat), Instrument No. 96005956**  
**Clearbrook Park, Section 2 (Plat), Instrument No. 96028527**  
**Clearbrook Park, Section 3 (Plat), Instrument No. 97012422**  
**Clearbrook Park, Section 4 (Plat), Instrument No. 98005164**  
**Clearbrook Park, Section 5 (Plat), Instrument No. 98026787**  
**Clearbrook Park, Covenants and Restrictions, Instrument No. 96023860**

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**AMENDED AND RESTATED  
CODE OF BYLAWS**

**for**

**CLEARBROOK PARK HOMEOWNERS' ASSOCIATION, INC.**

Clearbrook Park Homeowners' Association, Inc., by its Board of Directors, on this \_\_\_\_ day of \_\_\_\_\_, 2020, states the following:

**INTRODUCTION**

The residential community in Johnson County, Indiana, known as Clearbrook Park was created by the recording of certain documents with the Office of the Recorder of Johnson County, Indiana; and

The Plat for Clearbrook Park, Section 1, was recorded in the Office of the Recorder of Johnson County, Indiana, on March 26, 1996, as **Instrument No. 96005956**; and

The Plat for Clearbrook Park, Section 2, was recorded in the Office of the Recorder of Johnson County, Indiana, on December 30, 1996, as **Instrument No. 96028527**; and

The Plat for Clearbrook Park, Section 3, was recorded in the Office of the Recorder of Johnson County, Indiana, on June 13, 1997, as **Instrument No. 97012422**; and

The Plat for Clearbrook Park, Section 4, was recorded in the Office of the Recorder of Johnson County, Indiana, on February 27, 1998, as **Instrument No. 98005164**; and

The Plat for Clearbrook Park, Section 5, was recorded in the Office of the Recorder of Johnson County, Indiana, on September 21, 1998, as **Instrument No. 98026787**; and

The Clearbrook Park community is bound by the Declaration of Covenants, Conditions and Restrictions of Clearbrook Park (the “Declaration”), recorded in the Office of the Recorder of Johnson County, Indiana, on October 22, 1996, as **Instrument No. 96023860**; and

The Covenants state that by taking a deed to any Lot or Dwelling Unit on the Plat(s) for the Clearbrook Park development, each Owner becomes a mandatory member of the Clearbrook Park Homeowners’ Association, Inc. (“Association”); and

The Association was incorporated as a non-profit corporation by the Articles of Incorporation (“Articles”) filed with, and approved by, the Indiana Secretary of State on January 7, 1997; and

The Association’s Board of Directors adopted a Code of Bylaws (“Bylaws”), on January 7, 1997; and

**AS A RESULT**, based on the authority granted to the Board of Directors by the Indiana Nonprofit Corporation Act of 1991 and the Bylaws, a majority of the Board of Directors have voted to adopt this Amended and Restated Code of Bylaws This Amended and Restated Code of Bylaws does not conflict in any manner with any provision contained in the Declaration or the Articles, and it is the intention of the Association that this Amended and Restated Code of Bylaws replace any previously adopted Code of Bylaws and any amendments that may have been made to the Bylaws through today’s date, if any.

**[End of Introduction]**

**REVISED  
CODE OF BYLAWS**

**for**

**CLEARBROOK PARK HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE I**

**Identification**

**Section 1. Name.** The name of the corporation is “Clearbrook Park Homeowners’ Association, Inc.” (also referred to as “Corporation” or “Association”).

**Section 2. Principal Office and Registered Agent.** The name and post office address of the principal office of the Association is: Nat Ridge, 489 Overland Drive, Greenwood, Indiana 46143, or as updated from time to time with the Indiana Secretary of State’s Office.

The registered agent of the corporation is currently: Nat Ridge, 489 Overland Drive, Greenwood, Indiana 46143. However, it should be noted that the registered agent may be a member of the Board of Directors, a hired management agent, or other professional representing the Association and can potentially change from year to year. Therefore, the current registered agent of the Association can be determined through the most recent annual business entity report filed with the Indiana Secretary of State’s office.

It should be noted that the principal office for the Association can be changed by the Board of Directors and does not have to be the same as the registered place of business of the Association.

**ARTICLE II**

**Definitions**

**Section 1.** “Act” means the Indiana Nonprofit Corporation Act of 1991 and any subsequent amendments thereto.

**Section 2.** “Articles of Incorporation” or “Articles” means the Articles of Incorporation of the Corporation filed with the Office of the Secretary of State of Indiana and includes any amendments that have been made to the original Articles.

**Section 3.** “Association” or “Corporation” means Clearbrook Park Homeowners’ Association, Inc.

**Section 4.** “Board of Directors” means the Board of Directors of the Association.

**Section 5.** “Bylaws” means this Amended and Restated Code of Bylaws, including any amendments or revisions that may be made to it by the Association.

**Section 6.** “Declaration” means the Declaration of Covenants, Conditions and Restrictions of Clearbrook Park, recorded with the Office of the Johnson County Recorder on October 22, 1996, as **Instrument No. 96023860**, and any amendments later made to the Covenants.

**Section 7.** “Director” means an individual member of the Board of Directors that has been elected or appointed to the Board of Directors following the procedures outlined in the Bylaws.

**Section 8.** “Owner” also referred to as “Member”, means any person or persons who hold legal title to any Lot (i.e. the name on the deed); provided, however, that “Owner” does not include any holder of any mortgage of all or part of any Lot, so long as such holder does not hold both legal and equitable title thereto.

**Section 9.** “Property”, “Properties”, “Real Estate” and “Tract” means the real estate described in the Plat(s) and Covenants, along with any property that may have been later added to the Development, if any.

**Section 10.** All other terms used in these Bylaws not listed in this Article are to use the meaning given to them in the Covenants or by law. Any reference to the masculine, feminine or neuter gender should, unless the context clearly requires the contrary, be considered to include both the masculine and feminine genders. Words in the singular also include the plural, and vice versa, as appropriate.

### **ARTICLE III**

#### **Membership, Meetings, and Voting Rights**

**Section 1. Membership:** All of the terms, provisions, and conditions governing and relating to membership in the Association, transfer of membership and voting rights of classes of Members, are listed in the Covenants and Articles and are incorporated into these Bylaws by reference.

**Section 2. Quorum and Adjournments:** At any meeting of the membership, unless otherwise required by the Covenants or these Bylaws, the presence of Members, in person or by proxy, entitled to cast twenty percent (20%) of the total number of valid and eligible Owner votes will make up a quorum. For purposes of this section, the term “eligible” means any Owner whose privileges are not suspended for any reason as set forth in the Covenants, Articles or these Bylaws. If a Member has had his voting rights suspended pursuant to the Covenants, Articles or these Bylaws, then that Member’s vote is not considered a valid or eligible vote toward calculating quorum requirements. After a Member’s vote is represented, either in person or by

proxy, for any purpose at a meeting, the Member's vote will be considered present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting, even if the Member leaves the meeting before a vote is taken.

If quorum is not met at the first meeting, that meeting may be adjourned to another date not more than sixty (60) days later. At this re-set meeting, or meetings, the quorum will be one-half (1/2) of the quorum of the previous meeting. Please note that a follow-up meeting(s) may be called without a new notice being sent to the Members if it is called within sixty (60) days following the preceding meeting. If the follow-up meeting is re-set more than sixty (60) days from the previous meeting, then a new meeting notice must be sent to the Members.

At any special meeting of the Members to vote on the removal of a director(s), the presence of Members, in person or by proxy, entitled to cast fifty-one percent (51%) of the total number of valid and eligible Owner votes will make up a quorum. This quorum will not drop at any subsequent meetings held on this issue.

**Section 3. Meetings:** Meetings of the Members of the Association will follow these procedures:

- A. **Place.** Meetings of the Members will be held in Johnson County, Indiana, at a location picked by the Board of Directors of the Association.
- B. **Annual Meeting.** The Annual Meeting will be held each year on a specific date, time and place set by the Board of Directors. The Annual Meeting must be held within fifteen (15) months after the previous Annual meeting. At each Annual Meeting, the Members may conduct director elections, unless a separate date for director elections is used, and transact any other Association business to be properly addressed at the meeting.
- C. **Special Meetings.** A Special Meeting of the Lot Owners may be called by: a) the President; b) resolution approved by majority vote of the Board of Directors; or c) by written petition signed by at least ten percent (10%) of the lot owners. The petition must be presented to the President or Secretary of the Association and must state the purpose(s) for which the Special Meeting is to be called. A Special Meeting may be called by the membership only to address items that are within the member's authority to review and vote upon. The percentage required for a quorum has no impact on the percentage of owners necessary to approve an amendment to the Covenants.

The Board of Directors has thirty (30) days from the date the Secretary receives a properly signed petition from the members to send a notice to the membership calling the requested Special Meeting. The purpose(s) of the Special Meeting, along with the date, time and location of the Special Meeting must be stated in the meeting notice sent to the lot owners. No business shall be transacted at a Special Meeting except as stated in the notice of the meeting, unless all the lot owners are present.

It should be noted that the Act states the members may not call or hold a Special Meeting of the members without first submitting a petition, signed by not less than ten percent (10%) of the members, asking that the Board of Directors call a Special Meeting as set forth above. If the Board refuses to call a Special Meeting of the members after receiving a proper petition from the members, then the members may call a Special Meeting of the membership on their own.

- D. **Notice of Meetings.** Unless otherwise required, written or printed notices stating the place, day and hour of a meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called must be delivered or mailed by the Secretary of the Corporation to each member of record of the Corporation entitled to vote at the meeting, at such last-known address as appears upon the records of the Corporation, at least ten (10) days before the date of the meeting, but not more than sixty (60) days prior to the meeting.

Notices of any meeting may be mailed by first class U.S. Mail. Notices of meetings may also be hand-delivered to an owner's residence. Notice of meetings may also be provided to owners by email or postings on the Association's website, if the Association has one, unless an Owner notifies the Association they do not wish to receive notices by electronic means.

The Association does not have a duty to locate new or alternate addresses for an owner. It is the owner's responsibility to make sure the Association has the owner's current mailing or contact information.

Notice of any meeting of the members may be waived in writing by any owner or by the owner's attendance at the meeting in person, by proxy or by ballot.

- E. **Business to be Addressed at the Annual Meeting.** The business to be addressed at the Annual Meeting will, to the extent applicable, be as follows:

1. Call to Order.
2. Reading of the minutes from the last Annual Meeting.
3. Treasurer's Report and Approval of Annual Budget (if an Annual Meeting).
4. Reports of committees.
5. Old Business.
6. New Business.
7. Election of director(s).
8. Adjournment.

#### **Section 4. Voting at Meetings.**

- A. **Voting Rights.** Unless otherwise suspended, each lot will be entitled to cast one (1) vote on each issue properly brought before the membership. If a lot is owned by more than one person, the owners will decide among themselves which co-owner of the lot will cast the vote(s) for that lot. In the event the lot is owned by a corporation or other entity, that entity may appoint a representative to cast the vote(s) for the lot.
- B. **Proxies.** Any eligible Member may vote either in person or by his duly appointed proxy. When a Member wishes to appoint a proxy to vote in his place for a specific meeting, the Member must designate the name of his proxy in writing and deliver it in person, by U.S. Mail, facsimile, or electronic mail or other electronic means, to the Association or its designated agent. The proxy is effective once it is received by the Association or its designated agent.

Unless excused by the presiding officer, all proxies must be received by the Association at least two (2) business days before the date of the scheduled meeting where the proxy is to be counted. That will give the Association sufficient time to verify the validity of the proxy.

To be valid, a proxy must contain:

- a. The member's name and address giving the proxy;
- b. The name of the person being appointed as proxy;
- c. The date the proxy is given;
- d. The date of the meeting for which the proxy is given;
- e. The member's signature; and
- f. An affirmation under the penalties for perjury that the individual signing the proxy has the authority to grant the proxy to the individual named in the proxy to exercise the member's proxy.

A proxy is only valid for one hundred eighty (180) days from the date it is signed. A proxy may be revoked in writing by the member prior to being exercised or by the member's personal attendance at the meeting where the proxy appointment was to be used.

If a member signs more than one proxy appointment, the latest in time, if possible to determine, is considered to be valid. If a member signs more than one (1) proxy to be used at a particular meeting, and it cannot be determined which proxy is the latest in time, then none of the member's proxies shall be counted or voted.

If a member has his voting privileges suspended for any reason, then he cannot vote, whether in person or by proxy. In addition, any member who is suspended for any reason cannot serve as a proxy for another member.

- C. **Majority Required.** Unless a higher percentage is required by the Covenants, Articles or these Bylaws, each question or action voted on will be passed if it is approved by a simple majority of the eligible votes cast by the Members present, in person or by proxy, at a meeting at which a quorum is present.
- D. **Suspension of Voting Rights.** No member shown on the books or management accounts of the Association to be more than six (6) months delinquent in any payment due to the Association will be eligible to vote, either in person or by proxy.

For purposes of this provision, the six (6) month period begins on the first day of the fiscal year or the due date of the assessment as set by the Board of Directors, whichever is later in time. If the amount due to the Association is for an obligation other than assessments, such as reimbursement for a covenant violation or court judgment, then the six (6) month period will start on the date the amount became due.

The term “payment” means the payment of all amounts due to the Association, including any assessments, collection fees, interest, late fees, administrative or management company fees, attorney fees, court costs, or other sums that are owed to the Association. As a result, if any owner is paying the Association on a payment plan or agreement, and that payment arrangement does not pay the entire amount due to the Association within six (6) months of becoming due, then that owner’s voting rights will stay suspended until the entire amount due to the Association is paid in full.

The Board of Directors is free to adopt additional rules regarding the suspension of voting rights as they deem necessary or appropriate for the failure of an owner to pay any sums owed to the Association. Any owner whose privileges are suspended may not vote on any Association matter, nor act as a proxy for another member, nor be elected to or serve on the Board of Directors.

**Section 5. Action by Written Ballot, Etc.** Any action required or permitted to be taken at any meeting of the Members may be taken by written ballot with or without a meeting if the Association delivers a written ballot to every owner eligible to vote on the matter. To be valid, the ballot must contain:

- a) the printed name of the lot owner;
- b) the signature of the lot owner;
- c) the lot(s) owned or being purchased by the lot owner; and
- d) the date the ballot is being signed.

Approval by written ballot is only valid if:

- a) the number of votes cast in person and/or by ballot equals or exceeds the quorum required to be present at a meeting authoring such action; and
- b) the number of approvals equals or exceeds the number of votes required to approve the matter at a meeting.



The written ballot must set forth each proposed action and provide an opportunity for the owner to vote for or against each proposed action. A solicitation, or request, for votes by written ballot must indicate:

- a) the number of responses needed to meet the quorum requirements;
- b) the percentage of approvals necessary to approve each matter, other than the election of directors; and
- c) specify the time by which a ballot must be received by the Association to be counted.

Ballots may be submitted in person, by mail, fax, or any electronic means. Unofficial ballots will not be counted. Each Owner must fully fill out the ballot, print their name and address and sign the ballot. The Board of Directors may adopt additional voting procedures for submitting and processing ballots.

Once a ballot is submitted, it cannot be revoked. If an Owner signs or submits more than one ballot, the first ballot submitted, if possible to determine, will be considered the valid ballot. However, if an Owner signs or submits more than one ballot, and it is not possible to determine which ballot is to be used, the Board may reject all ballots submitted by that Owner.

In addition, voting and meeting participation may be held or performed in any manner set forth in the Act or deemed acceptable by the Courts as a practical way to collect votes and allow Members to participate in Association actions.

## **ARTICLE IV**

### **Nomination and Election of Directors**

**Section 1. Nominations.** Nominations for the Board of Directors may be made by any Owner from those persons eligible to serve. Such nominations may be made in writing and presented to the President or Secretary of the Association or its agent prior to the date of the Annual Meeting. The Board has the authority to set a deadline date for submitting written nominations prior to the Annual Meeting.

If an insufficient number of written nominations are received prior to the date of the Annual Meeting to fill all Board positions open for elections at the Annual Meeting, then oral nominations will be accepted from the floor prior to voting on any open Directorship position.

If a sufficient number of written nominations are received prior to the date of the Annual Meeting to fill all Board positions open for elections at the Annual Meeting, then the presiding officer of the Annual Meeting has the sole discretion to either: 1) stand on the submitted written nominations; or 2) accept additional oral nominations from the floor prior to voting on any open Directorship position.

**Section 2. Election.** Voting on each position for the Board of Directors will be by paper ballot containing the signature, printed name and address of the Owner casting the ballot.

Written balloting may be waived by proper motion at the annual meeting and voting conducted by a voice vote or show of hands in circumstances where the number of nominees does not exceed the number of Board positions open for election (i.e. 2 nominees for 2 open directorships).

Each Owner, or their proxy, may cast the total number of votes to which he is entitled to cast for as many nominees as are to be elected; however, cumulative voting will not be allowed. Those persons receiving the highest number of votes will be elected. If there is a tie for a directorship position(s), a run-off vote by the Members will be conducted.

If no quorum is present at an Annual Meeting of the Association, or a sufficient number of candidates cannot be found to fill all open Board vacancies at the Annual Meeting, whether by slating, written petition or oral nomination, then the remaining members of the Board of Directors may fill any unfilled directorship positions that were open for election at the Annual Meeting. Any Director so appointed to fill an open position on the Board of Directors will serve the same term as if elected by the members at the Annual Meeting.

**Section 3. Conducting Elections by Limited Proxy or Ballot.** The election of directors may be conducted by limited proxy or ballot so that owners may select their nominees and send in their votes prior to the annual or election meeting. If the number of written nominations received by the Association before the deadline date exceeds the number of open board positions to be filled at the annual or election meeting, then a limited proxy or ballot may be mailed to each owner for voting on new board members. *If the election of directors is conducted by limited proxy or ballot, then NO write-in nominations or nominations from the floor of the meeting will be accepted so everyone has a chance to vote on the same list of candidates.*

If the number of written nominations received by the Association before the deadline date matches the number of open board positions to be filled at the annual or election meeting, then there is no reason to incur the expense of a mailed ballot since all submitted nominees will be elected by default. In this situation, the Board may simply waive ballot voting and accept the submitted nominees by voice vote at the annual or election meeting.

If an insufficient number of written nominations are received by the deadline date to fill all Board positions open for election at the annual or election meeting, then limited proxy or ballot voting will not be conducted and oral nominations will be accepted from the floor of the meeting prior to voting on any open Directorship position.

## **ARTICLE V**

### **Board of Directors**

#### **Section 1. Number, Qualifications and Term of Office.**

(a). **Number.** The affairs of the Association will be governed and managed by the Board of Directors (collectively called the “Board” or “Directors” and individually called

“Director”). The Board of Directors will be composed of three (3) persons. The minimum number of directors may be three (3), and the maximum number may be five (5). The exact number of directors may be increased or decreased, as permitted by law, by resolution of the Board of Directors. If the number of directors currently serving changes due to the resignation or removal of directors, or if an insufficient number of Members volunteer to fill all possible Board positions, the Board will continue to function with the remaining number of directors until those vacancies can be filled.

(b). **Qualifications.** A director must be an Owner in Clearbrook Park and maintain his primary place of residence in Clearbrook Park. An Owner cannot serve as a director if his membership rights in the Association is suspended for any reason as provided in the Covenants, Articles or these Bylaws, nor can an Owner be elected to the Board if the owner is currently involved in pending litigation with the Association. No lot may be represented by more than one person or representative on the Board of Directors at the same time; nor can an Owner, along with a spouse, significant other or family member, hold more than one (1) directorship at the same time, even if the Owner, spouse, significant other, or family member owns more than one (1) lot in Clearbrook Park.

(c). **Term of Office Generally.** At the first Annual Meeting held after this Revised Bylaws is adopted, one (1) director will be elected to a three (3) year term, one (1) director will be elected to a two (2) year term, and one (1) director will be elected to a one (1) year term. At future Annual Meetings, directors will be elected to a three (3) year term based upon this staggered rotation. If the number of directors is increased or decreased, the Board will determine the rotation of the Board terms, so long as approximately one-third (1/3) of the directors are up for election each year. As set forth in IC 32-25.5-3-11, each director will serve his full term and will continue to serve until his successor is properly elected and qualified. There is no limit on the number of terms a director may serve.

## **Section 2. Vacancies and Removal.**

(a). **Vacancies.** Unless a director is removed from the Board by a vote of the owners, any vacancy or vacancies occurring in the Board will be filled by a majority vote of the remaining members of the Board. A director appointed by the Board to fill a vacancy on the Board will serve until the next annual meeting of the Members, and the Members will then elect a person to serve the remaining portion of the director’s term, if any.

(b). **Removal.** A director or directors may be removed with or without cause by the affirmative majority vote of the voting Members at a duly called meeting for that purpose. If a director is removed by a vote of the Members, then a successor will be elected at the same meeting from eligible Members nominated at the meeting. The person elected to fill the spot of the removed director will serve the remaining portion of the Board term of the director he is replacing.

Pursuant to Indiana Code 23-17-12-10, as may be amended or re-codified from time to time, the Board of Directors also may remove a director from the Board by a two-thirds (2/3) vote of the Board for the following specific acts: a) failing to attend three (3) or more

consecutive meetings of the Board of Directors; b) becoming ineligible to serve on the Board according to any terms set forth in the Covenants, Articles or these Bylaws; c) acts of fraud, theft, deception, or criminal behavior while performing his duties as a director; d) breach or disclosure of confidential Board or owner information to person(s) not on the Board; or e) performing any action in the name of or on behalf of the Association that is not within the director's duties as set forth under the Bylaws, was not previously authorized by the Board, or was not subsequently ratified by the Board.

If a director is removed by a vote of the Board, the vacancy will be filled by a majority vote of the remaining Directors and the appointee will serve until the next annual meeting of the Members, and the Members will then elect a person to serve the remaining portion of the director's term, if any.

**Section 3. Duties of the Board of Directors.** The Board of Directors shall be the governing body of the Association representing all of the owners and being responsible for the functions and duties of the Association, including but not limited to, providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Areas (unless the same are otherwise the responsibility or duty of owners), the collection and disbursement of the Common Expenses.

The Board may, on behalf of the Association, employ a reputable and recognized professional property management agent ("Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if on is employed, will assist the Board in carrying out its duties, which include, but are not limited to:

- (a) protection, surveillance, and replacement of the Common Areas, unless the same are otherwise the responsibility or duty of owners of lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Association, the Board or any Managing Agent must provide any on-site or roving guards, security service or security systems for protection or surveillance, and the same need not be furnished;
- (b) procuring of utilities used in connection with the lots, dwelling houses and Common Areas (to the extent the same are not provided and billed directly to owners of lots and dwelling houses by utility companies) and snow removal from the streets; streets within the subdivision (if the appropriate governmental authority exercising jurisdiction over such streets is unable or unwilling to provide such snow removal);
- (c) landscaping, painting, decorating, furnishing and maintenance and upkeep of, the Common Areas;
- (d) assessment collection from the owners of the owners' respective shares of the Common Expenses;

- (e) preparation of the proposed annual budget, a copy of which will be mailed, emailed, or delivered to each owner at the same time as the notice of the annual or special meeting at which the same is to be acted upon is mailed, emailed or delivered;
- (f) preparing and delivering annually to the owners a full accounting all receipts and expenses incurred in the prior year; if possible, such accounting shall be delivered to each owner simultaneously with delivered of the proposed annual budget for the current year;
- (g) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Areas and the business and affairs of the Association, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an owner at any time during normal business hours;
- (h) procuring and maintaining for the benefit of the Association, the owners, any Managing Agent and the Board the insurance coverage required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
- (i) paying taxes and assessments levied and assessed against, and payable with respect to, the Common Areas and paying any other necessary expenses and costs in connection with the Common Areas; and
- (j) all duties and obligations imposed upon the Association or the Board under the Covenants, Articles or any recorded subdivision plat of the Real Estate.

**Section 4. Powers of the Board of Directors.** The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (a) to employ a Managing Agent to assist the Board in performing its duties;
- (b) to purchase, lease or otherwise obtain for the Association, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
- (c) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;
- (d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;
- (e) to include the costs of performing all of its functions, duties and obligations as Common Expenses and to pay all of such costs therefrom;

- (f) to open and maintain a bank account or accounts in the name of the Association;
- (g) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Areas (in addition to those set forth in the Covenants) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners; and
- (h) to grant such public or private companies, entities or bodies as the Board shall approve, such easements as may be necessary to provide the lots, dwelling houses and Common Areas with facilities for utility and similar services, including but not limited to cable television facilities and service; provided that such easements are located within or are co-extensive with any one or more easements or Common Areas shown upon, and identified as such on, or provided for in, any subdivision plat of the Real Estate, whether such plat is heretofore and hereafter recorded.

**Section 5. Limitation of Board Action.** The authority of the Board of Directors to enter into contracts will be limited to contracts involving a total expenditure of less than \$5,000.00 without obtaining the prior approval of a majority of the cumulative vote of the owners, except that in the following cases such approval will not be necessary:

- a. Contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the insurance carrier has acknowledged coverage;
- b. Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by owners at the annual meeting; and
- c. Expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the owners.

In addition, the Board may not enter into any contracts that would result in a new assessment or increase of an existing assessment paid by the Members in an amount of more than five hundred dollars (\$500.00) per year unless:

- a. The Board holds at least two (2) Member meetings concerning the contract; and
- b. The contract is approved by at least two-thirds (2/3) of the Members.

**Section 6. Annual Meeting.** The Board of Directors must meet annually following the annual or election meeting of the membership, or at the next regularly scheduled Board meeting, to elect officers.

**Section 7. Regular Meetings.** Regular meetings of the Board of Directors will be held at such regular intervals, without notice, at such place and hour as may be determined from time to time by resolution of the Board of Directors. If a regular meeting of the Board is to be held on a date other than a regularly scheduled meeting date previously set by the board, then notice of the meeting must be provided to each director personally, by telephone or email, at least twenty-four (24) hours prior to the meeting.

**Section 8. Special Meetings.** Special meetings of the Board of Directors may be called by the President or by a majority of the members of the Board of Directors, at any place within or without the State of Indiana, upon twenty-four (24) hours notice, specifying the time, place and general purposes of the meeting, given to each director personally, by telephone or email, or notice may be given by U.S. Mail if sent, via first class, postage pre-paid, mail at least three (3) days before such meeting.

**Section 9. Notice and Waiver of Notice.** Notices of Board meetings must be given to each Director as set forth in these Bylaws. A Director waives formal meeting notice requirements by attending the meeting or by voting in writing or email on any issue addressed at a meeting of the Board.

**Section 10. Quorum.** A majority of the entire Board of Directors then qualified and acting will constitute a quorum and be sufficient for transaction of any business, except for filling vacancies in the Board of Directors which requires action by a majority of the remaining Directors. Any act of the majority of the Directors present at a meeting at which a quorum is present will be considered an act of the entire Board unless otherwise provided for by law or by these Bylaws. A majority of the Directors present may adjourn any meeting from time to time. Notice of an adjourned meeting need not be given other than by announcement at the time of adjournment.

**Section 11. Attendance at Board Meetings.** Any board member may participate in a board meeting telephonically, such as a conference call, or electronically, such as internet video transmission, or other internet or electronic communication by which all directors participating may hear each other during the meeting. As provided in IC 32-25.5-3-3(g), a Member has the right to attend any meeting of the Board of Directors, except for those meeting where legal issues or delinquent assessments are being discussed.

**Section 12. Action Taken Without a Meeting.** Any action required or permitted to be taken at a meeting of the Board of Directors or any committee may be taken without a meeting if the action is approved by a majority of the entire Board in writing or via email. If an action is approved via writing or email, evidence of the written or email approval must be made a part of the corporate Board minutes or records. However, failure to keep documentation of the approval does not automatically invalidate the decision.

**Section 13. Compensation.** No Director may receive any compensation for his services unless compensation is expressly authorized by a majority vote of the Owners. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties. The Managing Agent, if any is employed, is entitled to reasonable compensation for its services, the cost of which will be a Common Expense.

## **ARTICLE VI**

### **Officers**

**Section 1. In General.** The term “Officer” is the name given to the particular position which a Director may be serving on the Board. Each officer position carries different duties on the Board. The officers of the Corporation must be members of the Board of Directors and may consist of a President, a Vice President, a Secretary, a Treasurer, etc. The same director can hold more than one officer position, except for the offices of President and Secretary, which cannot be performed by the same person.

**Section 2. Election and Terms.** Officers are not elected by the members. Only directors are elected by the members. At the first Board meeting held after the election of directors at the annual meeting, the Board of Directors will assign each officer position to a member of the Board of Directors. Each officer will hold that officer position until: a) the next annual meeting of the Board; b) the expiration of the director’s term on the Board of Directors; or c) the director’s removal or resignation from the Board, whichever occurs first.

**Section 3. Vacancies and Removal.** Whenever a vacancy occurs in an office due to the death or resignation of the officeholder, or due to new office positions being created by the Board, the vacant office position will be filled by the Board of Directors, and the officer appointed to the office will hold that office until the next annual meeting of the Board.

A Director may be removed from an officer position at any time, with or without cause, by a vote of a majority of the whole Board. A Director removed from a particular office shall continue to serve on the Board of Directors and may be re-appointed to a different office or may serve on the Board without an officer designation.

**Section 4. President.** The President is the chief executive officer of the Corporation. The President presides at all meetings of Voting Members and of the Board of Directors; has general and active supervision, control, and management of the affairs and business of the Corporation, subject to the orders and resolutions of the entire Board; handles the general supervision and direction of all officers, agents and employees of the Corporation; makes sure that all orders and resolutions of the Board are carried into effect; and in general exercises all powers and performs all duties normally part of the President’s office and any other powers and duties assigned to him by the Board.

The President has full authority to execute proxies on behalf of the Corporation, and to execute, with the Secretary, powers of attorney appointing other corporations, partnerships or individuals as the agent of the Corporation, all subject to the provisions of the laws of the State of Indiana, the Covenants, the Articles of Incorporation, this Code of Bylaws, and the approval of the entire Board.



**Section 5. Vice-President.** The Vice-President acts in the place of the President if the President is absent, unable to act, or refuses to act, and will also have any other duties as may be assigned to him by the Board of Directors or delegated to him by the President.

**Section 6. Secretary.** The Secretary will attend both Board meetings and Membership meetings and will keep minutes during the meetings and record all votes taken at these meetings. The Secretary is also responsible for making sure all meeting notices are sent to the Board and the Members as required by these Bylaws and the law. The Secretary also keeps or oversees the records of the Corporation as well as the Membership list of the Association. The Secretary also performs any other duties that may be assigned to him by the Board or the President. The Board has the authority to appoint someone to perform the duties of the Secretary or serve as the Secretary's assistant.

**Section 7. Treasurer.** The Treasurer keeps correct and complete financial records of the Association. The Treasurer is also in charge of the Association's funds and securities, has an annual review of the Association's income and expense performed each fiscal year (not necessarily in accordance with AICPA standards), and oversees the timely deposit of all money and other valuable effects belonging to the Association in a financial institution selected by the entire Board. The Treasurer also pays the Association's bills as approved by the Board or directed by the President; and in general exercises all the powers and duties customarily performed by the Treasurer's position, and any other powers and duties assigned to him by the Board or the President. The Board has the authority to appoint someone to perform the duties of the Treasurer or serve as the Treasurer's assistant.

**Section 8. Special Appointments.** The Board of Directors has the authority to appoint any other officers or assistant officers that the Board believes are necessary or advisable. These officers or assistant officers will hold their positions at the discretion of the Board and will have the power and perform the duties assigned to them by the Board. However, these special appointments or assistants, even if they perform the duties of a specific officer, will not have any voting power on the Board.

## **ARTICLE VII**

### **Liability of Directors and Officers**

**Section 1. In General.** The Directors and Officers of the Association will not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Association will indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Association, unless any such contract was made in bad faith. It is intended that the Directors will have no personal liability with respect to any contract made by them on behalf of the Association.

**Section 2. Grounds for Indemnification.** If a director is named a party to a proceeding based upon his actions as a director, the Association may indemnify the director against liability incurred in the proceeding if:

- (1) the individual's conduct was in good faith; and
- (2) the individual reasonably believed:
  - (A) in the case of conduct in the individual's official capacity with the corporation, that the individual's conduct was in the corporation's best interests; and
  - (B) in all other cases, that the individual's conduct was at least not opposed to the corporation's best interests; and
- (3) in the case of any criminal proceeding, the individual:
  - (A) had reasonable cause to believe the individual's conduct was lawful; or
  - (B) had no reasonable cause to believe the individual's conduct was unlawful.

The termination of a proceeding by judgment, order, settlement, or conviction is not determinative that a director did not meet the required standard of conduct.

**Section 3. Successful Defense.** Unless limited by the articles of incorporation, the Association will indemnify a director who was wholly successful, on the merits or otherwise, in the defense of a proceeding to which the director was a party, because the director is or was a director of the Association, against reasonable expenses actually incurred by the director in connection with the proceeding.

**Section 4. Advanced Expense Payments.** The Association may 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 the following occur:

- (1) The director furnishes the Association a written affirmation of the director's good faith belief that the director has met the standard of conduct described in Section 2 of this Article.
- (2) The director furnishes the Association a written undertaking, executed personally or on the director's behalf, to repay an advance if it is ultimately determined that the director did not meet the standard of conduct.
- (3) A determination is made that the facts then known to those making the determination would not preclude indemnification under this chapter.

The written undertaking described in #2 above:

- (1) must be an unlimited general obligation of the director;

(2) is not required to be secured; and

(3) may be accepted without reference to financial ability to make repayment.

Determinations and authorizations of payments under this section will be made in the manner specified in Section 6 of this Article.

**Section 5. Court Ordered Indemnification.** Unless the Association's articles of incorporation provide otherwise, a director of the Association who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court may, after giving any notice the court considers necessary, order indemnification in the amount the court considers proper if the court determines one (1) of the following:

- (1) The director is entitled to mandatory indemnification under Section 3 of this Article, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court ordered indemnification.
- (2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in Section 2 of this Article.

**Section 6. Authorization of Indemnification.** The Association may not indemnify a director under Section 2 of this Article unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in Section 2 of this Article.

The determination must be made by one (1) of the following procedures:

- (1) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding.
- (2) If a quorum cannot be obtained under subdivision (1), by majority vote of a committee designated by the board of directors consisting solely of at least two (2) directors not at the time parties to the proceeding. Directors who are parties may participate in the designation.
- (3) By special legal counsel:
  - (A) selected by the board of directors or a committee of the board of directors in the manner prescribed in subdivision (1) or (2); or
  - (B) if a quorum of the board of directors cannot be obtained under subdivision (1) and a committee cannot be designated under subdivision (2), selected by majority vote of the full board of directors. Directors who are parties may participate in the selection.

- (4) By the members. However, memberships voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

Authorization of indemnification and evaluation as to reasonableness of expenses will be made in the same manner as the determination that indemnification is permissible. However, if the determination is made by special legal counsel, authorization of indemnification and evaluation as to the reasonableness of expenses will be made by those entitled in #3 above to select counsel.

**Section 7. Indemnification of Officers, Agents, and Others.** Unless the Association's articles of incorporation provide otherwise:

- (1) an officer of the Association, whether or not a director, is entitled to:

- (A) mandatory indemnification under Section 3 of this Article; and

- (B) apply for court ordered indemnification under Section 5 of this Article in each case;

to the same extent as a director;

- (2) the Association may indemnify and advance expenses under this chapter to an officer, employee, or agent of the Association, whether or not a director, to the same extent as to a director; and
- (3) the Association may indemnify and advance expenses to an officer, employee, or agent, whether or not a director, to the extent and consistent with public policy that may be provided by articles of incorporation, bylaws, general or specific action of the Association's board of directors, or contract.

**Section 8. Other Rights to Indemnification.** The indemnification and advance for expenses provided for or authorized by this Article does not exclude other rights to indemnification and advance for expenses that a person may have under the following:

- (1) The Association's articles of incorporation or bylaws.
- (2) A resolution of the board of directors or of the members.
- (3) Any other authorization, whenever adopted after notice, by a majority vote of all the voting members of the Association.

If the articles of incorporation, bylaws, resolutions of the board of directors or of the members, or other duly adopted authorization of indemnification or advance for expenses limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles of incorporation, bylaws, or resolution of the board

of directors or of the members, or other duly adopted authorization of indemnification or advance for expenses.

This Article does not limit the Association's power to pay or reimburse expenses incurred by a director, an officer, an employee, or an agent in connection with the person's appearance as a witness in a proceeding at a time when the person has not been made a named defendant respondent to the proceeding.

**Section 9. Bond.** The Board of Directors may provide surety bonds (or an equivalent form of coverage) and may require the managing agent (if any), the treasurer of the Association, and such other officers as the Board deems necessary, to provide surety bonds (or an equivalent form of coverage), indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful, abstraction, willful misapplication and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond (or equivalent form of coverage) must specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds (or equivalent form of coverage) will be a Common Expense.

## **ARTICLE VIII**

### **Committees**

The Board of Directors, by resolution adopted by a majority of the Board of Directors, may create or appoint one (1) or more committees to assist the Board in carrying out the purposes of the Association. Committee members do not need to be members of the Board of Directors.

Each committee, to the extent provided in such resolution or as authorized by the Act, Articles, Covenants, these Bylaws, or the Board, will have the authority and duties assigned to it by the Board, except that no committee may:

- a. Adopt, amend or repeal the Articles of Incorporation;
- b. Approve or recommend a plan of merger or consolidation of the corporation not requiring Member approval;
- c. Approve or recommend to the Members the sale, pledge, lease, transfer or exchange of all or substantially all of the assets of the Corporation;
- d. Approve or recommend to the Members the dissolution of the Corporation or a revocation thereof;
- e. Adopt, amend, or repeal the Bylaws of the Corporation;
- f. Fill vacancies on the Board of Directors or committees;
- g. Elect, appoint or remove Directors or members of committees;
- h. Commit to any financial obligation without prior Board approval;
- i. Fix the compensation of any member of such committee; or
- j. Alter or repeal any resolution of the Board of Directors that by the resolution's own terms cannot be amended or repealed.

Unless the Board directs otherwise, the committee's members may determine when the committee meets and how it performs its duties. The Board of Directors has the power at any time to: a) change the number of committee members; b) change the actual members of a committee; and c) end or discharge a committee. The creation of a committee does not relieve the Board of Directors, or any member thereof, of any responsibility imposed upon it or him by the Indiana Nonprofit Corporation Act of 1991, as amended.

## **ARTICLE IX**

### **Records of the Association**

**Section 1. In General.** Current copies of the Covenants, the Articles, the Bylaws, rules and regulations, other corporate documents concerning the Real Estate or the Association and its operation required to be kept and made available for inspection will be available for inspection by any member or other properly designated party at the principal office of the Association or other designated location selected by the Board during reasonable business hours or under other reasonable circumstances, where copies of the same may be purchased at reasonable cost up to one dollar (\$1.00) per page.

The Association will keep detailed books of account showing all expenditures and receipt of administration which will specify the Common Expenses incurred by or on behalf of the Association and the members. The accounts, books, records, financial statements, and other papers of the Association will be open for inspection by any member upon written request submitted to the Board at least five (5) days in advance of the inspection date, and said inspection is to be made during reasonable business hours or under other reasonable circumstances. Any holder, insurer, or guarantor of a first mortgage on a Lot will be entitled upon written request to receive a financial statement for the immediately preceding fiscal year. The Association is entitled to reimbursement from the party requesting to inspect records any reasonable administrative or reproduction expenses incurred by the Association as a result of the records request.

The Association reserves the right to require any member to request inspection of the accounts, books, records, financial statements, and other papers of the Association according to the requirements set forth under the Indiana Nonprofit Corporation Act of 1991, specifically Indiana Code 23-17-27 et seq., IC 32-25.5-3-3(g) through (m), and any amendments or changes to these laws. The Association reserves the right to deny an owner access to any records that are not required to be opened for inspection under Indiana law. The Association also reserves the right to charge owners requesting inspection of Association records reasonable copy and search charges and other charges as allowed or not prohibited by law.

**Section 2. Record Retention.** Meeting minutes of both the Board and the Members (along with any attached proxies), any record of any action taken by the Board or Members without a meeting must be kept permanently in the records of the Association. If these records are reduced to digital or electronic recordings, the actual documents may then be destroyed. Ballots voting on an amendment to the covenants must be permanently retained in the corporate records unless they are attached to the recorded document.

Except for ballots voting on a covenant amendment, the Association must keep ballots for a period of ninety (90) days following the meeting date where an election or vote was held. After ninety (90) days has passed, any vote taken at the meeting will be presumed valid and accepted by the membership and the ballots may be destroyed by the Board or their designated agent.

In addition, other records of the Association not essential for tax purposes must be kept for a period of two (2) years before being destroyed. Financial records essential for a state or federal tax audit, if one is ever conducted, must be kept for ten (10) years before being destroyed.

## **ARTICLE X**

### **Execution of Instruments**

**Section 1. Checks, Draft, etc.** All checks, drafts, or other orders for the payment of money, obligations, notes or other evidences of indebtedness of the Association must be signed or endorsed by the Treasurer, President, or another officer, employee or agent of the Association designated by the Board of Directors.

Signatories on each account held by the Association must be designated and approved by a majority vote of the Board, and the signatories may be removed and/or replaced at any time by a majority vote of the Board.

**Section 2. Contracts.** All contracts, agreements, deeds, conveyances, mortgages and similar instruments authorized by the Board of Directors must be signed, unless otherwise directed by the Board of Directors or required by law, by the President and attested by the Secretary or another officer.

Except as provided in these Bylaws, no officer, agent, or employee has the power to bind the Association or to render it liable for any purpose or amount unless the act is previously authorized or later ratified by the Board of Directors.

## **ARTICLE XI**

### **Assessments and Fiscal Year**

**Section 1. Liability for Assessment.** The liability of an Owner for assessments will begin on the date the Owner becomes a deeded Owner of a Lot. Each Lot Owner, by accepting a deed, whether or not it is expressed in the deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges for maintenance, insurance, taxes and other costs and expenses incurred by the Association and, (2) special assessments for capital improvements and operating deficits. These assessments are mandatory and will be shared among the Owners on an equal, or pro-rata, basis. The annual and special assessments, together with interest, late fees, costs, and reasonable attorneys' fees, will be a charge on the Lot and will be a continuing lien on the property against which each assessment is made. Each assessment, together with

interest, late fees, costs, and reasonable attorneys' fees, will also be the personal obligation of the person(s) who was the Owner of the property at the time the assessment becomes due. If more than one person owned the property when the assessment became due, then the co-Owners will be joint and severally liable for the personal obligation for unpaid assessments. The personal obligation for delinquent assessments does not pass to his successors in title unless the debt is expressly assumed by them. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot or by waiving the Common Expense Items.

**Section 2. Purpose of Assessments.** The assessments levied by the Association will be used exclusively to promote the health, safety, and welfare of the residents in the Development; to ensure compliance with and the enforcement of the restrictions, rules and regulations set forth in or adopted pursuant to the Covenants, Articles or Bylaws; and for the improvement and maintenance of the common areas and other areas owned, maintained, managed, used or operated by the Association.

**Section 3. Annual Assessments.** The Board of Directors will establish an annual budget prior to the beginning of each fiscal year which sets the amount of the annual assessment sufficient to cover all of the anticipated expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves for periodic repair and replacement of the common areas and property maintained by the Association. A copy of the budget must be provided to each Owner before the annual meeting, and the budget must be approved at the duly called and constituted annual meeting by a majority of the Owners in attendance at the meeting in person, by proxy, or by any other means allowed under state law or the Association's governing documents. If there is no quorum at the annual meeting, then the Board may adopt a budget for the next fiscal year that does not exceed one hundred ten percent (110%) of the last approved Association annual budget.

**Section 4. Special Assessments.** In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association may from time to time incur; or to cover any operating deficits that may occur should the Board of Directors determine at any time during the fiscal year that the annual assessments levied for that year are insufficient to pay for the common expenses of the Association for that fiscal year. A special assessment must be approved by two-thirds (2/3) of all eligible Members of the Association voting in person or by proxy at a duly constituted special meeting called for the purpose of voting on the special assessment. Any approved special assessment will be due and payable on the date set by the Board of Directors.

**Section 5. Fiscal Year; Date of Commencement; Due Dates.** The fiscal year of the Association begins at the beginning of the first day of January in each calendar year and ends at the close of the last day of December of the same calendar year. The fiscal year of the Association may be changed from time to time by the Board if necessary or desirable.

**Section 6. Duties of the Association.** The Board will keep proper books and records of assessments and the collection of assessments, including a list identifying each Lot and Owner.



The books and records will be kept by the Association and will be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) in accordance with IC 32-25.5-3-3, IC 23-17-27 et. seq., and any other applicable Indiana statute.

The Board will provide notice to each Lot Owner of all assessments levied by the Association at least thirty (30) days prior to the due date of the assessment. The Association, or their appointed agent or representative, will promptly furnish to any Owner or any mortgagee of any Owner upon request a certificate in writing signed by an officer of the Association, or their duly appointed agent or representative, setting forth the assessments that have been levied and paid with respect to the requesting Owner's or mortgagee's Lot. This written certificate will be conclusive evidence of payment of any assessment stated to have been paid. The Association, or its agent or representative, may assess a reasonable administrative fee for this certificate.

The Association will notify any mortgagee from which it has received a request for notice of any default in the performance by any owner of any obligation under the Bylaws or the Covenants which is not cured within sixty (60) days.

**Section 7. Failure of Owner to Pay Assessments.** If the assessment is not paid within thirty (30) days after the assessment falls due, the assessment may bear simple interest from the date of delinquency at an annual rate of eight percent (8%) or the current statutory maximum annual interest rate, whichever is less. In lieu of interest, the Association may impose reasonable late fees on all delinquencies. The Board will determine the amount of the late fee, the time period before the late fee is imposed, the rate of the late fee (i.e. annually, monthly, quarterly, etc.) and to make any other provisions for late fees and interest charges on late payments as the Board, in its sole discretion, deems appropriate. The Board may also adopt specific collection procedures to be used in collecting assessments and pursuing delinquent accounts.

If the Association incurs administrative fees or expenses for collecting delinquent amounts or enforcing provisions of the governing documents, including fees charged to the Association by the Association's management company as part of a contractual agreement for the handling of collection matters for the Association, the Owner must reimburse the Association these fees.

If the Association employs legal counsel to pursue the collection of unpaid amounts owed to the Association, the Owner must reimburse to the Association any collection costs or expenses for the sending of collection letters or other correspondence or communication prior to the filing of legal action, or for the Association's attorney to take any other action to collect the unpaid amounts.

The Association may bring an action at law against the Owner personally obligated to pay the assessments or charges, or it may foreclose the lien against the property, or both, and there will be added to the amount of the Owner's account balance the costs of preparing the collection notices and letters, preparing and filing the complaint in such action, interest or late fees on any assessment as above provided, administrative or management company charges for the handling of the collection account, and reasonable attorneys' fees, together with the court costs of the action.

In addition, an Owner who becomes more than thirty (30) days delinquent on any assessment or other payment due to the Association will not be eligible to: a) vote on any Association matter, either in person or by proxy; b) act as a proxy for another Owner; or c) be elected or serve on the Association's Board of Directors.

**Section 8. Subordination of Association's Assessment Lien to Mortgage.**

Notwithstanding anything contained in Plat Covenants, Articles or Bylaws, any sale or transfer of a Lot to a mortgagee as the result of a foreclosure on its mortgage or conveyance in lieu of foreclosure, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, will extinguish the lien of any unpaid assessments which became due prior to the sale, transfer or conveyance; provided, however, that the extinguishment of the lien does not relieve the prior owner from the personal liability for any unpaid assessments. No sale, transfer or conveyance will relieve the Lot or the purchaser of the Lot at a foreclosure sale, or the grantee in the event of conveyance in lieu of foreclosure, from liability for any assessments that become due after the sale, transfer or conveyance. The unpaid share of any assessments, the lien for which has been extinguished by this Section, will be treated as a common expense collectible from all Owners.

**ARTICLE XII**

**Rules and Regulations; Enforcement**

**Section 1. Rules and Regulations.** The Board has the authority to create, adopt, revise, amend or alter from time to time such additional rules and regulations with respect to use, occupancy, operation, enjoyment, and architectural additions or modifications of the Property, including the individual lots, streets (whether public or private), common areas, landscape easements, and any other portion of the Property, including the personal conduct of the members and guests thereon, as in the sole discretion of the Board are deemed necessary or advisable. Copies of any rules and regulations adopted by the Board must be delivered to all owners at their last known address unless they are recorded in the Office of the Johnson County Recorder.

All rules, regulations, policies, procedures and guidelines are binding and enforceable upon each lot and member, including all occupants, guests and invitees of any lot or member in the Development the same as if it were expressly set forth in the Covenants itself. Any rules, regulations, policies, procedures and guidelines adopted by the Board may be specifically overruled, cancelled, or modified by the Board or at a duly called and constituted regular or special meeting of the members by a majority vote of all eligible members of the Association.

**Section 2. Enforcement in General.** Any party subject to the Covenants or these Bylaws, including the Association, any committee, or any individual owner, may proceed at law or in equity to prevent the occurrence, recurrence or continuation of any violation of the Covenants, these Bylaws, or any properly adopted rules, regulations, policies, procedures or guideline of the Association. However, neither the Association nor any committee may be held liable for damages of any kind, including legal fees and costs, to any owner or person for failing to enforce or carry out any of the provisions of the Covenants or these Bylaws.

No delay or failure on the part of the Association or any owner to seek any available remedy regarding a violation of any provision of the Covenants or adopted rule of the Association will be a waiver by the Association or any owner (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of a violation of the Covenants or rule adopted by the Association. Likewise, no delay or failure of the Association or any owner to enforce any particular provision of the Covenants or rule adopted by the Association will be a waiver or estoppel of the Association or owner to enforce any other provision of the Covenants or rule adopted by the Association.

**Section 3. Costs and Attorney Fees.** The provisions of the Covenants, Articles, Bylaws, and rules, regulations and architectural guidelines for Clearbrook Park, including any amendments or modifications made to them, are binding and enforceable upon each and every Lot and Lot Owner in Clearbrook Park. For any violation of the Covenants, Articles, Bylaws, or rules, regulations or architectural guidelines adopted by the Board or the Committee, each owner in violation may be subject to an action at law or in equity by the Association to enjoin the violation or pursue any other relief or remedy as may be set forth in the Covenants, Articles, Bylaws or rules and regulations.

If the Association takes any action to enforce any provision or restriction in the Covenants, Articles, Bylaws, or properly adopted rules, regulations and architectural guidelines of the Association, including such acts as the preparing and sending of violation letters, towing of vehicles, self-help, or filing a legal action in the courts, then the Association will be entitled to reimbursement from the party or parties found to be in violation of a covenant, rule or guideline of all its costs and expenses, including reasonable attorney fees, administrative charges by a management agent, and court costs, for the enforcement action.

The remedies in this provision are in addition to, or supplement, any remedies of the Association identified in the Covenants, Articles, Bylaws or Rules and Regulations, and may be used or applied to any enforcement activity or action taken by the Association to stop a violation of the Covenants, Articles, Bylaws or any properly adopted rule, regulation or guideline of the Association.

These remedies are adopted to maintain the intent and spirit of the Covenants, Articles or Bylaws that the Association and its members should not be penalized or suffer a financial loss to the Association's operating budget for the cost of any enforcement effort necessary to gain or achieve an Owner's compliance with the terms and restrictions set forth in the Covenants, Articles, Bylaws or any properly adopted rule, regulation or guideline of the Association.

## **ARTICLE XIII**

### **Amendments**

**Section 1. Amendments.** The Board of Directors of the Association may alter, amend, repeal the Code of Bylaws or adopt a new Code of Bylaws for the Association, without the approval of the Members, by an affirmative vote of the majority of the members of the Board of

Directors of the Association. In addition, and as provided in IC 32-25.5-3-9, the Owners may amend the Bylaws at any time if the consent of a majority of the Owners to the amendment(s) has been obtained as evidenced by either of the following: A) The vote of the Owners at a meeting duly called for the purpose of considering the amendment(s); or B) A written instrument signed by the Owners.

**Section 2. Recording.** While the Code of Bylaws does not have to be recorded under Indiana law, if the Board decides at any point in time to record the Code of Bylaws, the Bylaws, including all future amendments or changes thereto, must be executed by the President and Secretary of the Board and recorded in the Office of the Johnson County Recorder before becoming effective.

**Section 3. Document Conflicts.** In the case of any conflict between the Covenants and the Articles, the Covenants will control. In the case of any conflict between the Covenants and these Bylaws, the Covenants will control. In the case of any conflict between the Articles and these Bylaws, the Articles will control.

## **ARTICLE XIV**

### **Grievance Resolution**

**Section 1. In General.** The Association, board members and all owners must follow the grievance resolution provisions of Indiana Code 32-25.5-5 in addressing any claims, except for exempt claims, they may have before filing a legal action in court or any administrative proceeding initiated under applicable law.

## **ARTICLE XV**

### **The Indiana Nonprofit Corporation Act of 1991**

The provisions of the Indiana Nonprofit Corporation Act of 1991, as amended, along with Indiana Code 32-25.5-3-3(g) through (m), IC 32-25.5-3-10, IC 32-25.5-5, and any other laws applicable to the Association or any matter not herein specifically covered by these Bylaws, are hereby incorporated by reference in and made a part of these Bylaws.

**[End of Revised Bylaws]**

We certify that this Code of Bylaws of Clearbrook Park Homeowners' Association, Inc. was duly moved and passed by a majority vote of the Board of Directors.

CLEARBROOK PARK HOMEOWNERS' ASSOCIATION, INC.

\_\_\_\_\_  
President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Director

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Director

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Signed (or attested) before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2020 by  
\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_, Witness  
Printed

STATE OF INDIANA                    )  
  )  
COUNTY OF JOHNSON                )

Before me a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, the President and Secretary, respectively, of Clearbrook Park Homeowners' Association, Inc., who acknowledged execution of the foregoing Revised Code of Bylaws for Clearbrook Park Homeowners' Association, Inc. and who, having been duly sworn, stated that the representations contained herein are true.

Witness my hand and Notarial Seal of this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary of Public – Signature

\_\_\_\_\_  
County of Residence

\_\_\_\_\_  
Printed

\_\_\_\_\_  
Date Commission Expires

***I hereby affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. – David E. Jacuk***

**This document was prepared by and should be returned to:**

David E. Jacuk  
Kovitz Shifrin Nestbit  
6125 South East Street, Suite A  
Indianapolis, Indiana 46227