

(Version reflects Amendments of October 2002)  
**CODE OF BYLAWS**

OF

**THE ENCLAVE OF CARMEL HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**

Section 1.1. Name. The name of this corporation shall be The Enclave of Carmel Homeowners Association, Inc. (hereinafter referred to as "Association").

Section 1.2. Definitions. The definitions of the terms used herein shall, unless the context clearly indicates to the contrary, be the same as the definitions used in the Declaration of Covenants, Conditions and Restrictions for The Enclave of Carmel Subdivision, as recorded September 26, 1991 as Instrument No. 9125568 in the Office of the Recorder of Hamilton County, Indiana, as amended from time to time in accordance with the terms thereof (the "Declaration").

**ARTICLE II**

**Purposes**

Section 2.1. Purposes. This Association is a mutual benefit corporation. The Association has been formed for the purposes described in the Articles of Incorporation of this Association, filed with the Indiana Secretary of State, as amended from time to time in accordance with the terms thereof (the "Articles").

**ARTICLE III**

**Powers**

Section 3.1. Powers. In furtherance of the purposes for which it is organized, the Association shall possess the powers specified herein, in the Articles, and all of the general rights, privileges, and powers conferred by the Act.

**ARTICLE IV**

**Definitions**

The following terms as used in these Bylaws, unless the context clearly requires otherwise, shall mean the following:

Section 4.1. "Board of Directors" or "Board" means the governing body of the Association elected in accordance with these Bylaws.

Section 4.2. "Common Expense" shall have the same meaning as "Maintenance and Operational Costs" at section 2.17 of the Declaration.

Section 4.3. "Developer" shall have the same meaning as "Declarant" at section 2.02 of the Declaration.

Section 4.4. "Lot", referred to the plural as "Lots", shall mean any of the parcels into which the Real Estate is subdivided by the Plat (as herein defined) or, after construction of a Dwelling Unit, any parcel of land conveyed by Developer to an Owner (as hereinafter defined) upon which a Dwelling Unit has been constructed. If a Dwelling Unit is constructed upon more than one Lot (or parts thereof) as designated by the Plat, then for purposes of the Declaration the term Lot shall also mean and include (i) that parcel of land conveyed therewith and (ii) any other parcel of land otherwise designated as a Lot on the Plat whose size is affected thereby.

Section 4.5. "The Act" means the Indiana Nonprofit Corporation Act of 1991, as amended.

## **ARTICLE V**

### **MEMBERSHIP**

Section 5.1. Membership in Association. Each Owner of a Lot shall automatically upon becoming an Owner, be and become a Member of the Association and shall remain a Member until such time as his ownership of a Lot ceases. Membership shall terminate when any Owner ceases to be an Owner, and membership will transfer to the new Owner of a Lot; provided, however, that any person or entity who holds the interest of any Owner in a Lot merely as security for the performance of an obligation shall not be a Member until and unless such person or entity realizes upon its security, at which time such person or entity shall automatically be and become an Owner and a Member of the Association.

Section 5.2. Voting Rights. The Association shall have one (1) class of membership. Each Owner shall be a Member. Each Member who is in good standing shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Members are entitled to vote. A Member who is in arrears in the payment of any part of the Assessment with respect to any Lot owned by the Member shall not be in good standing during such delinquency. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Association, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot. Whenever a quorum or majority of Members is required at a meeting to transact business or approve resolutions, such quorum or majority shall mean a quorum or majority of Lots represented by Members at the meeting. If a Lot is owned by two or more persons, any one such Owner at a meeting shall be deemed to represent such Lot without a proxy from any other Owners.

## **ARTICLE VI**

### **Meetings of Members**

Section 6.1. Place of Meetings. All meetings of the Members shall be held at such place in Hamilton or Marion Counties, Indiana as may be designated by the Board of Directors and specified in the respective notices or waivers of notice thereof.

Section 6.2. Annual Meeting. The annual meeting of the Members shall be held in the month of October of each calendar year for the purposes of electing Directors, examining the proposed annual budget and conducting such other business as may be considered by Members pursuant to the Articles of Incorporation or these Bylaws. The Board of Directors may designate another time for the annual meeting.

Section 6.3. Special Meetings. Special meetings of the Members may be called by the President, by a majority of the Board of Directors, or by written petition signed by Members

representing ownership of all or part of not fewer than ten (10) lots. Upon a request in writing delivered to the President or the Secretary by a person or persons entitled to call a special meeting, it shall be the duty of the President or the Secretary to give notice to the Members of such meeting, and, if such request is refused, the person or persons making the request may call a meeting by giving notice in the manner hereinafter provided. Business transacted at all special meetings shall be limited to the subjects stated in the call or waiver of notice, and matters germane thereto.

**Section 6.4. Notice of Meetings.** A 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 such meeting is called, shall be delivered or mailed by the Secretary or by the officer of person calling the meeting to each Member at such address as appears on the records of the Association not more than thirty (30) nor less than ten (10) days before the date of any meeting. Notice of any meeting may be waived by any Member in writing filed with the Secretary if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place of the meeting. Such waivers shall be filed by the Secretary in the minutes of the meeting. Attendance at any meeting shall constitute a waiver of notice of that meeting.

**Section 6.5. Voting Lists.** At least ten (10) days before each meeting of Members, the Secretary shall make a complete list of Members entitled to vote at the meeting, which list may be inspected by any Member, for any proper purpose, at any reasonable time. The address of any Member appearing upon the records of the Association shall be deemed to be the latest address of such Member appearing on the records maintained by the Secretary. Such list shall be produced and kept open at the time and place of election and subject to the inspection of any Member during the holding of such election. The Secretary will comply with the provisions of Sec. 23-17-11-1 of the Act, as amended.

**Section 6.6. Quorum.** At any meeting of the Members, Members entitled to vote at such meeting and representing ownership of all or part of fifteen (15) Lots present in person or by proxy executed in writing, shall constitute a quorum for the transaction of business, except as otherwise provided by law or in sections 6.04 and 6.05 of the Declaration. In the absence of a quorum, the Members present in person or by proxy, by a majority vote and without notice, may adjourn the meeting from time to time until a quorum is present. At any such adjourned meeting at which a quorum is present, any business may be transacted for which notice was originally given. The Members present at a duly organized meeting may continue to do business until adjournment notwithstanding the withdrawal of enough Members or leave less than a quorum, provided that any meeting shall be adjourned when the remaining Members represent fewer than eight (8) Lots.

**Section 6.7. Voting Rights.** Except in those instances set forth in the Declaration where a specific number of votes is required, a majority of the votes cast at a meeting of the Members, duly called and at which a quorum is present, shall be sufficient to take or authorize action upon any matter that may properly come before a meeting, provided that Members representing not fewer than eight (8) Lots shall be required to vote in the affirmative to adopt any resolution.

**Section 6.8. Proxies.** A Member may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Member shall designate his attorney-in-fact in writing, delivered to an officer of the Association prior to the commencement of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution unless a longer time is expressly provided in the proxy.

**Section 6.9. Action Without a Meeting.** Any action required by the Act to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting, if prior to the action, a consent in writing setting forth the action so taken is signed by all of the Members entitled to vote with respect to the subject matter thereof, and

such written consent is filed with the minutes of the proceedings of the Members. Such consent shall have the same effect as a unanimous vote of the Members.

## **ARTICLE VII**

### **Board of Directors**

**Section 7.1. Management.** The business and affairs of the Association shall be governed and managed by the Board of Directors. The number of Directors shall be six (6). No person shall be eligible to serve as a member of the Board of Directors unless such person is, or is deemed in accordance with these Bylaws to be, an Owner and a Member in good standing.

**Section 7.2. Additional Qualifications.** If an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner, or a partner, an officer or trustee, respectively, shall be eligible to serve on the Board of Directors, except that no single Lot may be represented on the Board of Directors by more than one person at a time.

### **Section 7.3. Election: Terms of Office and Vacancy**

(a) At each annual meeting of the Members of the Association there shall be an election of Directors. As provided in Section 6.4 of Article VI, the notice of the annual meeting of the Members of the Association shall be mailed to each Member not more than 30 days prior to the scheduled date of the annual meeting. Such notice shall include the names of the candidates recommended by the Nominating Committee who have agreed to be nominated for the Office of Director and to serve if elected. The notice also shall include a request that nominations from Members for the Office of Director be submitted to the Secretary within 14 days of the date of mailing of the meeting notice. The Secretary shall contact each nominee for Director recommended by a Member in order to obtain the consent of such nominee to be nominated and to serve on the Board of Directors if elected at the annual meeting. Not less than 10 days prior to the scheduled date of the meeting, the Secretary shall mail to Members proxy forms including the names of all the Members nominated to serve on the Board of Directors who have agreed to be nominated for the Office of Director and to serve if elected. If there are an inadequate number of nominations for Director, provisions will be made for nominations to be made from the floor during the annual meeting. Members holding proxies shall vote for the Directors designated on the proxies they hold, and may vote in their discretion for nominees that were nominated from the floor during the annual meeting in the event an insufficient number of nominations had been received prior to the meeting. If there are more nominees than the number of Directors to be elected, then Directors shall be elected by secret written ballots. Members shall vote by their respective Lots, with one vote and ballot per Lot. Each ballot shall contain the same number of votes as the number of directorships to be filled. A person is elected when the person receives a majority of the votes cast. If more than the requisite number of nominees receives a majority of the votes cast, then the persons receiving the higher majorities are elected.

(b) Each Director shall be elected for a term of two (2) years, except that at the election of Directors at the first meeting of Members, three (3) of the Directors shall be elected to serve terms of one (1) year each and three (3) of the Directors shall be elected to serve terms of two (2) years each. Thereafter, at each annual meeting of the Members there shall be three Directors elected who shall serve for terms of two (2) years each. Directors may serve successive terms. Each Director shall hold office throughout the elected term and until a successor is elected and qualified.

(c) Any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining Directors or by vote of the Members if a Director is removed in accordance with Section 7.8 of this Article VII. The Director so filling a vacancy shall serve until the next annual meeting of the Members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to which there has otherwise been a vacancy.

Section 7.4. Annual Meeting. The Board of Directors shall meet each year immediately after the annual meeting of the Members, at the place where such meeting of the Members has been held, for the purpose of organization, election of officers, and consideration of any other business that may properly be brought before the meeting. No notice shall be necessary for the holding of this annual meeting. If such meeting is not held as above provided, the election of officers may be held at any subsequent meeting of the board specifically called in the manner provided in Section 7.5. A Director may participate in any meeting of the Board of Directors by or through the use of any means of communication by which all Directors participating may simultaneously hear each other during the meeting.

#### Section 7.5. Regular and Special Meetings

(a) Regular Meetings. The Board of Directors shall meet quarterly at a time and place to be decided by the Directors at the Annual Meeting of the Board of Directors, subject to change by majority vote of the Directors from time to time. If there is no important business to be conducted, the President, with the concurrence of the Secretary and Treasurer, may cancel not more than one regular meeting in a two-quarter period. Such regular meetings of the Board of Directors may be held without notice or upon such notice as may be fixed by the Directors. A member of the Board of Directors may participate in any meeting of the Board by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with each other and participation by these means constitutes presence in person at the meeting.

(b) Special Meetings. Special meetings of the Board may be called by the President and shall be called by order thereof upon the written request of not fewer than three (3) of the Directors, which request shall set forth the business to be conducted at such meeting.

Section 7.6. Notice of Meetings. Notice of all meetings of the Board of Directors, except as herein provided, shall be given by mailing the same at least ten (10) days before the meeting to the usual business or residence address of the Director as shown upon the records of the Association. Notice of any meeting of the Board may be waived by any Director in writing filed with the Secretary if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place of the meeting. All such waivers shall be filed by the Secretary with the minutes of the meeting. Attendance at any meeting of the Board shall constitute a waiver of notice of that meeting. Any meeting of the Board may adjourn from time to time to reconvene at the same place or some other place. No notice need be given of any such adjourned meeting.

Section 7.7. Quorum. A quorum of the Board of Directors at any annual or special meeting of the Board shall be a majority of the duly qualified Directors then occupying office, but in no event less than three (3) Directors, except that in filling vacancies a majority of the remaining Directors shall constitute a quorum. The act of a majority of the Directors present at a meeting, who constitute a quorum, shall be the act of the Board unless otherwise provided by the Act. In the absence of a quorum, the Directors present may, by majority vote, adjourn the meeting from time to time until a quorum is present.

**Section 7.8. Action Without a Meeting.** Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if prior to such action a written consent to such action is signed by all of the Directors and such written consent is filed with the minutes of the proceedings of the Board of Directors.

**Section 7.9. Removal of Directors.** A Director or Directors may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Members duly called and constituted for such purpose. In such case, a successor or successors shall be elected at the same meeting from eligible Members nominated at the meeting. The Director or Directors so elected shall serve until the next annual meeting of the Members and until a successor or successors are duly elected and qualified.

**Section 7.10. Duties of the Board of Directors.** The Board of Directors shall be the governing body of the Association representing all of the Members and be responsible for the functions and duties of the Association, including, but not limited to, providing for the administration of the Common Areas and Facilities, the management, maintenance, repair, upkeep and replacement of the Lake, collection of the Assessments, and disbursement of the

Maintenance and Operational Costs. The Board may, on behalf of the Association, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary, provided any such management agreement shall be for a term of three (3) years or less and shall provide that any such agreement may be terminated without cause by either party upon ninety (90) days written notice to the other party. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (a) snow removal;
- (b) assessment and collection from the Owners of each Owner's respective share of the Maintenance and Operational Costs;
- (c) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (d) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year: such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year,
- (e) keeping a current, accurate, and detailed record of receipts and expenditures affecting the business and affairs of the Association, specifying and itemizing the Maintenance and Operational Costs: all records and vouchers (including current copies of the Declaration, Articles of Incorporation, Bylaws and Rules) shall be available for examination by an Owner, Mortgagee, insurer or guarantor of a first mortgage at any time during normal business hours;
- (f) procuring and maintaining for the benefit of the Association and the Board the insurance coverage required under these Bylaws and such other insurance coverage as the Board, in its sole discretion, may deem necessary or advisable; and,
- (g) furnishing upon request of any Mortgagee, insurer or guarantor of a first mortgage, a financial statement for the immediately preceding fiscal year.

Section 7.11. 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 for the Board of Directors to perform its duties;
- (e) to include the costs of all of the above and foregoing as maintenance and Operational Cost and to pay all of such costs there from;
- (f) to open and maintain a bank account or accounts in the name of the Association, and
- (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 Plat, the Lake and the Common Areas and Facilities (in addition to those set forth in these Bylaws) 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 or mailed to all Owners; and,
- (h) to establish and oversee such committees as the Directors may from time to time determine are necessary or desirable.

Section 7.12. Indemnification of Directors, Officers, Agents, Employees and Others.

(a) The Association shall indemnify any person who is or was a Director, officer, employee, or agent of the Association to the fullest extent permitted under the Act. In addition, the Association shall indemnify, hold harmless and defend any person, and that person's heirs, assigns, and legal representatives, made a party to any action, suit or proceeding by reason of the fact that such person is or was a Director of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by that person in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which is shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of that person's duties. The Association shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. Each person seeking indemnification shall do all things necessary and in a timely manner to obtain the indemnification of the Association in accordance with the Act. Notwithstanding the above, the Association shall not be permitted to indemnify a Director until the Board of Directors shall have determined that, in accordance with the rules set

forth at Indiana Code Section 23-17-16-12 as amended, the Director seeking indemnification has met the standard of conduct set forth in Indiana Code Section 23-17-6-8, as amended. No Director, officer, employee or agent shall be entitled to seek indemnification in any court conducting the proceeding in question or in any other court of competent jurisdiction unless and until such indemnification shall have been denied by the Association.

(b) The Association shall have the power to enter into agreements with officers, employees, and agents of the Association, whether or not they shall be Directors, to provide indemnification and for payment of advance expenses to such officers, employees, or agents.

(c) The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee, or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not

the Association would have the power to indemnify him against such liability under the provisions of this Article.

(d) The rights of indemnification provided under this Article are not exhaustive and shall be in addition to any rights to which a Director or officer may otherwise be entitled by contract or as a matter of law. Irrespective of the provisions of this Article, the Association may, at any time and from time to time, indemnify Directors, officers, employees and other persons to the full extent permitted by the Act, or any successor law, as then in effect, whether with regard to past or future matters.

(e) All obligations of the Association under this Article shall survive the termination of a Director's or officer's service in any capacity covered by this Article.

(f) The provisions of this Article shall inure to the benefit of each Director or officer and his respective heirs, personal representatives, and assigns and to the Association, its successors and assigns.

(g) In case any one or more of the provisions contained in this Article shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Article, but this Article shall be construed as if such invalid, illegal, or unenforceable provision or provisions had never been contained herein.

Section 7.13. Insurance. The Board of Directors shall have the authority to and shall obtain insurance for all of the structures located in the Common Area, whether owned or leased by the Association, against loss or damage by fire or other hazards commonly insured against in similar properties in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any insured hazard, and shall also obtain a broad form public liability policy covering all damage or injury caused by the negligence of the Association or any of its agents, in addition, the Board of Directors shall authorize and direct the President to obtain Directors and Officers Insurance in form and amount satisfactory to the Board to indemnify the officers, Directors, employees, and agents of the Association from liability arising out of or in connection with the performance of their duties and powers which are described in sections 7.10 and 7.11 hereinabove and generally herein.



**Section 7.14. Bond.** The Board of Directors shall have the authority to provide blanket fidelity bonds for the Managing Agent (if any), the Treasurer of the Association, and such other officers or Directors of the Association that handle or are responsible for funds 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 (provided, however, in no event shall the aggregate amount of the bond be less than a sum equal to three (3) months aggregate assessments on all Dwelling Units) and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. Fidelity bonds shall name the Association as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. Such bonds shall provide that they may not be canceled or substantially modified for any reason without at least ten (10) days prior written notice to the Association. Unless required by the Board of Directors to be provided at the expense of the Managing Agent, the expense of any such bonds shall be a Maintenance and Operational Cost.

## **ARTICLE VIII**

### **OFFICERS**

**Section 8.1. Officer.** The Board of Directors shall elect or appoint the officer of the Association. The principal officers of the Association shall be a President, a Vice President, a Secretary, a Treasurer, an Assistant Secretary, and an Assistant Treasurer. The Board of Directors may elect such other officers, who shall not be principal officers, as may be deemed desirable by the Board of Directors at that time, and for such terms of office and with such duties as the Board may choose. Each of the principal officers shall be a Director. If the Board of Directors shall elect other officers, they need not be Directors and a Director may hold such office in addition to the Director's principal office.

**Section 8.2. Election and Term of Office.** The principal officers of the Association shall be elected annually from among and by the Board of Directors at the regular annual meeting of the Board of Directors held immediately following the annual meeting of the Members. Each officer shall hold office until his successor shall have been duly elected and shall have qualified, unless earlier removed by the Board of Directors. All officers and agents can be removed at any time by the affirmative vote of a majority of the Directors then in office.

**Section 8.3. President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Board of Directors. Under the Board's direction the President shall have general supervision over the affairs of the Association and over the other officers. The President shall perform all such other duties as are incident to this office.

**Section 8.4. Vice President** The Vice President shall perform the duties specified in Section 8.3 of this Article in the absence or disability of the President. In addition, the Vice President shall perform duties and assignments which may from time to time be delegated by the President or the Board.

**Section 8.5. Treasurer.** The Treasurer shall have custody of all monies and securities of the Association and shall give a bond in such sums and with such surety as the Directors may require, conditioned upon the faithful performance of such office. The Treasurer shall maintain records of the Members in good standing and provide such information to the Secretary upon request. The Treasurer shall be responsible for collection of all Assessments due the Association

and shall perform a timely review of the records of the Managing Agent, if any. The Treasurer shall perform all such other duties as are incident to this office.

Section 8.6. Assistant Treasurer. The Assistant Treasurer shall perform the duties specified in Section 8.5 of this Article in the absence or disability of the Treasurer and such other duties as may be delegated by the Treasurer, the President, or the Board of Directors.

Section 8.7. Secretary. The Secretary shall have the responsibility for providing that notices required by the Act, the Articles, the Declaration, or these Bylaws be Issued, and shall provide the minutes of all meetings of the Board of Directors be adequately kept. The Secretary shall maintain a list of the Directors and their mailing addresses, be responsible for all corporate books, records and papers, any and all written contracts of the Association, and be custodian of the corporate seal. The Secretary shall maintain a current roster of all Lots, Owners, and Members, including whether such Members are in good standing, and shall prepare a list of Members eligible to vote at each meeting of the Members. The Secretary shall perform all such other duties as are incident to this office.

Section 8.8. Assistant Secretary. The Assistant Secretary shall perform the duties specified in Section 8.7 of this Article in the absence or disability of the Secretary and such other duties as may be delegated by the Secretary, the President, or the Board of Directors.

Section 8.9. Vacancies. Vacancies among elected and appointed officers occurring during the annual terms thereof shall be filled by the Board of Directors.

## ARTICLE IX

### Architectural Control

Section 9.1. The Architectural Review Board. As a standing committee of the Association, there shall be, and hereby is, established an Architectural Review Board consisting of three (3) or more persons as may, from time to time, be provided in the Bylaws. The Architectural Review Board shall be appointed by the Board of Directors or if not so appointed the Architectural Review Board shall be the same as the Board of Directors. The first Architectural Review Board shall be appointed at the first meeting of the Board of Directors and shall be appointed or reappointed at each subsequent annual meeting of the Board. Members of the Architectural Review Board may be added, replaced, or removed by the Board of Directors by a majority vote of the Board of Directors at any time and without notice. All appointments to the Architectural Review Board expire upon the convening of the first annual meeting of the Directors following their appointment. Except upon the approval of a majority of the Members at an annual meeting, the members of the Architectural Review Board may not serve more than two (2) consecutive terms of one year each.

Section 9.2. Purposes. The primary purpose of the Architectural Review Board is to enforce the terms, conditions and restrictions of Articles VII (Lot Development) and VIII (Use and Maintenance of Lots) of the Declaration of Covenants, Conditions and Restrictions for the Enclave of Carmel Subdivision. In the performance of this responsibility, the Architectural Review Board shall make recommendations to the Board of Directors for the regulation of the external design, appearance, use, location and maintenance of the Development and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements, and the natural vegetation and topography; it shall be responsible for periodically reviewing the Declaration and compliance therewith by all Owners, any builder, and the Declarant; it shall initially hear and review all requests for opinions, improvements, and other matters involving the improvements located within the Development;

following such hearings. It shall make findings and recommendations to the Board of Directors for their final decision on all such matters; and, if and when the Board of Directors shall obtain the authority of the Declarant, whether in whole or in part, to administer the Declaration in any way. It may be delegated by the Board of Directors such authority and responsibility as the Board of Directors may determine, provided that all of its recommendations shall be reviewed, rejected, modified, and/or approved by the Board of Directors prior to Implementation. All recommendations by the Architectural Review Board shall be in writing and accompanied by such findings and evidence as may be reasonably required or requested by the Board of Directors to make a knowledgeable review of the recommendations. When the Architectural Review Board has held a hearing on a complaint, a request for Improvement or physical change to an Owner's property of the Common Area or Facilities, or any other matter involving a dispute and in which the Architectural Review Board has by vote made a recommendation affecting the rights of an Owner, the Architectural Review Board shall indicate the number of votes in favor of the recommendation and number of votes in opposition.

**Section 9.3. Procedures.** In the event the Architectural Review Board fails to make its recommendation to the Board of Directors within 30 days following the conclusion of any hearing or the proper and complete submission of any initial written request for approval, the parties at interest, or any of them, may request that the Board of Directors conduct its own hearing or grant the request for approval. In such event, and with respect to hearings, the Board of Directors shall hold its own hearing, allowing only such evidence as was submitted at the hearing before the Architectural Review Board, and shall render its decision within 30 days after the conclusion of the hearing. With respect to requests for approval, the requesting party shall present the same materials to the Board of Directors as were presented to the Architectural Review Board and, in the event the Board of Directors shall fail to reject the request for approval within 30 days after receipt of such materials, approval will be deemed granted by the Board of Directors.

**Section 9.4. Maintenance of Architectural Control.** The Association may not waive or abandon the procedure for regulating and enforcing the architectural design or exterior appearance of the Dwelling Units nor for maintaining the Lake without the prior written approval of all Owners and all mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of these Bylaws.

## ARTICLE X

### Nominating Committee

**Section 10.1. The Nominating Committee.** As a standing committee of the Association, there shall be, and hereby is, established a Nominating Committee consisting of three (3) persons. The Nominating Committee shall be comprised of the Secretary of the Board and two other members appointed by the President, subject to the approval of the Board of Directors. At least one of the appointed members of the Nominating Committee shall be a Director. The members of the Nominating Committee shall be appointed at each annual meeting of the Board of Directors (first meeting of new board). Members of the Nominating Committee may be added, replaced, or removed by the Board of Directors by a majority vote of the Board of Directors at any time and without notice. All appointments to the Nominating Committee expire upon the convening of the annual meeting of the Directors following their appointment. Except upon the approval of a majority of the Members at an annual meeting, the members of the Nominating Committee may not serve more than two (2) consecutive terms of one year each.

**Section 10.2. Purpose.** The Purpose of the Nominating Committee is to recommend to the Board of Directors candidates for nomination for the Office of Director at the annual meeting of the Members of the Association. As provided in Article VII, Section 7.3, nominations for the Office of Director also may be made by Members qualified to vote at the annual meeting of Members of the Association.

**Section 10.3. Procedures.** The Nominating Committee shall make recommendations to the Board of Directors regarding candidates for the Office of Director not less than 60 days prior to the scheduled date of the annual meeting of Members of the Association. The Nominating Committee shall recommend for nomination a sufficient number of candidates to fill the vacancies to be filled at the annual meeting of the Members of the Association. Upon receipt of such recommendations by the Board, the Secretary shall contact each nominee for Director to obtain the consent of such nominee to be nominated and to serve on the Board of Directors if elected at the annual meeting. In the event that a recommended candidate declines to be nominated and to serve, the Nominating Committee shall make additional recommendations to the Board. The work of the Nominating Committee shall be completed not less than 45 days prior to the scheduled date of the annual meeting of the Members of the Association. As provided in Section 6.4 of Article VI, the notice of the annual meeting of the Members of the Association shall be mailed to each Member not more than 30 days prior to the scheduled date of the annual meeting. Such notice shall include the names of the candidates recommended by the Nominating Committee who have agreed to be nominated for the Office of Director and to serve if elected. The notice also shall include a request that nominations from Members for the Office of Director be submitted to the Secretary within 14 days of the date of mailing of the meeting notice. The Secretary shall contact each nominee for Director recommended by a Member in order to obtain the consent of such nominee to be nominated and to serve on the Board of Directors if elected at the annual meeting. Pursuant to Section 7.3 of Article VII, not less than 10 days prior to the scheduled date of the meeting, the Secretary shall mail to Members proxy forms including the names of all the Members nominated to serve on the Board of Directors.

## **Article XI**

### **Assessments**

**Section 11.1. Power to Levy.** The Association shall have the power to levy regular and special assessments against each Owner and each Lot.

**Section 11.2. Assessment.** Assessments shall be made pursuant to the provisions of the Declaration.

**Section 11.3. Implied Powers.** Notwithstanding anything contained herein or in the Declaration, the Act, or the Articles to the contrary, the Board of Directors, acting on behalf of the Association, shall have all powers necessary and appropriate to collect and enforce collection of all Assessments which may be lawfully imposed by the Association on the Owners of any Lot, including the power to enforce judgments against Owners, retain legal counsel, and collect interest and court costs from Owners. In so doing, the Board of Directors may delegate some or all of such power and authority to one or more agents, Managing Agents, collection agents, and/or legal counsel, who may act on behalf of the Association and appear in court for the Association. Until such delegation shall have occurred, the President, Vice President, Secretary, and Treasurer, singly, may represent the Association and the Board of Directors in any court proceeding for the enforcement and/or collection of Assessments from Owners without farther action by the Board of Directors being required.

## **ARTICLE XII**

### **Contracts. Checks. Deposits and Funds**

**Section 12.1. Contracts.** The President, with the attestation of the Secretary, shall have the apparent authority to enter into all contracts in the name of the Association which are permitted by the Declaration, the Articles, or these Bylaws, except that contracts for the sale,

transfer, mortgaging, or other encumbering of the title to the Common Property or Facilities shall require approval by Seventy-five Percent (75%) of the Members at a special meeting or annual meeting and the approval of such mortgagees as shall be required pursuant to the Declaration. The Board of Directors, by unanimous consent, may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any Instrument In the name of and on behalf of the Association, and such authority may be general or confined to specific instances. In such event, the Members shall be advised at their next meeting of such delegation and the Managing Agent shall be immediately advised in writing.

**Section 12.2. Checks, Drafts, etc.** All checks, drafts, or orders for the payment of money, notes or other evidences of indebtedness issued In the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors; provided, however, that each such resolution shall require the signature of at least one (1) principal officer (the President, Vice President or Treasurer). In the event that there is no managing agent, each such resolution shall require that not fewer than two (2) signatures by officers, with at least one (1) being a principal officer shall be required for all transfers of money of the Association. Unless the Board of Directors shall resolve by unanimous consent to the contrary, all checks shall be signed by any two of the following: the President, Vice President, and Treasurer.

**Section 12.3. Deposits.** All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories as the Board of Directors may select.

#### ARTICLE-XIII

##### Books and Records

**Section 13.1. Books and Records.** The Association shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board of Directors and committees having any of the authority of the Board of Directors. All books and records of the Association may be inspected by any Director, or his agent or attorney for any proper purpose at any reasonable time.

#### ARTICLE XIV

##### Amendments

**Section 14.1. Amendment.** As set forth in the Articles, the power to alter, amend, add to, and repeal the Bylaws of the Association is hereby vested in the Board of Directors, except with respect to any provision of these Bylaws which by law or the Articles or these Bylaws requires action by the Members, which power shall be exercised In accordance with the requirements of these Bylaws and the Act. The Board of Directors may recommend amendments in the Articles to the Members, but shall have no power to amend the Articles. Those provisions of these Bylaws which require approval by a majority of the Members at a regular, special, or annual meeting thereof for amendment are as follows:

- (a) Section 5.1: Membership in Association
- (b) Section 5.2: Voting Rights
- (c) Section 7.3: Election; Terms of Office; Vacancy
- (d) Section 7.9: Removal of Directors

(e) Section 7.11: Indemnification of Directors, Officers, Agents, Employees, and Others

(f) Section 9.1: Limitation on more than two (2) consecutive terms on the Architectural Review Board

(g) Section 9.4: Maintenance of Architectural Control

(h) Section 11.1: Power to Levy

(i) Section 12.1: Contracts

(j) Section 12.2: Checks, Drafts, etc.

All other provisions of these Bylaws may be amended by a majority vote of the total number of Directors elected to and then holding office.

## ARTICLE XV

### Miscellaneous

Section 15.2. Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the last day of December in each year.

Section 15.2. Conflicting Provisions. In the event of direct conflict between the terms and provisions of these Bylaws, the Declaration, the Articles, and/or the Act, the provisions of the Act shall control those of the Declaration, those of the Declaration shall control those of the Articles, and the provisions of the Articles shall control those of these Bylaws.

Section 15.3. Parliamentary Procedure. Roberts Rules of Order, Newly Revised, shall govern the procedures of all meetings of the Members, the Board of Directors, and all duly constituted committees. The chairperson of the meeting shall function as the parliamentarian unless the chairperson shall appoint another person to do so.

IN WITNESS WHEREOF, the undersigned, being all of the duly elected members of the Board of Directors of The Enclave of Carmel Homeowners Association Inc. hereby certify that the above and foregoing amended Bylaws of the Association were duly adopted at a meeting of the Members of the Enclave Homeowners Association held on the 29<sup>th</sup> day of October, 2002.

Don Hecht, President



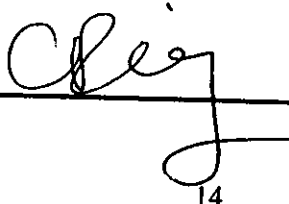
Bob Hughes, Vice President



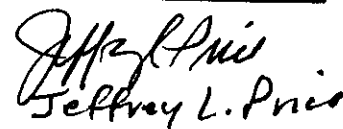
Bill Barlow, Director "At Large"



Craig Wierenga, Secretary



PREPARED BY DON HECHT

  
JEFFREY L. PRICE  
MARSON CRY 9/20/02

Article VII  
Board of Directors

Section 7.3 Election, Terms of Office and Vacancy

Paragraph (a)

*Strike the second sentence:*

Nominations may be made by any Member and shall be received by the Secretary no later than 10 days prior to the Annual Meeting.

*Insert the following after first sentence, ending with.....election of Directors.*

The meeting notice will be mailed to residents 30 days prior to the scheduled meeting and will include a request for board nominations to be made to the secretary within 14 days of the meeting notice mailing. If there are an inadequate number of board nominations, provisions will be made for nominations from the floor during the association meeting. Homeowners holding proxies can vote the proxies on the basis of the additional nominations. If there are more nominees.....