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Section 10. Procedures. All Board meetings will be conducted according to the 21st Century Robert's Rules of Order (current edition), by the Princeton Language Institute (Robert's Rules). In the event of any dispute concerning the application of Robert's Rules, the Chair's interpretation will be final and binding. The Board may, by resolution, adopt a different set of procedures for conducting Board meetings than that specified in this section.

ARTICLE VIII

Powers, Duties of Board of Directors

Section 1. Powers, Duties and Responsibilities. Except to the extent that such powers have been previously delegated to the CCA Board, it shall be the affirmative and perpetual obligation and duty of the Section 4 Board to perform the following:

- (a) Cause the Common Elements to be maintained according to accepted standards as set forth in the Master Deed and including, but not limited to, such maintenance, painting, replacement and repair work as may be necessary, lawn maintenance and clearing of snow from roadways and walkways as the Board may deem appropriate. All repairs and replacements shall be substantially similar to the original application and installation and shall be of first-class quality; and
- (b) Investigate, hire, pay, supervise and discharge the personnel necessary to be employed, including professionals, property managers and all other persons, and provide the equipment and materials necessary, in order to properly maintain and operate the Common Elements and administer the affairs of the Association. Compensation for the services of such employees (as evidenced by certified payroll) shall be considered an operating expense of the Association; and
- (c) Cause to be kept a complete record of all its acts and corporate affairs and to present a summary report thereof to the Members at the annual meeting or at any special meeting when requested in writing at least twenty-one (21) days in advance by Members representing at least fifteen (15%) percent of the Eligible Votes of the Association; and
- (d) Allocate common surplus or make repairs, additions, improvements to, or restoration of the Common Elements in accordance with the provisions of these Amended By-Laws, the Master Deed and the after damage or destruction by fire or other casualty, or as a result of the condemnation or eminent domain proceedings; and
- (e) Take such action as may be necessary to comply promptly with any and all orders or requirements affecting the premises maintained by the Association placed thereon by any federal, state, county or municipal authority having jurisdiction thereover, and order the Board of Fire Underwriters or other similar bodies; and

(f) Place and keep in force all insurance coverages required to be maintained by the Association, applicable to its property and members including, but not limited to:

- (i) *Property Damage Insurance.* To the extent available in the normal commercial marketplace, broad form insurance against loss by fire and against loss by lightning, windstorm and other risks normally included within risk of loss extended coverage, including vandalism and malicious mischief, insuring all Common Elements and Unit betterments existing at the time of initial conveyance, together with all service machinery appurtenant thereto, as well as common personalty belonging to the Association, and covering the interest of the Association, the Board, and all Unit Owners and any Mortgage Holder who has requested the Association in writing to be named as loss payee, as their respective interests may appear, in an amount equal to the full replacement value of the Common Elements (exclusive of foundations and footings), and Unit betterments existing at the time of the initial conveyance, without deduction for depreciation. Each policy shall contain a standard mortgagee clause in favor of each applicable Mortgage Holder which shall provide that the loss, if any, thereunder, shall be payable to each applicable Mortgage Holder, its successors and assigns, as its interest may appear. The aforesaid mortgage clause shall name as mortgagee either the Federal National Mortgage Association (FNMA) or its servicers in the event FNMA holds mortgages on any Units. When a servicer is named as the mortgagee, its name must be followed by the phrase "its successors and assigns." Prior to obtaining any renewal of a policy of fire insurance, the Board shall obtain an appraisal or other written evaluation of an insurance broker licensed to conduct business in New Jersey or other qualified expert as to the full replacement value of the Common Elements (exclusive of foundations and footings) and Unit betterments existing at the time of the initial conveyance of the Unit without deduction for depreciation, for the purposes of determining the amount of fire insurance to be obtained pursuant to this subparagraph. The amount of any deductible and the responsibility for payment of same shall be determined by the Board, in its sole discretion. The property damage coverage shall, to the extent obtainable, contain agreed amount and inflation guard endorsements; construction code endorsement; demolition cost endorsement; contingent liability from operation of building laws endorsement and increased cost of construction endorsement.
- (ii) *Public Liability Insurance.* To the extent obtainable in the normal commercial marketplace, public liability insurance for personal injury and death from accidents occurring within the Common Elements (and any other areas which the Board may deem advisable), and the defense of any actions brought by injury or death of a person or damage to property,

occurring within such Common Elements, and not arising by reason of any act or negligence of any individual Unit Owner. Said insurance shall be in such limits as the Board may, from time to time, determine, covering each member of the Board, the managing agent, the manager, and each member, and shall also cover cross liability claims of an insured against another. Such public liability insurance shall be in a single limit of not less than \$5,000,000 covering all claims for personal injury or property damage arising out of any one occurrence. The Board shall review such limits once a year.

- (iii) *Directors' Officers' and Committee Member Liability Insurance.* To the extent obtainable in the normal commercial marketplace, liability insurance indemnifying the Directors, Officers and committee members of the Association against liability for errors and omissions occurring in connection with the performance of their duties in an amount of at least \$5,000,000 with any deductible amount to be in the sole discretion of the Board.
- (iv) *Workers' Compensation Insurance.* Workers' compensation and New Jersey disability benefits insurance as required by law.
- (v) *Water Damage.* Water damage legal liability insurance.
- (vi) *Flood Insurance.* Flood hazard insurance in the event any of the insurable Common elements are located within a federally designated zone of the greater than minimal flood hazard.
- (vii) *Other Insurance.* Such other insurance as the Board may determine to be appropriate.

All policies shall: (i) provide, if possible, for recognition of any insurance trust agreement of the Association and that adjustment of loss shall be made by the Board of Directors with the approval of the Insurance Trustee, if any, and that the net proceeds thereof, if \$50,000 or less shall be payable to the Board, and if more than \$50,000 shall be payable to the Insurance Trustee, if any; (ii) require that the proceeds of property damage insurance be applied to the restoration of such Common Elements and structural portions and service machinery as is required by the Master Deed and these Amended By-Laws; (iii) provide that the insurance will not be prejudiced by any act or omission of individual members that are not under the control of the Association; (iv) provide that the policy will be primary, even if insurance covering the same loss is held by any member(s); (v) to the extent obtainable, contain waivers of subrogation and waivers of any defense based on coinsurance or of invalidity arising from any acts of the insured; and (vi) provide that such policies may not be canceled without at least thirty (30) days' prior written notice to all the named insureds, including all Unit Owners and Eligible Mortgage Holders.

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All policies shall show the named insured as: "Clearbrook Condominium Association No. 4, for the use and benefit of the individual owners" or the Association's Insurance Trustee, if any. The "loss payable" clause must show the Association or the Insurance Trustee, as a Trustee for each Unit Owner, mortgage holder or other loss payee. Also, the policies must require the insurer to notify in writing the Association, its Insurance Trustee, if any, and each Eligible Mortgage Holder or other entity named in the mortgage clause at least thirty (30) days before it substantially changes the Association's coverage.

The Board may determine, in its sole discretion, the amount of any deductible and the responsibility for payment of same as to any policy of insurance maintained under this subsection. Despite any other provisions of this subparagraph, the Association shall not be required to provide any type or amount of insurance not commonly available in the normal commercial marketplace.

The premiums for any and all insurance coverage maintained by the Association shall be a Common Expense of the Association.

Unit Owners shall not be prohibited from carrying insurance for their own benefit provided that all such policies shall contain waivers of subrogation; and further provided that the liability of the carriers issuing insurance obtained by the Board shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owners.

- (g) Manage the fiscal affairs of the Association as hereinafter provided in Article IX.
- (h) Appoint Grievance Committee members, as hereinafter provided in Article XIII, Section 1.
- (i) Adopt, amend, repeal and publish rules and regulations necessary for the administration of the affairs of the Association, including, but not limited to, securing full performance of the Unit Owners' obligations regarding their Units and the Owners' use of the Common Elements.
- (j) Maintain businesslike relations with Unit Owners or occupants whose service requests shall be received, considered and recorded in systematic fashion, in order to show the action taken with respect to each. As part of a continuing program, secure full performance of such Unit Owners or occupants of all such items and maintenance for which they are responsible.
- (k) Arrange for maintenance of roads, walkways and parking areas.
- (l) Arrange for the removal of refuse from all buildings and common areas.
- (m) Arrange for security protection as necessary.

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- (n) Borrow and repay monies giving notes, mortgages or other security upon such term or terms as the Board deems necessary. The powers granted to the Board herein to borrow money on a real estate mortgage, pass title to real estate, or purchase real estate shall only be exercised by the Board with the assent of no less than two-thirds of the Eligible Votes present in person or by proxy at a meeting of the Association's members, with the quorum requirement for the membership meeting being fifty (50%) percent of the Eligible Votes present in person or by proxy.
- (o) Invest and reinvest monies, sue and be sued; collect interest, dividends, capital gains, exercise rights, pay taxes; make and enter into contracts (including agreements with utility companies like cable television and satellite service providers and other service providers); insure, enter into leases or concessions, and to pass good and marketable title without the necessity of any third party seeing to the application of the funds; make and execute any and all proper affidavits for various purposes, including, but not limited to, title to real estate, compromise any action without leave of court; insure its own liability for claims against it or for damage to the Condominium Association, including moral claims; and all other powers contained herein, and those necessary and incidental thereto.
- (p) Coordinate the plans of Unit Owners and occupants of a Unit for moving their personal belongings into or out of a Unit, with the intent of scheduling the transition so that there is minimal inconvenience for other Unit Owners or occupants.
- (q) Cause each Member to promptly perform at his own risk, cost and expense all maintenance and repair work with respect to the portions of each Unit owned by him which does not comprise a part of the Common Elements and which, if omitted, would adversely affect the safety or general welfare of the Condominium in which his Unit is located or any part or parts thereof belonging in whole or in part to other members; and each member shall be liable for any damages, liabilities, costs or expenses, including attorney fees, caused by or arising out of his failure to promptly perform any such maintenance and repair work. In addition, if any Unit Owner fails to perform such work, the Association may do so on the owner's behalf and charge the reasonable expenses thereof to the Unit Owner.

Section 2. Revocable Delegation of Powers, Duties and Responsibilities. The Board may, by resolution, delegate any of the powers, duties or responsibilities of the Board set forth in this Article VIII to the CCA, provided the delegation procedures set forth in the CCA By-Laws have been complied with, and the CCA Board has accepted, by resolution, any such delegation. Any of the powers, duties and responsibilities set forth in Section 1 of this Article VIII may be delegated to the CCA Board. The delegation of such powers, duties and responsibilities may be revoked in its entirety by the Board without consent of the CCA Board, with the assent of no less than two-thirds of the Eligible Votes present in person or by proxy at a meeting of the

Association's members, with the quorum requirement for the membership meeting being fifty (50%) percent of the Eligible Votes present in person or by proxy. The delegation provided for hereunder may be partially revoked by a vote of a majority of the Eligible Votes at a duly held membership meeting provided the CCA has, through its Board of Directors, consented to the partial revocation. No revocation shall be effective until January 1 of the year following the year in which the revocation vote is approved, provided that no revocation vote shall be effective unless taken on or before September 30. Any revocation approved between October 1 and December 31 shall not become effective until January 1 of the next following year.

Notwithstanding any revocation, if the CCA has entered into any binding contracts for providing maintenance or service to Section 4, the Unit Owners shall continue to be responsible for their pro rata share of the costs of such contract until the contract is terminated or expires. In addition, provided the CCA Board has appointed a Grievance committee, the functions of the Association's Grievance Committee may be delegated to the CCA Grievance committee so long as any right of appeal of a decision by the CCA Grievance committee shall be heard by the Board. Architectural review functions may be delegated to the CCA pursuant to the terms of Article XIII, Section 2(b) of these Amended By-Laws. The following powers, duties and responsibilities have previously been delegated to the CCA:

- (a) The maintenance of the grounds of the Condominium;
- (b) Maintenance services for Condominium Unit Owners and for Condominium common property under an agreed maintenance schedule on file in the CCA Administration office;
- (c) Maintenance of roads and parking areas, including street lighting, traffic regulation, signs and markings, but excluding repair of sidewalks and driveways in the Condominium;
- (d) Garbage and recycling collection, security protection, sanitary sewer usage (charges), pest and termite control throughout the Condominium (excluding responsibility for resulting damage to Unit) and snow removal of accumulations over two (2) inches from all walkways, driveways, streets and parking areas;
- (e) All forms of insurance coverage except homeowners insurance including, but not limited to, property and liability, business automobile, fire, crime, Directors and Officers and umbrella liability;
- (f) Water (based on metered usage);
- (g) Animal treatment (excluding responsibility for resulting damage to Unit);
- (h) Health care services;
- (i) Lifeguard services (where provided); and

- (j) Storm systems (maintenance, repair and replacement).

Section 4 is not obligated to administer or manage those functions, duties or responsibilities that are required by the Condominium Act to the extent that they have been previously delegated to the CCA unless the delegation is revoked. The cost of providing such services and administering these functions is charged to the Association by the CCA, which is, in turn, charged to the Owners as a Common Expense.

ARTICLE IX

Fiscal Management

Section 1. Annual Assessments/Fiscal Year. It shall be an affirmative and perpetual obligation of the Association to fix Common Expense assessments in an amount at least sufficient to maintain the exterior of the Units and maintain and operate the other Common Elements. The amount of monies for Common Expenses of the Association deemed necessary by the Board and the manner of its expenditure shall be a matter for its sole discretion. Annual assessments shall be made for the fiscal year of the Association, and shall be due at the commencement of the fiscal year, with the privilege of paying in monthly installments, due on the first day of the month, if payments are made on a current basis. Each Unit will pay an annual assessment that is based on the total Common Expenses for the year divided equally among the 138 Units in Section 4. The Board shall cause to be prepared, at least thirty (30) days in advance of the commencement of the fiscal year, the amount of the Common Expense assessment for each Unit, which shall be kept in the administrative offices of the CCA and shall be open to inspection, upon request, by any Unit Owner. Written notice of the Common Expense assessments shall be sent to every Unit Owner. The fiscal year of the Association shall be determined by the Board of Directors.

Section 2. Default Assessment. If an Annual Common Expense Assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior year's assessment, and monthly installments on such assessment shall be due upon each installment payment due until changed by the Board by an amended assessment.

Section 3. Budget: Notice of Budget. The budget for each fiscal year shall be approved by the Board of Directors no later than seventy-five (75) days before the beginning of the fiscal year, to permit each Unit Owner to be advised of the Annual Assessment allocable to each unit in a timely manner. A copy of any proposed budget shall be available at a Board meeting at least one month prior to the meeting at which the Board is scheduled to vote on the budget, and the Unit Owners shall be given the opportunity to comment on the budget or its component parts. If any budget is amended after the opportunity for Unit Owner comment, the budget need not be presented to the Unit Owners for additional comment before the Board votes on the budget. Members shall be allowed a comment period of not less than forty-five (45) minutes, and reasonable limitations may be placed upon the comment time given each Unit Owner seeking to comment, to allow sufficient time for all Unit Owners seeking to comment. The Board shall give written notice to each Unit Owner and to any Eligible Mortgage Holder

who requests same, of the budget adopted by the Board for the management and operation of the Association for the next ensuing budget period. The notice setting forth the amount of the Annual Assessment shall include a copy of the budget, directed to the Unit Owner in accordance with the notice provision contained in Article XIX of these Amended By-Laws. The notice shall be conclusively presumed to have been delivered five (5) days after deposit in United States mails, postage pre-paid, or by hand delivery.

Section 4. Amendment of Budget and Assessments. In the event that the annual Common Expense assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board, provided that nothing in these Amended By-Laws shall serve to prohibit or prevent the Board from imposing a lump sum assessment in the case of any immediate need or emergency that cannot be met by reserve funds earmarked for the matter requiring maintenance.

Section 5. Common Receipts. The Board shall have the duty to collect from each Unit Owner, his, her, or their heirs, administrators, successors and assigns, as "Common Receipts," the Owner's equal share of the Annual and Special Assessments assessed against the Unit as provided in the Master Deed, the Articles of Incorporation, these Amended By-Laws, and in accordance with applicable law, in that the Master Deed states the proportional liability of the Unit Owner for all Common Expenses is an equal amount of the total divided by the 138 Units within Section 4.

Section 6. Determination of Annual Assessments. The amount of monies for the Annual Assessments deemed necessary by the Board and the manner of expenditure thereof, including but not limited to, the allocation thereof, will be a matter for the sole discretion of the Board. If an Annual Assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior year's assessment, and monthly installments on such assessment shall be due upon each installment payment date until changed by the Board by an amended assessment pursuant to Article IX, Section 4, of the Amended By-Laws.

Section 7. Assessment Period. The Annual Assessment period shall be consistent with the Association's fiscal year.

Section 8. Special Assessments. The Board may levy, in any assessment year, a special Common Expense assessment, for the purpose of defraying in whole or in part, the cost of Capital Improvements and any reconstruction, upgrade, repair or replacement of an existing Common Element, including the necessary furniture, fixtures, equipment, and other personal property of the Condominium Association, or for any other lawful purpose. Nothing in this Article will be deemed to require approval by the membership in connection with the maintenance, repair or replacement of an existing Common Element, including Special Assessments for Capital Improvements, as defined in Article I, Section 4 of these Amended By-Laws. However, in the case of replacement, the item or component to be replaced must be substantially similar to the existing Common Element, subject to such modifications as are required as a result of modifications in any building code or other law or regulation applicable to the replacement or the unavailability of materials of the type.

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Section 9. Common Expenses. Unit Owners shall pay to the Association an equal monthly sum which is the total common expenses for Section 4 divided by the number of units, or one hundred thirty eight (138).

Section 10. Assessment Collection; Notice of Assessment. Annual Assessments shall be payable by Unit Owners upon the commencement of the fiscal year, with the privilege of paying in monthly installments, due on the first day of each month, provided that all payments are made on a current basis. The Board shall notify each Unit Owner, as specified in Article XIX of these Amended By-Laws, within the thirty (30) days preceding the commencement of the fiscal year, of the Owner's proportionate share of the Annual Assessment for the assessment period. Notices of Special Assessments will be made in the same fashion when imposed, but not less than thirty (30) days in advance of the first specified payment date.

Section 11. Disbursements. The Board will collect and hold the funds as collected and shall disburse the same for the purposes and in the manner set forth herein and as required by the Master Deed, the Articles of Incorporation, and applicable law.

Section 12. Depositories. The depository of the Association will be a bank or banks, or other financial institutions providing a reasonably secure depository for the funds of the Association as will be designated from time to time by the Board and in which the monies of the Association will be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such parties as are authorized by the Board.

Section 13. Accounts. The receipts and expenditures of the Association shall be Common Expense assessments and Common Expenses. Common Expense funds of the Association shall be budgeted and maintained in the following separate accounts:

- (a) **Operating Account.** The Operating Account shall be utilized for, without limitation, expenditures for the year in which the budget is adopted and will include general common element maintenance (e.g. landscaping, irrigation, snow clearing, etc.), utility charges, annual insurance premiums, professional fees, and the like, and including reasonable allowances for contingencies and working funds. The Operating Account will not include expenditures chargeable to reserves. At the end of each fiscal year, the unexpended amount remaining in the annual expense fund shall be applied to reduce the assessments for current expenses for the succeeding year, or may be distributed to the membership, as the Board may determine by resolution, or as otherwise may be required to be determined in accordance with the regulations promulgated by the Internal Revenue Service.
- (b) **Replacement Fund.** The Replacement Fund may include money accumulated over more than one fiscal year and will be used for repairs to, or replacements of, capital assets of the Association. The capital assets are those that the Association is obligated to maintain or repair, and those that the Association is required to

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replace as a result of damage, depreciation or obsolescence (e.g. roofs, sidewalks, and the like). The amounts to be deposited in the Replacement Fund shall include the Membership Fees collected from new Owners as established in Article IX, Section 16, of these Amended By-Laws.

- (c) Capital Improvement Fund. At the election of the Board, a Capital Improvement Fund may be established, which may include money accumulated over more than one fiscal year and which shall be used for the construction of new Capital Improvements, as defined in Article I, Section 4(h) of these Amended By-Laws. Repair and/or maintenance, or replacement of the buildings, Common Elements, recreation facilities and all other property, real or personal, of the CCA shall not be subject to provisions of this paragraph.
- (d) Deferred Maintenance Reserve Fund. The Association may, but shall not be obligated to, maintain a Deferred Maintenance Reserve Fund that may include money accumulated over more than one fiscal year, and will be used for preservation efforts and maintenance which would occur less frequently than annually (e.g. exterior painting, staining, and caulking; waterproofing all exterior wood surfaces). The foregoing shall not be construed to mean that the Board shall not be permitted to keep additional cash on hand, in a checking or petty cash account, for the necessary discharge of its functions.
- (e) The four funds shall be maintained separately on the books of the Association, and shall be prudently invested. The amounts assessed and collected for the reserves shall be invested in one or more interest-bearing savings accounts, certificates of deposit, treasury bills, or other instruments where the principal is guaranteed by the full faith and credit of the United States or one of its individual states. Any funds so invested shall not be utilized for any purpose other than that which was contemplated at the time of the assessment. The Board may expend monies out of the Deferred Maintenance Reserve Fund only for deferred maintenance expenses; may expend monies out of the Replacement Fund only for repair, replacement and maintenance expenses related to capital items; and may expend monies out of the Capital Improvement Fund only for construction of new capital improvements, provided, however, that in the case of an emergency, or other urgent circumstance, the Board, acting in accordance with its fiduciary responsibilities, may use the monies in the Deferred Maintenance Reserve Fund, Replacement Fund or Capital Improvement Fund to meet unexpected operating expenses.
- (f) The amount to be set aside for the Replacement Fund and the Deferred Maintenance Reserve Fund will be determined by periodic reserve analysis to be conducted every three to five years, but in no event more than seven years, which shall identify items for which reserve funds are to be accumulated, their useful lives and anticipated replacement or repair costs. Expenditures from the reserve

accounts for a particular item will not be limited to the amount allocated to that item.

Section 14. Deficits in the Operating Account. Any deficit in the Operating Account at the end of an assessment period shall be recovered through appropriate adjustments to the annual budget in not more than three (3) years. Nothing herein is intended to prohibit the Board from recovering the deficit in a shorter period of time including, without limitation, adopting a special assessment payable over the remaining months of the annual assessment period following the fiscal year during which the deficit was created.

Section 15. Reserve Funds. The Board will not be obligated to expend all of the revenues collected in any accounting period, and must maintain reasonable reserves for, among other things, deferred maintenance repairs and capital replacements. Notwithstanding anything herein to the contrary, the Board in its determination of the annual assessment and the preparation of a budget shall specifically designate and identify that portion of the annual assessment that is to be assessed against the Unit Owners for capital replacement and deferred maintenance reserves. The amounts assessed and collected for the reserves shall be invested in one or more interest-bearing savings accounts, certificates of deposit, treasury bills, or other instruments where the principal is guaranteed by the full faith and credit of the United States or one of its individual states. Except as provided in Section 14 of this Article IX, funds so invested shall not be utilized for any purpose other than that which was contemplated at the time of the assessment. The foregoing shall not be construed to mean that the Board shall not be permitted to keep additional cash on hand, in a checking or petty cash account, for the necessary discharge of its functions.

Section 16. Membership Fees. Each purchaser, upon acquiring title to a Unit, shall, as a condition of membership in the Association, pay a membership fee equal to \$1,000.00 ("Membership Fee") to the Association. The amount of the Membership Fee may be increased or otherwise amended by resolution of the Board, at the Directors' sole discretion.

The Membership Fee is nonrefundable, nontransferable and shall not be credited to the purchaser by the Association upon sale by the purchaser of his, her, or their unit. Any unpaid Membership Fee, as set forth in this section, shall be a lien on the Unit and collectable in the same manner as any unpaid Common Expense assessment attributable to the Unit.

The Board may reduce the amount of the Membership Fee or eliminate the Fee if, in the Board's sole discretion, the Directors determine that the imposition of the Fee may have a negative impact upon the sale of units within Section 4. If, at any time, the Board reduces or eliminates the Membership Fee, it may reinstate it at any time thereafter if the Directors determine that such charges will not negatively impact the sale of Units. In no event will the Association be obligated to rebate the Membership Fees previously paid as a result of the Board having, on one or more occasions, reduced or otherwise eliminated the requirement that the Membership Fee be paid.

Section 17. Emergencies. In the event the Annual Assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board, provided that nothing herein shall serve to prohibit or prevent the Board from imposing a lump sum assessment in the case of any immediate need or emergency which cannot be met by reserve funds earmarked for such contingency.

Section 18. Power of Attorney to Institutional Lender. In the event the Board shall not cause the enforcement procedures provided in the Master Deed to be implemented within the time provided, any Eligible Mortgage Holder for any Unit as to which there shall be such unpaid Annual or Special Assessments is hereby irrevocably granted a power of attorney to commence such actions and to invoke such other remedies, all in the name of the Association. This power of attorney is expressly stipulated to be coupled with an interest in the subject matter.

Section 19. Annual Audit. An audited financial statement prepared by an independent public accountant consisting of at least the following shall, if practically feasible, be made available to all Members within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year.

Section 20. Access to Records. The audited books, as well as all records and papers of the Association, shall be made available for examination or for copying by any Member and his authorized agents, during reasonable business hours, in such place that is reasonably convenient to both the Association and the requesting Member, within ten (10) business days of written request by the Member, except any records: (1) the disclosure of which would constitute an unwarranted invasion of individual privacy; (2) concerning pending or anticipated litigation or contract negotiations; (3) falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer; or (4) involving the employment, promotion, discipline or dismissal of a specific officer or employee of the Association; however, increases in the amounts of compensation awarded to an employee of or under contract with the Board shall not be deemed a matter of personal privacy. If a Member requests copies of any documents required to be made available under this Section, the Association shall make a copy for the Member at a reasonable cost to the Member, or may permit the Member to make copies, at the discretion of the Association. Notwithstanding the ten (10) business days' notice requirement of this section, the Association shall be entitled to respond within a reasonable time period for requests for records spanning more than one (1) year, or for requests which will require the copying of voluminous documents.

Section 21. Fidelity Bonds. The Treasurer, and all other officers who are authorized to sign checks, and all persons handling or responsible for Association funds, shall be bonded in such amounts as may be required by law or otherwise determined by the Board. The premiums on such bonds shall be paid by the Association.

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Section 22. Delinquent Unit Owner.

- (a) "A Delinquent Unit Owner" means a Unit Owner who owes any annual or special assessment, fines, or any other charges to the Association that are thirty (30) or more days past due.
- (b) Late fees may be levied on a Unit when an assessment is not received within fifteen (15) days of the due date; the Unit Owner shall be so notified and billed by the Association. The late fee shall be in an amount to be determined by the Board by resolution and will be applied to each installment that is not paid by its due date. If an installment remains late for more than one (1) month, the Board may accelerate all remaining installments for the assessment period for the Unit; the Unit Owner(s) shall be notified by certified mail return receipt requested upon acceleration. All installments of the annual assessment that are more than thirty (30) days late shall bear interest until the installment is paid, at such rate as may be established by resolution of the Board (but not less than ten percent (10%) per annum). If any installment of the annual assessment is more than sixty (60) days past due, the Board may cause the recording of a notice of lien with the Middlesex County Clerk's Office. If any installment is not received within ninety (90) days after the date it was due, the Board may foreclose the lien in the manner prescribed for the foreclosure of mortgages, or commence an action against the Unit Owner(s) seeking payment of all outstanding amounts. All costs and legal fees incurred by the Association to recover any past due installment shall be paid by the Delinquent Unit Owner and will be assessed against the Unit and may be collected in the same manner as the collection of the Unit Owner's allocable share of the Annual Assessment.

Section 23. Assignment of Rent.

- (a) Subject to the rights of holders of first security interests, the Association may collect from the rent due from a tenant to a Delinquent Unit Owner, as defined in Section 22, an amount not more than the unpaid assessments, late fees, interest, and costs of collection, including reasonable attorneys' fees (collectively, "charges").
- (b) Prior to taking any action permitted by this Section 23, the Association will give written notice by certified mail, return receipt requested to the Delinquent Unit Owner at the Unit Owner's last known address of the Association's intent to collect the rent. The notice will set forth the exact amount the Association claims is due and will indicate the intent of the Association to collect the past due charges from rent, along with any other amounts that become due in the future and that remain unpaid for thirty (30) days after becoming due, including any Annual Assessment fees lawfully accelerated pursuant to these Amended By-Laws. A copy of the notice will also be sent to the Unit's First Mortgagee. Any

cost incurred by the Association to ascertain the identity of the First Mortgagee, including the cost of the preparation of a title search, will constitute additional charges with respect to the Unit.

- (c) A Delinquent Owner will have ten (10) days from receipt of the notice required to be sent pursuant to paragraph (b) above to provide proof of payment or a statement of the grounds upon which the assessment is disputed. Upon the failure of the Delinquent Owner to respond within ten (10) days after receipt of the notice, or within fifteen (15) days of mailing if no receipt is obtained, and provided that no notice is received from the First Mortgagee that it is exercising its right of assignment of rental proceeds, the Association will be entitled to notify and direct each tenant renting a Unit from the Delinquent Owner to pay all or a portion of the rent otherwise due from the Delinquent Owner to the Association. The amount to be applied from the rent will be limited to the lesser of: (i) the amount as stated in the notice to the Delinquent Owner or, (ii) an amount adjusted to reflect any calculation errors sought to be corrected by the Unit Owner, as stated in the response to the Association, if timely sent. No offset will be allowed for amounts that are unrelated to claims of calculation errors. The Association will have a continuing right to collect the rent from the tenant or tenants until the delinquent charges are paid in full.
- (d) Nothing in this Section will prevent a Unit Owner or the Association from seeking a judicial remedy in a court of competent jurisdiction.
- (e) This Section will not affect the right of a First Mortgagee that is entitled to an assignment of rents and which has exercised its rights by written notice recorded in the Middlesex County Clerk's Office and such First Mortgagee may collect such rents in accordance with an assignment of rents under which it is an assignee.

Section 24. Termination of Membership. No obligation or liability of a Unit Owner that accrued during ownership of a Unit shall expire, terminate or be waived upon termination of membership, nor shall termination of membership impair any rights or remedies that the Association may have against any former owner.

Section 25. Certificate of Unpaid Assessments. Each purchaser of a Unit shall request from the Association a certificate signed by an officer of the Association showing the amount of unpaid assessments pertaining to such Unit and the Association shall provide such certificate within ten (10) days. Any person other than the Unit Owner at the time of issuance of any such certificates who relies upon such certificates shall be entitled to rely thereon and his liability shall be limited to the amounts set forth in such certificate. If said certificate is not requested from the Association then such purchaser and the previous Unit Owner shall be jointly and severally liable for all unpaid assessments pertaining to such Unit duly made by the Association or accrued up to the date of conveyance of such Unit.

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Section 26. No Avoidance of Liability. No Unit Owner may waive or otherwise avoid liability for Common Expenses by non-use of the Common Elements. Each assessment shall be a continuing lien upon the Unit against which it was made and shall also be the personal obligation of the Owner of the Unit at the time when the Common Expense assessment fell due, together with interest thereon and cost of collection thereof (including attorney's fees). Liens for unpaid Common Expense assessments may be foreclosed by suit brought in the name of the Condominium Association in the same manner as a foreclosure of a mortgage on real property. Suit to recover a money judgment for unpaid Common Expense assessments may be maintained without waiving the lien securing them.

Section 27. Additional Assessments to Units Uniquely Benefited. In addition to other assessments authorized in this section, the Board may levy an additional assessment applicable only to all Owners in a specific building or buildings in connection with annually recurring, non-routine, maintenance charges related to such building or buildings that are not common to all Units in the Condominium. The determination of the Board concerning the classification of expenses that may be specially assessed under this paragraph will be final and binding upon all Unit Owners.

ARTICLE X

Merger of Associations

The Association shall have the authority to participate in mergers and consolidations with other sections within the Clearbrook Community provided that any such merger or consolidation shall be subject to the terms, conditions, covenants and restrictions set forth in the Master Deed and these Amended By-Laws, as the same may be lawfully amended, and to the terms and conditions set forth under N.J.S. 15A:9-5 for the restatement and integration in a single certificate of incorporation the provisions of the associations' certificates of incorporation. No such merger or consolidation may take effect unless and until it is approved by a majority of all Eligible Votes at a special meeting duly called in accordance with Article IV, Section 3, of these By-Laws.

ARTICLE XI

Corporate Seal

The Association shall have a seal in circular form having within its circumference the words "Clearbrook Condominium Association No. 4."

ARTICLE XII

Compensation, Indemnification and Exculpability of Officers,
Directors, and Committee Members

Section 1. Compensation. No compensation will be paid to any officer, Director, or committee member for acting as such officer, Director, or committee member. Nothing herein stated will prevent any officer or Director, or committee member from being reimbursed for out-of-pocket expenses or compensated for services rendered in any other capacity to or for the Association, provided however that any such expenses incurred or services rendered shall have been authorized in advance by the Board.

Section 2. Indemnification. Each Director, officer or committee member of the Association will be indemnified by the Association against the actual amount of net loss including counsel fees, reasonably incurred by or imposed upon him in connection with any action, suit or proceeding to which he may be a party by reason of his being or having been a Director, officer, or committee member of the Association, or delegee, except as to matters as to which he will be ultimately found in such action to be liable for gross negligence or willful misconduct. In the event of a settlement of any such case, indemnification will be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified had not been guilty of gross negligence or willful misconduct.

Section 3. Exculpability. Unless acting in bad faith, neither the Board as a body nor any Director, officer, or any committee member of the Association, shall be personally liable to any Unit Owner in any respect for any action or lack of action arising out of the execution of his office. Each Unit Owner will be bound by the good faith actions of the Board, officers and committee members of the Association in the execution of the duties of said Directors, officers and committee members.

ARTICLE XIII

Standing Committees

Section 1. Grievance Committee.

(a) Membership. The Board shall act as the Grievance Committee, with all the powers and responsibilities associated therewith, unless and until it appoints non-Board members to serve on the committee. In that event, there shall be a Grievance Committee consisting of not less than three (3) members and may include two (2) alternates. The alternates may be invited to attend meetings and hearings and shall participate as a voting member of the committee upon direction of the committee chair. The members of, and alternates to, the Grievance Committee will be appointed by the Board and will serve for a term of one (1) year. The committee members may recommend a chair to the Board, and the Board will appoint a chair for a one (1) year term. The members of, and alternates to, the Grievance Committee may be removed by a

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majority vote of the fully constituted Board for any reason deemed sufficient by the Board. If the Board appoints a separate Grievance Committee no member of the Board may serve on the Grievance Committee. The Association may delegate the functions of the Grievance Committee to the CCA as provided under Article VIII, Section 2, of these Amended By-Laws.

(b) Purpose. The purpose of the Committee will be to:

- (1) Hear complaints involving alleged violations of the Governing Documents; and
- (2) Provide interpretations of the Governing Documents upon request.

(c) Powers. The Grievance Committee will hear complaints brought by any member of the Association or one of its Committees as set forth in the Enforcement Procedures in Schedule "A" to the Amended By-Laws. The Grievance Committee may decline to schedule a hearing in connection with any matter with respect to which it determines that sufficient cause does not exist to prosecute an alleged violation or that the alleged violation, if proven, does not constitute a violation of the Governing Documents. The Grievance Committee will have the power to issue a cease and desist request to a Unit Owner in connection with the actions of the owner, his guests, tenants, licensees or invitees that are inconsistent with the provisions of the Condominium Act or the Governing Documents. The Grievance Committee will from time to time, as required, provide interpretations of the Governing Documents pursuant to the intents, provisions and qualifications thereof when requested to do so by an Association member or the Board.

Any action, ruling or decision of the Grievance Committee may be appealed to the Board by any party deemed by the Board to have standing as an aggrieved party or the Board may, on its own motion, review any action, ruling or decision of the Grievance Committee and a vote of a majority of the full authorized membership of the Board may modify or reverse any action, ruling or decision. Any appeal shall be filed with the Board within twenty-five (25) days of the Grievance Committee's written action, ruling or decision. Appeals shall be conducted as set forth in the Enforcement Procedures in Schedule "A" to the Amended By-Laws.

If the Board undertakes a review of any action, ruling or decision on its own motion it must notify the Grievance Committee and all members directly affected by the action, ruling or decision within twenty-five (25) days of the Grievance Committee's written action, ruling or decision. A final decision of the Board must be taken within sixty (60) days of such appeal. The Board must take action at its regularly scheduled meeting or at a special meeting for such purpose. The party appealing to the Board will be entitled to at least ten (10) days' prior written notice of the decision of the Board's action affording to such person the opportunity to be heard, with or without counsel.

(d) Authority. The Grievance Committee, in the case of a decision, shall have the additional duties, powers and authority as set forth in the Enforcement Procedures in Schedule "A" to the Amended By-Laws including the power (1) to impose an obligation for the Unit

Owner to pay damages or other expenses caused by the violation, (2) to impose non-monetary penalties and other sanctions, including suspension of the right to use the Association's facilities by the Unit Owner, his family, guests and lessees, and (3) to impose fines. The enforcement procedures in Schedule "A" may, from time to time, be amended by the adoption of a Resolution by the Board.

If, having established a Grievance Committee, the Board determines there are insufficient members willing to serve, the Board will carry out the duties and responsibilities of the Grievance Committee as set forth in these Amended By-Laws.

(e) Delegation. The Association is not required to provide any of the foregoing powers, duties and responsibilities of the Grievance Committee to the extent that they have been previously delegated to the CCA.

Section 2. Architectural Review Committee.

(a) The Association. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit acknowledges that the Association has a substantial interest in ensuring that the improvements within the Condominium enhance the Association's reputation as a first class residential community and do not impair the members' ability to market, sell, or lease their properties. Each Unit Owner agrees that no Work shall be commenced on such Owner's Unit, with "Work" being defined as any alteration, addition, repair or replacement, unless and until the Association has given its prior written approval for such Work, which approval may be granted or withheld in the Association's sole discretion. In reviewing and acting upon any request for approval, the Association shall be acting in its own interest and shall owe no duty to any other entity or person. The Board may adopt procedures to be utilized by Section 4's own architectural review committee to expedite review and approval wherever emergency repairs are required to be made. Each Unit Owner further agrees to obtain written approval from Section 4, the CCA and the ARC (as defined in paragraph "b" below) before undertaking any addition, alteration or improvement to a Unit.

(b) Architectural Review Committee. The Association may delegate its reserved rights under this Article or other recorded instruments to an architectural review committee appointed by the CCA Board of Directors (the "ARC"), subject to (i) the right of the Association to revoke such delegation and (ii) the condition that regardless of whether the Association delegates its right to review any application for additions, alterations or improvements to a unit, the Unit Owner must obtain written approval of his or her plans from the CCA before beginning the work; and (iii) the right of the Association to reject any decision of the ARC which the Association determines, in its sole discretion, to be inappropriate or inadvisable for any reason. Any revocation of a delegation shall not be effective until sixty (60) days after the CCA has received the notice of revocation. Until such time as the Association delegates all or a portion of its reserved rights, the ARC shall have no jurisdiction over architectural matters; upon any such delegation, the ARC shall accept and exercise the jurisdiction so delegated in accordance with this Article.

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Guidelines and Procedures

(c) Design Guidelines. The Association, or the ARC, if review functions have been delegated to it, (the entity having jurisdiction at any particular time is referred to in this Article as the "reviewing entity") may but shall not be required to establish design and construction guidelines and review procedures (the "Design Guidelines") to provide guidance to Unit Owners regarding matters of particular concern to the Association in considering applications for architectural approval. The Design Guidelines shall not be the exclusive basis for decisions hereunder and compliance with the Design Guidelines shall not guarantee approval of an application. If prepared by the ARC, the Design Guidelines may contain general provisions applicable to all of the Clearbrook condominium associations who have delegated review authority to the Board, as well as specific provisions which vary from one condominium association to another depending upon the location, type of construction or use, and unique characteristics of the property.

Any Design Guidelines adopted pursuant to this Section shall be subject to amendment from time to time in the sole discretion of the entity adopting them. Amendments to the Design Guidelines shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; amendments may remove requirements previously imposed or otherwise to make the Design Guidelines more or less restrictive in whole or in part.

(d) Procedures. Prior to commencing any Work for which review and approval is required under this Article, an application for approval of such Work shall be submitted to the reviewing entity in such form as may be required by the reviewing entity or the Design Guidelines. The application shall include plans showing the site layout, exterior elevations, exterior materials and, where applicable, colors, landscaping, drainage, lighting, irrigation, and other features of the proposed construction, as required by the Design Guidelines and as applicable ("Plans"). The reviewing entity may require the submission of such additional information as it deems necessary to consider any application.

The reviewing entity may consider (but shall not be restricted to) the visual and environmental impact, ecological compatibility, finish grade elevation, harmony of external design with surrounding structures and environment, location in relation to surrounding structures and plant life, compliance with the general intent of the Design Guidelines, if any, and architectural merit. Decisions may be based on purely aesthetic considerations. Each Unit Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements.

The reviewing entity shall, within thirty (30) days after receipt of each submission of the Plans, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the disapproval of such Plans, specifying the segments or features of the Plans which are objectionable and suggestions, if any, for the curing of such objections. In the event the reviewing entity fails to advise the submitting

party by written notice within the time set forth above of either the approval or disapproval of the Plans, the applicant may give the reviewing entity written notice of such failure to respond, stating that unless the reviewing entity responds within ten (10) days of receipt of such notice, approval shall be deemed granted. Upon such further failure, approval shall be deemed to have been given, subject to the right of the Association, if it has delegated its review authority, to veto approvals by the ARC as set forth in this Section. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery.

Within five (5) business days after the ARC has approved any application relating to proposed Work within the scope of matters delegated to the ARC by the Association, the ARC shall give written notice to the Association of such action, together with such other information as the Association may require. The Association shall have ten (10) days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC and the applicant.

If construction does not commence on any Work for which approval has been granted within twelve (12) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Unit Owner to re-submit the Plans for reconsideration in accordance with such Design Guidelines as are then in effect prior to commencing such Work. All Work shall be completed within sixty (60) days of commencement or such other period as may be specified in the notice of approval, unless completion is delayed due to causes beyond the reasonable control of the Unit Owner, as determined in the sole discretion of the reviewing entity.

(e) No Waiver of Future Approvals. Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that decisions regarding aesthetic matters and interpretation and application of the Design Guidelines, if any, may vary accordingly. In addition, each Unit Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the reviewing entity may refuse to approve similar proposals in the future. Approval of proposals, plans and specifications, or drawings for any Work done or proposed, or in connection with any matter requiring approval, shall not be deemed a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters whatever subsequently or additionally submitted for approval.

(f) Variations. The reviewing entity may, but shall not be required to, authorize variations from compliance with any of the provisions of the Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, or when architectural merit warrants such variance, as it may determine in its sole discretion. Such variations shall be granted only when, in the sole judgment of the

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reviewing entity, unique circumstances exist, and no Unit Owner shall have any right to demand or obtain a variance. No variance shall (a) be effective unless in writing, (b) be contrary to the Master Deed or these Amended By-Laws, or (c) stop the reviewing entity from denying a variance in other circumstances.

(g) Limitation of Liability. The standards and procedures established by this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of Section 1 but shall not create any duty to any person. Neither the Association nor the ARC shall bear any responsibility for ensuring structural integrity or soundness, or compliance with building codes and other governmental requirements, or ensuring that modifications to Units are located so as to avoid impairing views from or other negative impact on neighboring Units. No representation is made that all structures and improvements constructed within the Clearbrook Community or Section 4 are or will be of comparable quality, value, size, or design. Neither the Association, the Board, the ARC, nor any member of any of the foregoing shall be held liable for soil conditions, drainage problems or other general site work, nor for defects in any plans or specifications submitted, nor for any structural or other defects in work done according to approved plans, nor for any injury, damages, or loss arising out of the manner, design or quality of approved construction on or modifications to any Unit.

(h) Enforcement. Any Work performed in violation of this Article or in a manner inconsistent with the approved Plans shall be deemed to be nonconforming. Upon written request from the Association, the Board, or the ARC, Unit Owners shall, at their own cost and expense, remove any non-conforming structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming Work. Should a Unit Owner fail to remove and restore as required, the Association, the Board or their designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass. Upon demand, the Unit Owner shall reimburse all costs incurred by any of the foregoing in exercising its rights under this Section. The Association may assess any costs incurred in taking enforcement action under this Section, together with interest at the maximum rate then allowed by law, against the benefited Unit as a Special Assessment.

The Association may preclude any contractor, subcontractor, agent, employee or other invitee of a Unit Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines from continuing or performing any further activities in Clearbrook Condominium Association No. 4, subject to the notice and hearing procedures contained in these By-Laws.

Neither the Association, nor its officers, directors or agents shall be held liable to any person for exercising the rights granted by this paragraph. In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the reviewing entities under this Article.

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(i) Delegation. The Association is not required to provide any of the foregoing powers, duties and responsibilities of the Architectural Review Committee to the extent that they have been previously delegated to the CCA.

ARTICLE XIV

Alternative Dispute Resolution ("ADR")

Section 1. When ADR is to be Offered. Whenever the Board reasonably determines that a dispute exists between the Association and any member of the Association, or between members of the Association that relates to: (a) the use of a Unit; or (b) an interpretation of the use restrictions, rules or regulations contained in the Governing Documents with respect to the use of the Unit, the use of the Common Elements or the permitted behavior of a member or resident of Section 4, and the Board reasonably concludes, with or without the advice of its attorney, that the dispute may result in litigation, the Association will offer a method of dispute resolution as set forth below.

Section 2. Designation of Method of ADR. In the event any dispute arises between the Association and a Unit Owner or between Unit Owners with respect to a matter described in Section 1 of this Article, the Association, through the Board, will offer alternative dispute resolution prior to the commencement of litigation or, where litigation is commenced, as soon as the Board receives notice of any litigation involving a matter described above. The Board may satisfy the obligation described in this Article by offering any of the following methods of ADR and complying with the procedures set forth in the attached Schedule "A":

- (a) Mediation by a qualified third-party mediator designated by the Board;
- (b) Non-binding arbitration by a qualified third-party arbitrator designated by the Board;
- (c) Binding arbitration by a qualified third-party arbitrator designated by the Board;
- (d) Mediation by a person or persons who are not specifically trained in mediation, but who have expertise in community association matters and who have no personal interest in the matter in dispute and who are not Unit Owners. Persons who would qualify under this provision include persons who are members of the Board or Directors for a community association other than Clearbrook Condominium Association No. 4; and
- (e) Mediation by such other person as the Board may designate, including a person who is a Unit Owner, provided that all parties to the dispute consent to the designation of such a person.

Section 3. Notice of Acceptance. No member of the Board may act as a mediator or arbitrator. Following the Board's determination to offer ADR under this Article, the Board will

provide notice to all parties to the dispute by personal delivery or certified U.S. mail, return receipt requested. The notice shall advise the parties to the dispute of the method of dispute resolution selected by the Board and shall provide a response form indicating whether the person involved in the dispute accepts or rejects the method of dispute resolution from sub-paragraphs (a) through (e) above. If the Board selects a method of dispute resolution utilizing subparagraph (a) through (d) above, and one or more persons involved in the dispute reject the offer of alternative dispute resolution, the Board will have satisfied its obligation under this Article and will have no further obligation. If the Board selects a method of dispute resolution utilizing subparagraph (e) above, and one or more persons involved in this dispute rejects the offer of dispute resolution, the Board shall offer an additional method of dispute resolution in the same manner as provided above. The notice advising a Unit Owner of the designation of a method of ADR will provide that the Unit Owner must accept the Board designation method within a specific time period, but in no event less than ten (10) days following the date of the letter offering ADR. Whenever the expiration date falls on a Saturday or Sunday or legal holiday, the expiration date will be the following business day. If a Unit Owner does not agree to participate in the ADR method offered by the Board on or before the expiration date, the Unit Owner will be deemed to have rejected the offer.

Section 4. Scheduling of ADR. Upon receipt of acceptance of a designated method of ADR from all necessary and indispensable parties to a dispute, the Association will offer a minimum of two alternative dates and times for the ADR procedure. At least one (1) of the alternate dates and times will be during non-business hours to accommodate the working schedules of the participants. The location of the ADR procedure will be on the grounds of the Association or at a location reasonably convenient to the participants. The notice of the alternate dates and times for ADR will provide that if a recipient does not respond within five (5) days of the date of the notice, the nonresponding participant will be deemed to have rejected ADR. If the response from the participants does not indicate a mutually acceptable date and time for ADR, the Association will make one attempt to obtain a date and time reasonably acceptable to the participants, but if unsuccessful in that attempt, will have no further obligation under this Article.

Section 5. Participation by the Board. If any dispute that is subject to ADR pursuant to this Article includes the Association as a participant in the dispute, at least one (1) member of the Board will be present at the ADR hearing, and the Board will make available such employees or agents of the Association that are necessary in order that the Association fully participate in the ADR process. If the method of ADR selected is a form of mediation and the dispute involves the Association as a party, the Board will authorize the attending members of the Board to have the power and authority to act on behalf of the Board, but may impose reasonable limitations on the authority and power granted.

Section 6. Procedures. The ADR hearing is intended to be an informal process, despite the form of ADR mechanism chosen. As a result, technical rules of evidence will not apply, provided however, that the person presiding over the ADR proceedings may require the administration of oaths and may exclude irrelevant, immaterial or unduly repetitious testimony or evidence. Any party to an ADR proceeding may, but is not required to, be represented by an

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attorney. The person presiding over the ADR process will determine all other procedures applicable to the hearing, including the length of the hearing, the order of presentation and, where appropriate, whether additional hearing dates are required or desirable in order to resolve the dispute. The person presiding over the ADR procedure may also, prior to the ADR hearing, request the parties to produce documentary evidence that the presiding person believes to be helpful or relevant to resolving the dispute.

Section 7. Fees and Costs. When the Board designates a form of ADR that requires a fee to be paid to the presiding person, the Association will bear the expense of the presiding person. All other costs, such as, but not limited to, the fees of any attorneys representing the individual parties, will both be borne by the respective parties.

Section 8. Non-Applicability of ADR. Despite anything to the contrary contained in this Article, no ADR need be offered in a matter solely concerning the collection of maintenance fees nor prior to the commencement of any litigation that seeks emergent relief in order to maintain the *status quo ante*.

Section 9. Delegation of ADR Procedures. The Association is not obligated to provide any of the foregoing ADR powers and procedures to the extent that they have been previously delegated to the CCA.

ARTICLE XV

Enforcement Procedures

Section 1. Fines; Suspension of Privileges. In addition to such other rights as are specifically granted under the Master Deed and these Amended By-Laws, the Association shall have the right to impose monetary fines in an amount not to exceed \$50.00 for each violation of the Governing Documents, which fines shall be a lien upon the Unit of the violator. Each day that a violation continues shall be deemed a separate violation, for which additional penalties of \$50.00 per day may be assessed, provided, however, that the total fine for any continuing violation may not exceed \$500.00. The Association shall also have the right to suspend an Owner's right to vote or any person's right to use the Common Elements if such person has been found to be in violation of any duty imposed under the Master Deed, these Amended By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Board to limit ingress and egress to or from a Unit. In addition, the Board may suspend any services provided by the Association to a Unit Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any assessment or other charges owed to the Association. No fines or other penalties will be imposed for violations of the Governing Documents before the Owner has been provided notice of the right to participate in Alternate Dispute Resolution pursuant to Article XIV of these Amended By-Laws and the attached Schedule "A."

Section 2. Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Master Deed, these Amended

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By-Laws, or the rules of the Association by self-help or, following compliance with the procedures set forth in Article XIV of these Amended By-Laws, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth above. In any such action, to the maximum extent permissible, the Unit Owner responsible for the violation of which abatement is sought shall pay all costs of the Association, including reasonable attorneys' fees actually incurred.

Section 3. Obligation to Enforce. The Association will have an obligation to enforce the Governing Documents if the failure to do so would have a material detrimental impact upon the value of any of the Units or would materially affect the common welfare of the Unit Owners. In all other instances, the Association will not be obligated to enforce every violation of the terms, conditions, covenants, restrictions, rules or regulations contained in any of the Governing Documents if the Board determines, in the reasonable exercise of its discretion, that it is imprudent, impractical or infeasible to enforce any particular rule or regulation; it having been determined that it is in the best interest of the Unit Owners to vest the Board's discretion in the Board with respect to the enforcement of the Governing Documents. Nothing in the Governing Documents is intended to prevent any Unit Owner from undertaking an appropriate action at law or in equity to enforce the terms of any of the Governing Documents.

Section 4. Delegation. The Association is not obligated to provide any of the foregoing enforcement process or procedures to the extent that they have been previously delegated to the CCA.

ARTICLE XVI

Amendments

(1) **General.** The provisions of these Amended By-Laws, other than this Article, may be amended or repealed by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such amendment has been approved by either of the following methods:

- (a) By the affirmative vote of all members of the fully constituted Board of Directors, provided the Board notifies the Unit Owners of the proposed amendment and includes a written ballot with the notice. The amendment will be deemed rejected, and of no force or effect, if ten (10%) percent or more of the Eligible Votes reject the proposed amendment and the Association receives, at the address stipulated in the notice, the ballots rejecting the proposed amendment within thirty (30) days following the mailing of the notice. Otherwise, the amendment will be effective on the 31st day following the mailing of the notice to the Unit Owners and its subsequent recording in the office of the Middlesex County Clerk.
- (b) By the vote of two-thirds (2/3) of the Eligible Votes present in person or by proxy at a duly held annual or special meeting of the Members upon which proper notification of the intent to amend has been given to the Owners and at which a

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quorum is present. For the purpose of amending the Governing Documents a quorum shall mean fifty (50%) percent of all Eligible Votes in person or by proxy. Notice of the meeting shall include the exact language of the amendment or proposed repeal. Amended text may be proposed by the Board or by written petition of twenty (20%) percent of Units in good standing. A duly approved amendment shall be effective upon its recordation in the Middlesex County Clerk's Office.

- (c) By the Board upon approval by a vote of all members of the fully constituted Board, solely when necessary to render these Amended By-Laws in compliance with any applicable law as set forth in a written opinion issued by the Association's attorney, but only to the extent necessary to render the Amended By-Laws compliant.
 - (d) An amendment will be effective upon its recordation in the Middlesex County Clerk's Office. Notice of any amendment adopted under this provision shall be distributed to the Unit Owners within thirty (30) days of receipt of the recorded amendment, provided, however, that the failure to distribute the recorded amendment will not render the amendment ineffective and void.
 - (e) The quorum requirement for a membership meeting where a vote regarding an amendment to these Amended By-laws will be taken is fifty (50%) percent of the Eligible Votes present in person or by proxy.
- (2) No amendment that affects the relationship between the Association and the CCA or the rights or privileges of the CCA may be adopted unless the approval of the CCA is endorsed thereon.

ARTICLE XVII

Conflict; Invalidity

Section 1. Conflict. Anything to the contrary herein notwithstanding, if any provision of these Amended By-Laws is in conflict with or in contradiction of the Master Deed, the Articles of Incorporation or with the requirements of any applicable law, then the requirements of these Amended By-Laws, the Articles of Incorporation or law shall be deemed controlling.

Section 2. Invalidity. The invalidity of any part of these Amended By-Laws shall not impair or affect in any manner the enforceability or affect the remaining provisions of the Amended By-Laws.