

EXHIBIT E

**AMENDED BY-LAWS**

**OF**

**CLEARBROOK MALDEN VILLAGE  
CONDOMINIUM ASSOCIATION NO. 11**

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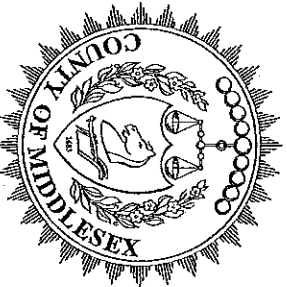
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## ARTICLE I

### Nature of Amended By-Laws

Section 1. Name. The name of the corporation is Clearbrook Malden Village Condominium Association No. 11, hereinafter referred to as the "Association" or "Section 11," a nonprofit corporation organized under Title 15A of the New Jersey Statutes Annotated. It was established by the Articles of Incorporation filed with the office of the New Jersey Secretary of State in 1979.

Section 2. Purpose of the Association. The purpose of the Association is defined in its Articles of Incorporation. The Association is the governing body of Clearbrook Malden Village Condominium Association No. 11, established under the laws of the State of New Jersey. It provides for the management, administration, utilization and maintenance of the Common and Limited Common Elements located in Clearbrook Malden Village Condominium Association No. 11.

Section 3. Purpose of the Amended By-Laws. These Amended By-Laws are intended to govern the administration of Clearbrook Malden Village Condominium Association No. 11. In the event of any inconsistency between the terms and conditions of the Master Deed and these Amended By-Laws, the Association's Unit Owners have agreed that the Amended By-Laws will govern.

Section 4. Definitions. For the purpose hereof, the following terms shall have the following meanings, unless the context in which same are utilized clearly indicate otherwise:

- (a) **"Amended By-Laws"** means these Amended By-Laws of Clearbrook Malden Village Condominium Association No. 11.
- (b) **"Annual Assessment" or "Annual Common Expense Assessment"** means the total revenues projected to be collected from all Unit Owners pursuant to the budget adopted by the Board as set forth in Article IX of these Amended By-Laws and also means, as the context indicates, each Unit Owner's pro rata share of the budget.
- (c) **"Architectural Review Committee"** means a committee of residents appointed by the Clearbrook Community Association (CCA) who are charged with the responsibility of reviewing owners' applications for additions, alterations or improvements to a unit, as more fully described in Article XIII, Section 2, of these Amended By-Laws.
- (d) **"Articles of Incorporation"** means the Articles of Incorporation for Clearbrook Malden Village Condominium Association No. 11, dated May 7, 1979.

- (e) “**Association**” means Clearbrook Malden Village Condominium Association No. 11, a New Jersey nonprofit corporation, formed to administer, manage and operate the common affairs of the Unit Owners of the Condominium and to maintain, repair and replace the Common Elements of the Condominium as provided in these Amended By-Laws.
- (f) “**Authorized votes**” means 99 votes, representing one vote for each Unit in Section 11.
- (g) “**Board**” means the Board of Directors of Section 11.
- (h) “**Capital Improvement**” means the construction of a new improvement of a capital nature, but does not include the maintenance, repair, or replacement of any existing capital property. For purposes of determining whether any item of maintenance, repair, or replacement is of sufficiently different nature that the repair or replacement constitutes a Capital Improvement, the following rules shall apply: (i) where any upgrade or change in the method of construction or materials utilized in repairing or replacing existing capital property is required to comply with the then current building codes such upgrade or change will not constitute a Capital Improvement; and (ii) any upgrade or change not covered under sub-part (i) of this sentence will constitute a Capital Improvement if the cost of upgrading the materials or methods of construction would cost in excess of ten (10%) percent more than the cost of replacing or repairing existing capital property with materials of a quality similar to that used in the construction of the existing capital property.
- (i) “**CCA**” means the Clearbrook Community Association.
- (j) “**CCA Board**” means the Board of Directors of the CCA.
- (k) “**CCA By-Laws**” means the By-Laws adopted by the Clearbrook Community Association, Inc. and attached as Exhibit “F” to the Master Deed, as amended on September 21, 2004 and recorded in the office of the Middlesex County Clerk on October 21, 2004 in Deed Book 5399 at Page 428.
- (l) “**Clearbrook Community**” means the lands, buildings, amenities and other improvements contained within each of the 18 condominiums within Clearbrook; the 18 condominium associations within Clearbrook; all Unit Owners of condominium Units; the lands, buildings amenities and other improvements owned or managed by the CCA; and the CCA.
- (m) “**Common Elements**” means “General Common Elements” and shall have the same meaning as “Common Elements” under N.J.S.A. 46:8B-3(d), except as same may be modified by the provisions of Article 4 of the Master Deed, or the specific definitions set forth herein.



- (n) **“Common Expenses”** means all those costs anticipated by N.J.S.A. 46:8B-3(e), in addition to all expenses including, but not limited to, operating and replacement reserve expenses incurred by the Condominium Association, or its respective Directors, officers, agents or employees, in the lawful performance of their respective duties.
- (o) **“Condominium”** means (i) the Property; (ii) all improvements now or hereinafter constructed in, upon, over or through the Property, whether or not shown on any exhibit to this Master Deed; (iii) all rights, roads, privileges belonging to or associated with the Property; (iv) any and all lands, premises, roads, interests, improvements, privileges which may be added to the Condominium from or on the premises described in Exhibits “A” through “D”; and (v) the entire entity created by the execution and recording of the Master Deed.
- (p) **“Condominium Association”** means Clearbrook Malden Village Condominium Association No. 11, a New Jersey nonprofit corporation, its successors and assigns.
- (q) **“Delinquent Unit Owner”** has the meaning set forth in Article IX, Section 22 of these Amended By-Laws.
- (r) **“Eligible Mortgage Holder”** means any holder of a first mortgage encumbering any Unit who has requested, in writing, by certified mail, return receipt requested, notice of certain matters from the Condominium Association. The notice to the Association must state the name of the mortgage holder and the address to which notices are to be sent and shall identify the mortgaged Unit. All notices to an Eligible Mortgage Holder shall be effective upon mailing to the address provided by the mortgage holder, unless the address is modified by written notice given to the Association in the same manner as provided above.
- (s) **“Eligible Votes”** means the number of Units whose owners are in good standing, as defined in Article III, Section 5, of these Amended By-Laws.
- (t) **“Exclusive Easement”** has the same meaning as defined in the Master Deed, Paragraphs 6d and 6e.
- (u) **“General Common Elements”** has the same meaning as “common elements” pursuant to N.J.S.A. 46:8B-3(d), except as same may be modified by the provisions of Paragraph 4 of the Master Deed. The New Jersey Condominium Act, specifically N.J.S.A. 46:8B-3(d) states that “common elements” means:
- (i) the land described in the master deed;
  - (ii) as to any improvement, the foundations, structural and bearing parts, supports, main walls, roofs, basements, halls, corridors, lobbies, stairways,

- (iii) elevators, entrances, exits and other means of access, excluding any specifically reserved or limited to a particular unit or group of units;
  - (iv) yards, gardens, walkways, parking area and driveways, excluding any specifically reserved or limited to a particular unit or group of units;
  - (v) portions of the land or any improvement or appurtenance reserved exclusively for the management, operation or maintenance of the common elements or of the condominium property;
  - (vi) installations of all central services and utilities;
  - (vii) all apparatus and installations existing or intended for common use;
  - (viii) all other elements of any improvement necessary or convenient to the existence, management, operation, maintenance and safety of the condominium property or normally in common use; and
  - (viii) such other elements and facilities as are designated in the master deed as common elements.
- (v) **"Governing Documents"** means the Master Deed, these Amended By-Laws, the Articles of Incorporation, any Rules and Regulations adopted by the Board, the CCA By-Laws, and any Rules and Regulations adopted by the CCA Board.
- (w) **"Limited Common Elements"** has the same meaning as "limited common elements" pursuant to N.J.S.A. 46:8B-3(k), i.e., those common elements which are for the use of one or more specified units to the exclusion of other units.
- (x) **"Master Deed"** means the Master Deed of the Association recorded in the Office of the Middlesex County Clerk on May 28, 1980 in Deed Book 3144 at Page 455.
- (y) **"Member"** means an Owner who has satisfied all of the prerequisites for membership as set forth in the Master Deed and these Amended By-Laws.
- (z) **"Membership Fees"** are those fees set forth under Article IX, Section 16, which all owners must pay to the Association upon purchase of a Unit as a condition of membership in the Association. The Membership Fee is a one-time payment that is non-refundable and non-transferable, in an amount that is determined by the Board.
- (aa) **"Operating Account"** means the operating account of the Association, established and maintained for the purposes specifically set forth in Article IX, Section 13(a) of these Amended By-Laws.
- (bb) **"Owner"** means any natural person, corporation, partnership, limited liability company, limited liability partnership, trust, or any other entity recognized by the State of New Jersey, which is authorized to hold record title to real property, and which appears as the record title owner of a condominium unit located within Section 11.

- (cc) **"Property"** means the buildings, the land described in Exhibits "A" through "D" of the Master Deed and all improvements now or hereinafter constructed in, upon, over or through such lands.
- (dd) **"Quorum"** means, in connection with any Membership Meeting, fifteen (15%) percent of the Eligible Votes unless otherwise required by the Articles of Incorporation, the Master Deed, or these Amended By-Laws. "Quorum" also means, specifically in connection with amendments to the Governing Documents, loans on behalf of the Association, and special meetings of the Association, fifty (50%) percent of the Eligible Votes.
- (ee) **"Replacement Reserve Fund"** means the account of the Association established and maintained for the accumulation of money to pay for the expenses specifically set forth in Article IX, Section 13(b) of these Amended By-Laws.
- (ff) **"Resident Owner"** means an Owner of a Unit who has actually resided in Section 11 for one hundred eighty-three (183) or more days during the immediately preceding twelve (12) month period.
- (gg) **"Resident Relative"** means a resident of a Unit that is owned by the resident's sibling, child, children or living family trust, or is owned by the Resident's Spouse's sibling, child, children or living family trust, who has resided in the Unit no less than one hundred eighty-three (183) days during the immediately preceding twelve (12) month period.
- (hh) **"Resident Spouse"** means the spouse of an Owner of a Unit who has actually resided in Section 11 for one hundred eighty-three (183) or more days during the immediately preceding twelve (12) month period. The term "Resident Spouse" will include a domestic partner provided the State of New Jersey has statutorily recognized the creation and termination of such relationships.
- (ii) **"Rules and Regulations"** means those rules and regulations set forth under Article XXII of these Amended By-Laws and those additional rules and regulations that may be lawfully adopted, amended and repealed by the Board in accordance with the powers granted to it under the Governing Documents or by law.
- (jj) **"Section 11"** means Clearbrook Malden Village Condominium Association No. 11.
- (kk) **"Sponsor"** means Villa Park Construction Company, formerly known as Aaron Cross Construction Company, Inc., the developer of the Clearbrook Community.
- (ll) **"Unit"** means a part of the Condominium designated and intended for independent use as a residential dwelling, and shall not be deemed to mean any

part of the Common Elements situated within or used in connection with a Unit, as more specifically described in Article 3 of the Master Deed.

(mm) “Unit Owner” or “Owner” means one or more persons or entity having fee simple title to a Unit.

Unless the context indicates otherwise, all definitions set forth in N.J.S.A. 46:8B-3 are incorporated herein by reference and the definitions set forth above shall be read in conjunction with those statutory definitions.

Section 5. Principal Office. As of the adoption of these Amended By-Laws on \_\_\_\_\_, 2007, the principal office of the Association is in the Clearbrook Clubhouse on Clearbrook Drive, Monroe Township, New Jersey, 08831, County of Middlesex, State of New Jersey. The principal address of the Association may be amended by recorded resolution of the Board, from time to time.

## ARTICLE II

### Applicability

Section 1. General. These Amended By-Laws, and all other Governing Documents, will apply to all current and future owners, occupants, tenants or other persons or entities claiming an interest in any Unit.

Section 2. Personal Application. All present and future owners, occupants, tenants, future tenants or their employees, or any other person that might use the Association’s facilities in any manner, are subject to the terms of these Amended By-Laws. The acquisition, use, or rental of a Unit, or use of a Common Element or easement, by any person or entity, shall mandate compliance with these Amended By-Laws.

## ARTICLE III

### Membership And Voting Rights

Section 1. Members. Subject to the pre-conditions to membership set forth in this Section, every person, firm, Association, corporation or other legal entity who is a record owner, or co-owner of the fee simple title to any Unit shall be a Member of the Association; provided, however, that any person, firm, Association, corporation or legal entity who holds such title or interest merely as a security for the performance of an obligation (including but not limited to mortgagees or Directors under deeds of trust) shall not be a Member of the Association. Prior to being entitled to the privileges and benefits of membership, each new Owner must pay the Membership Fees set forth in Article IX, Section 16 of these Amended By-Laws. Failure of a Unit Owner to qualify as a Member will not relieve the Unit Owner from payment of all fees assessed pursuant to the Governing Documents.

Section 2. Associate Members. Every person who is entitled to possession and occupancy of a Unit as a tenant or lessee of a Unit Owner may be an associate Member of the Association, but shall not be entitled to any vote with respect to Association matters.

Section 3. Change of Membership. Change of membership shall be accomplished by recording in the Middlesex County Clerk's Office a deed or other instrument establishing a record title to a Unit, and delivery to the Secretary of the Association at the principal office of the Association of a certified copy of such instrument. The membership of the prior owner shall simultaneously terminate with the membership of a new Owner.

Section 4. Rights of Membership. Every person who is entitled to membership in the Association, pursuant to the provisions of the Articles of Incorporation and these Amended By-Laws, shall be privileged to use and enjoy the Common Elements subject to the terms and conditions of the Master Deed and these Amended By-Laws. No new Unit Owner will be entitled to the rights, entitlements and benefits of membership until he (or she) has paid the Membership Fees provided for in Article IX, Section 16.

Section 5. Good Standing; Suspension of Rights.

- (a) If any individual Member is not in good standing, as defined in this subparagraph, no vote may be cast with respect to any Unit in which that Member holds an ownership interest. A Member is in good standing if the Member is (i) not in default, breach or violation of the terms, conditions, restrictions or covenants contained in the Governing Documents as determined following the opportunity to have a hearing before the Grievance Committee, if any, or the Board, and (ii) not more than thirty (30) days late in the payment of any installment due for assessments made or levied against the Unit by the Association pursuant to the Master Deed or these Amended By-Laws, together with all interest and/or costs, attorney's fees, penalties, fines and other expenses chargeable to the Member, or the Member's Unit.
- (b) Any Member not in good standing seven days prior to a membership meeting, will not, in connection with any Unit in which such owner has a membership interest, be permitted to cast any vote in connection with any matter coming before the membership, nor be permitted to run for any elected office of the Association, nor will the Unit(s) owned by such a Member be counted towards the Eligible Votes.
- (c) A Member's rights, as set forth in subsection (b) above, will be reinstated eight (8) days following the restoration of the Member's good standing, provided, however, that in connection with any adjournment of a meeting in connection with which the Member was not in good standing, the Member will not have a right to vote or be counted as an Eligible Vote in connection with such adjourned meeting.

Section 6. Votes. Members shall be entitled to one vote for each Unit to which the Unit Owner holds title. When more than one person holds title, the vote for each Unit shall be exercised as the co-owners among themselves determine. Members will be allowed to cast ballots anonymously by mail, provided that a procedure will be utilized to ensure that a ballot has been cast by a Member who is in good standing. A mailed ballot will constitute a proxy for purposes of determining a quorum in connection with a vote that is required to be conducted at a meeting of the Members. Any vote may, at the election of the Board, be cast electronically provided that (1) the Association is able to verify that the vote is cast by a Member eligible to vote, and (2) the ballot may be cast anonymously, or where that is not reasonably practical the selection indicated on any electronic ballot shall only be known to a person or persons appointed to count the ballots, which person or persons shall not be a member of the Board and who shall subscribe to an oath not to divulge the selection indicated by any Member casting an electronic ballot. If the anonymity of an electronic ballot cannot be guaranteed, electronic voting may be permitted, provided a Member is given the option of casting an anonymous written ballot. A Member voting by electronic means will be deemed present at a meeting at which a vote is to be conducted for the purpose of determining whether a quorum was obtained.

Section 7. Proxies. A written ballot shall, as provided in Section 6 of this Article, constitute a proxy. Formal proxies that provide the proxy agent with the discretion to cast a vote as the proxy agent may determine will be permitted only where: (a) any matter to be voted on may result in an alternative proposal being presented at a meeting of the members; (b) there are more than twice the number of candidates as there are Director positions open for election; or (c) there are less candidates than open Director positions. All proxies must be in writing, signed by a Member, or by his duly authorized representative(s) and delivered to the Secretary of the Association, or such other person as the President may designate. All proxies will be effective only in connection with the meeting for which it is given, and all lawful adjournments of the meeting. Proxies may be revoked, in writing, at any time prior to the opening of the polls. Proxies may only be given to a Member of the Association in good standing in the Association. All proxies shall be substantially in the form prescribed by the Board, and if not in such form, shall be deemed invalid, which determination shall be made in the sole and absolute discretion of the Board. In no event shall any person, other than the secretary of the Association acting in his or her official capacity, be the proxy agent for more than two Unit Owners.

#### ARTICLE IV

##### Membership Meetings

Section 1. Place of Meeting. All meetings of the Members of the Association shall be held within the community or at such other place convenient to the Members as may be designated by the Board, provided that if a meeting is not held in the Clearbrook Community it shall be held in Monroe Township, or in an immediately adjacent municipality.

Section 2. Annual Meetings. All annual meetings of the Members of the Association shall be held not earlier than April 1 and not later than May 31, on the date determined by the

Board. Annual meetings shall be scheduled in addition to the regular meetings of the Board of Directors set forth in Article VII, section 1.

Section 3. Special Meetings. Special meetings of members may be called by the President whenever such a meeting is deemed advisable, or may be called by the Secretary when so ordered by the Board, or upon the written request of Members representing not less than fifteen (15%) percent of the Eligible Votes. The request must state the purpose(s) of such meeting and the matter(s) proposed to be acted upon. Unless members representing not less than fifty (50%) percent of the Eligible Votes request such a meeting, no special meeting may be called to consider any matter that is substantially the same as a matter voted upon at any meeting of the Members held during the preceding twelve (12) months. Special meetings must be held within forty-five (45) days of the filing of a written request complying with the terms of this section. The quorum requirement for special meetings is fifty (50%) percent of the Eligible Votes present in person or by proxy.

Section 4. Emergency Meetings. In the event that the Board is required to deal with such matters of urgency and importance that delay for the purpose of providing forty-eight (48) hours advance notice would be likely to result in substantial harm to the interests of the Association, the notice shall be deemed adequate if it is provided as soon as possible following the calling of the meeting.

Section 5. Proxies and Adjourned Meetings. All proxies or ballots validly received for the originally scheduled meeting shall remain in full force and effect for any such adjourned meeting or special meeting and new proxies may be received for any such subsequent reconvened meeting:

Section 6. Notice of Meetings. Notice of each meeting of Members, whether annual or special, will be given not less than ten (10) days, nor more than sixty (60) days before the day on which the meeting is to be held. Notice will be sent by U.S. mail, regular post with postage prepaid, addressed to the Member at the address on the records of the Association pursuant to Article XIX of these Amended By-Laws. Every such notice shall state the time and place of the meeting and shall state briefly the purpose(s) of the meeting. Except where otherwise expressly required by law, no publication of any notice of a meeting of Members will be required.

Section 7. Quorum and Adjourned Meetings. The quorum for any membership meeting, unless otherwise specifically set forth in the Articles of Incorporation, the Master Deed or these Amended By-Laws, shall be fifteen (15%) percent of the Eligible Votes. The quorum requirement for membership meetings when a vote regarding an amendment to the Governing Documents or an Association loan will be taken, or for special meetings of the Association is fifty (50%) percent of the Eligible Votes present in person or by proxy. Only Members in good standing who are present in person or by proxy shall be counted in establishing a quorum. Once a quorum has been established, the quorum will remain in effect, despite the subsequent departure or absence of one or more persons from the meeting, provided that any action taken by the membership is approved by at least a majority of the required quorum for that meeting. In the absence of a quorum, the persons holding votes present in person or by proxy and entitled to

vote, may, by majority vote, adjourn the meeting from time to time, until a quorum shall be present or represented. To establish a quorum at the adjourned meeting, the number of Members that were present either in person or by proxy at any meeting adjourned due to lack of a quorum are considered present at any subsequent meetings of the original adjourned meeting, except that issues not expressly voted on in any proxies cannot be counted. The quorum will be determined by the Secretary or his designee.

Section 8. Organization. At each meeting of the Members, the President, or in his absence, the Vice President, or in the absence of both, another Director chosen by a majority vote of the Members present in person or represented by proxy and entitled to vote at the meeting, shall act as a chair, and the Secretary, or in his absence, a person whom the Chair shall appoint, shall act as Secretary of the meeting.

Section 9. Number of Votes Required. Except as otherwise required by the Articles of Incorporation, the Master Deed, these Amended By-Laws, or any law, a quorum being present, the affirmative vote of a majority of the quorum present, in person or by proxy, will be sufficient on those matters that are to be voted on by the Members. Any vote permitted to be cast by a Member, may be cast by a Resident Spouse or a Resident Relative. Unless determined by a majority of the votes of the Members present at such meeting, in person or by proxy, or determined by the chairperson of the meeting to be advisable, the vote on any other question need not be by ballot, unless expressly otherwise required pursuant to the Master Deed or these Amended By-Laws.

Section 10. Inspectors. If at any meeting of the Members a vote by ballot will be taken on any questions, the chair of such meeting will appoint two (2) inspectors to act with respect to the vote. Each inspector so appointed shall first subscribe an oath faithfully to execute the duties of an inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors will decide upon the qualifications of voters and will report the number of Eligible Votes represented at the meeting and entitled to vote on the question, will conduct and accept the votes, and when the voting is completed, will ascertain and report the number of votes respectively for and against the questions; but as to the election of Directors, the number of votes received by each candidate will be reported to the presiding officer of the meeting, but need not be reported to the membership at large. Reports of inspectors will be in writing and subscribed and delivered by them to the Secretary of the meeting. The inspectors need not be Members of the Association, and any officer or Director of the Association may be an inspector on any question, other than a vote for or against his election to any position with the Association or any other question in which he may be directly interested. Inspectors may obtain the opinion of the Association's attorney concerning any matter within the inspector's discretion, as set forth in this section.

Section 11. Order of Business. The order of business at the annual meeting of the Members or at any special meetings insofar as practicable shall be:

- a. Call of the roll and certifying the proxies and determining the quorum;
- b. Proof of notice of meeting and waiver of notice;



- c. Approval of the minutes of the previous membership meeting;
- d. Appointment of inspectors, if appropriate;
- e. Election of Directors, if appropriate;
- f. Receiving reports of officers;
- g. Receiving reports of committees;
- h. Membership comments;
- i. Noticed business;
- j. Old business;
- k. New business;
- l. Adjournment.

Section 12. Ascertainment of Votes Needed. Whenever the Governing Documents require a specific percentage or fraction to vote in the affirmative, the percentage or fraction shall be applied to the total number of Eligible Votes present in person or by proxy.

Section 13. Minutes. Minutes of every membership meeting shall be taken by the Secretary or the Secretary's designee. A copy of the unapproved minutes shall be available for distribution to any Member requesting same in writing to the Secretary, or to the Secretary's designee, no later than thirty (30) days after the meeting.

Section 14. Procedures. All membership meetings will be conducted according to the 21<sup>st</sup> 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 membership meetings than that specified in this section.

## ARTICLE V

### Board of Directors

Section 1. Express and Implied Powers. The property, affairs and business of the Association will be managed by the Board of Directors. Except to the extent that such powers have been previously delegated to the CCA Board, the Section 11 Board shall have all those powers granted to it by law, the Master Deed, the Articles of Incorporation, and these Amended By-Laws, including, without limitation, the power to:

- (a) Establish, adopt and enforce rules and regulations (the "Rules and Regulations") in connection with the conduct of Owners, occupants, guests, visitors and invitees with respect to the Common Elements and the Units, including, without limitation, the power to adopt rules and regulations with respect to parking upon the Common Elements; and
- (b) Enforce by any legal means the provisions of the Governing Documents including imposing fines, as permitted by law, and bringing any proceedings that may be instituted on behalf of or against the Owners concerning the Association;

provided, however, the Association will not be obligated to take action to enforce any covenant, restriction or rule which the Board in the exercise of its reasonable business judgement determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not likely to be successful unless 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; and

- (c) Establish such committees in addition to the standing committees referenced in Article XIII, as the Board may, from time to time, determine, which committees will serve at the pleasure of the Board and in accordance with the duties and limitations placed upon such committees by the resolution of the Board establishing them; and
- (d) Exercise all powers necessary or reasonably implied to carry out the functions of the Board as set forth in the Master Deed, these Amended By-Laws, or by law, it being the intention of this provision to grant the broadest powers reasonably necessary to carry out its functions.

Section 2. Number and Qualifications: Nomination.

- (a) The Board will consist of no more than nine (9) nor less than five (5) Directors at any time. A person may be a candidate for the Board of Directors if: (a) he or she is, at the time of nomination, a Member in good standing, or in the event the candidate is an authorized representative of a partnership, limited liability company, limited liability partnership, corporation, trust or other permitted entity, the entity Member is a Member in good standing, or if permitted to stand for election as a resident under subparagraph (b) of this section, the Owner is a Member in good standing; and (b) the person has been or will be, for not less than 183 days prior to the scheduled date of the Annual Meeting at which the person intends to stand for election, an Owner, a Resident Spouse or a Resident Relative.
- (b) Prior to each election of Directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a *bona fide* interest in serving as a Director may file as a candidate. The Board may also establish other rules and regulations as it deems appropriate to conduct the nomination of Directors in a fair, efficient and cost-effective manner, provided that such rules and regulations shall not prohibit otherwise qualified Resident Owners, Resident Spouses or Resident Relatives, from becoming candidates for a Director position. Nominations for a Director position may be made at the meeting at which Directors are to be elected, provided the candidate accepts the nomination in person or by proxy.

Section 3. Election and Term of Office. Directors shall be elected at annual meetings of the Association. Each Director that is elected shall serve for a term of three (3) years. At least thirty (30) days prior to the annual meeting, the Board shall notify each Member by mail addressed at his last known address of the name of the individuals who desire to be candidates for Director at the meeting. Service of the notice may also be accomplished by delivery of the notice to the Member at his dwelling Unit of last known address. A resume of each candidate shall accompany the notice, unless there is only one (1) candidate and he or she is an incumbent Director. If there is an unexpired term to be filled at the annual meeting, the notice shall also contain the name and resume of the individual(s) who is a candidate for the unexpired term. A Director shall hold office until his successor has been elected.

Section 4. Alternate Directors. If there are candidates desirous to serve as alternate Directors who satisfy the qualifications set forth in this Article to serve as a Director, the ballot may provide for an election of not more than three (3) alternate Directors at the Annual Meeting. If there are more candidates than alternate Director positions, the candidate(s) receiving the greatest number of votes will be elected. All alternate Directors so elected shall serve a term of one (1) year and have the right to attend all Board meetings and meetings of the membership. Notwithstanding any statement to the contrary contained herein, there shall not be more than three (3) alternate Directors serving at any one time. Alternate Directors shall have the right to vote in the same manner as a regular Director only when a regular Director is absent from a meeting. If two (2) or more alternate Directors are present at a meeting, and only one (1) regular Director is absent, the alternate Directors shall decide between themselves as to who shall vote in the regular Director's absence, or where they cannot agree among themselves, the remaining regular Director or Directors shall select the alternate who shall serve. The meeting minutes shall clearly state, by name, which alternate is voting in place of the absentee regular Director.

Section 5. Removal of Directors.

- (a) At any duly held regular or special meeting of the Members, any one (1) or more Directors (including alternate Directors) may be removed with or without cause by the Members, Resident Spouses or Resident Relatives present (no proxies), provided that (i) the notice of the meeting expressly includes the removal of one or more Directors, and (ii) the Director(s) whose removal is proposed will receive not less than seven (7) days prior notice of the intention to vote upon his removal, (iii) the Director(s) will be given an opportunity to be heard at the meeting, and (iv) the total votes cast in favor of removal constitute not less than thirty-three (33%) percent of all Eligible Votes. If the removal of one (1) or more Directors is proposed to be placed on the annual meeting agenda, a petition containing fifteen (15%) percent of the Eligible Votes must be submitted to an officer of the Association at least thirty (30) days prior to the annual meeting. If one (1) or more Director's removal is to be considered at any special meeting of the Association, the procedure established in Article IV, Section 3 will be followed. If a vote to remove a Director(s) is approved, a successor(s) may then and there be appointed by a majority of the remaining Directors to fill the vacancy thus created. Each person so appointed shall be a Director until the next annual

meeting when an election will be held to fill the vacancy pursuant to Article V, Section 6, below.

- (b) Any Director or alternate Director who is not himself or herself a Member in good standing or who is a Resident Spouse or a Resident Relative of a Member who is not in good standing for a period of more than thirty (30) days after receiving notice that the Member is not in good standing will automatically be removed as a Director.
- (c) Any Director whose removal has been proposed by the Board shall be given an opportunity to be heard at a Board meeting prior to the vote for removal.
- (d) In the event that all of the Directors are removed, successors shall be elected by the Members in the manner set forth in Article V, Section 3 of these By-Laws to fill the vacancies thus created. Each person so elected shall be a Director for the remainder of the term of the Director whose term he is filling and until his successor is duly elected and qualified.

Section 6. Vacancies. Vacancies in the Board caused by any reason other than the removal of all Directors by a vote of the Unit Owners shall be filled by a vote of a majority of the remaining Board Members at any regular meeting of the Board or at any special meeting of the Board called for that purpose, promptly after the occurrence of any such vacancy. The Directors shall fill Board member vacancies by selecting by vote of the majority, a qualified Member to serve as a regular Director until the next annual membership meeting, when an election will be held to fill that directorship pursuant to Article V, Section 3, above. If the annual meeting constitutes the expiration of the term of the directorship filled by appointment by the Board, a successor Director may be elected for a full term by election in the manner set forth under Article V, Section 3, above. If the annual meeting does not constitute the expiration of the term of the directorship filled by appointment by the Board, the successor Director elected to the directorship will serve only for the unexpired term.

## ARTICLE VI

### Officers

Section 1. Designation. The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer all of whom shall be members of the Board. The Board may also appoint such other Assistant Treasurers and Assistant Secretaries as may be necessary in its judgment, provided that such assistants need not be members of the Board. Any person may hold more than one officer position provided that no person may be designated both the President and Vice President.

Section 2. Election of Officers. The officers of the Association shall be elected annually by the Board at the first Board of Directors meeting following each annual meeting and such officers shall hold office at the pleasure of the Board.

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the full number of Directors, any officer may be removed, either with or without cause, after opportunity for a hearing. The Director's successor may be elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

Section 4. Duties and Responsibilities of Officers.

- (a) The President will be the chief executive officer of the Association. The President shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties that are usually vested in the office of President of a condominium association, including but not limited to, the power to appoint committees from among the members of the Condominium Association from time to time as he/she may in his/her discretion deem appropriate to assist in the conduct of the affairs of the Condominium Association.
- (b) The Vice-President will take the place of the President and perform the duties whenever the President shall be absent or unable to act. If neither the President nor the Vice-President is able to act, the Board will appoint some other Director to so do on an interim basis. The Vice-President will also perform such other duties as shall from time to time be imposed by the Board.
- (c) The Secretary will keep the minutes of all meetings of the Board and the minutes of all meetings of the members of the Association; will have charge of such books and papers as the Board may direct; and will, in general, perform all those duties incident to the office of the Secretary.
- (d) The Treasurer will have the responsibility for the custody of Association funds and securities and will be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer will be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of the Association in such depositories as may from time to time be authorized by the Board.
- (e) The Assistant Treasurer, if any, will perform the duties of the Treasurer whenever the Treasurer shall be absent or unable to act or at such other times and in such capacity as may be specifically delegated by the Board.
- (f) The Assistant Secretary, if any, will perform the duties of the Secretary whenever the Secretary shall be absent or unable to act or at such other times and in such capacity as may be specifically delegated by the Board.

Section 5. Other Duties and Powers. The officers will have such other duties, powers and responsibilities as shall, from time to time, be authorized by the Board.

Section 6. Eligibility of Directors. Nothing herein contained will prohibit a Director from being an officer.

## ARTICLE VII

### Meetings of the Board of Directors

Section 1. Notices; Waiver of Notice. Regular meetings of the Board may be held at such time and place as must be determined from time to time by a majority of the Board, but at least four (4) meetings may be held each year. Notice of regular meetings of the Board will be given to each Director by telephone, mail, telegram or, if accepted in writing by a Director as an authorized form of notice, by email, (any of the foregoing being "Valid Notice") at least ten (10) days prior to the day of the meeting. Special meetings of the Board may be called by the President on three (3) days' notice to each Director by Valid Notice, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board may be called by the President or the Secretary in like manner and on like notice on the written request of at least three (3) Directors. Any Director may, at any time, waive notice of any meeting of the Board in writing and such waiver shall be deemed equivalent to the giving of notice. Actual attendance by Directors at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 2. Meetings Open to Unit Owners; Notice. No less than four (4) meetings of the Board each year shall be open to attendance by the Unit Owners. All other meetings of the Board except conference or working sessions at which no binding votes are taken, will also be open to attendance by all members, except that the Board may, at its discretion, exclude or restrict attendance at those meetings, or portions of meetings, dealing with:

- a. Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy, including, without limitation, records, data, reports or information relating to an individual's personal or family circumstances, unless the individual concerned or the individual's representative consents, in writing, to public disclosure;
- b. Any pending or anticipated litigation or contract negotiations;
- c. Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise the ethical duties of a lawyer; or
- d. Any matter involving the employment, promotion, discipline or dismissal of any employee or officer of the Association.

Written notice of the date, time, place and the agenda, to the extent known, of all open meetings of the Board of Directors shall be given by the Board to all Unit Owners at least seven (7) days prior to a regular meeting and three (3) days prior to a special meeting. Notice shall also be posted in at least one (1) place on the Condominium property that is accessible at all times to all Unit Owners and be published in one (1) or more newspapers of general circulation if required by law. Moreover, the Board shall also, within thirty (30) days following the annual meeting of the Association, post in at least one (1) place on the Condominium property, a schedule of the regular Board meetings to be held in the succeeding year, and make appropriate revisions thereto, as required. The date, time and location of each meeting shall be contained in the notice.

The foregoing notice will not be required in the event of an emergency, provided that only emergent matters may be voted upon at such meeting. Further, to the extent that any of the foregoing means of providing notice prove impracticable, the Board shall undertake alternative measures to carry out the intent of these terms in good faith.

Section 3. Organization. The presiding officer of the Board of Directors meetings shall be the President, or in his absence, the Vice President, or in the absence of both of them a Director selected by the majority of the remaining Directors, including alternate Directors. The presiding officer will act as the chair of the meeting. The Secretary, or in his or her absence, the Assistant Secretary or such other Director or alternate Director appointed by the chair, shall act as Secretary of the meeting.

Section 4. Minutes. Minutes of the Board meetings will be taken, and copies of minutes will be made available to Members at the meeting following their approval by the Board, within seven (7) days following receipt of a written request by a Member. Minutes of closed meetings will be taken separately, and will not be available to Unit Owners, until the need for confidentiality no longer applies. Thereafter such minutes will be available on the same basis as other minutes of the Board.

Section 5. Agenda. An agenda shall be followed for each meeting and copies of the agenda shall be made available to the Unit Owners at the beginning of each meeting. The agenda shall include; in order:

- a. Calling of the roll; Certification of quorum;
- b. Proof of notice of meeting or waiver;
- c. Approval of minutes of previous meeting;
- d. Membership comments;
- e. Specific topics of business;
- f. Approval of Treasurer's report and bills for payment;
- g. Acceptance of reports of officers;
- h. Acceptance of reports of committees;
- i. Manager's report;
- j. Old Business;
- k. New Business;

I. Adjournment.

Upon motion and approval by a majority of the Board, the order of the agenda may be amended in the discretion of the Board. Each open meeting of the Board will provide for a period of Unit Owner comment following the calling of the roll, which period of Unit Owner comment may not exceed forty-five (45) minutes in its entirety, or such longer time as the Board may determine, and the President or acting chair of the meeting may place reasonable limitations upon the time given to each Unit Owner seeking to comment to allow sufficient time for all Unit Owners seeking to comment. The Board will also provide a Unit Owner comment period prior to any vote of the Board concerning: (i) the adoption of rules or regulations; or (ii) the adoption of a budget, provided that the presiding officer may, at the officer's discretion, limit the total comment period to not less than forty-five (45) minutes and may reasonably limit comments in such a manner so as to provide each Unit Owner seeking to comment with an opportunity to do so. The failure to provide an adequate comment period or opportunity for each Unit Owner wishing to comment to do so will not be a basis upon which any action otherwise properly taken by the Board may be voided.

Section 6. Quorum, Voting and Adjourned Meetings. A majority of the Directors, including alternate Directors, serving on the Board who are present in person at a Board meeting will constitute a quorum for the transaction of business. The vote of a majority of those present at a Board meeting at which a quorum is present shall be necessary for valid action by the Board on any matter, unless otherwise set forth in these Amended By-Laws. After a quorum of the Board of Directors has been established, the quorum will remain in effect, despite the subsequent departure or absence of one or more Directors thereafter, provided that any action taken is approved by at least a majority of the required quorum. If at any meeting of the Board there shall be less than a quorum present, the majority of those present may adjourn the meeting to a new date. At any such adjourned meeting at which a quorum is present, any business that may have been transacted at the original meeting may be transacted without further notice.

Section 7. Joinder in Meetings by Approval of Minutes. The transaction of any business at any meeting of the Board, however called and noticed or whenever held, will be valid as though a meeting duly held after regular call and notice, if a quorum is present; and if either before or after the meeting, each Director signs a written waiver of notice, or a consent to the holding of the meeting, or an approval of the minutes thereof or of the resolution or act adopted at such meeting. All such waivers, consents or approval, shall be in writing and filed with the Secretary and made a part of the minutes of the meeting even though filed subsequent thereto.

Section 8. Non-Waiver. All the rights, duties and privileges of the Board will be deemed to be continuing and shall not be exhausted by any single act or series of acts. To the same extent, the failure to use or employ any remedy or right hereunder or hereafter granted shall not preclude its exercise in the future nor shall any custom bind the Board.

Section 9. Consent in Lieu of Meeting and Vote. Despite anything to the contrary in these Amended By-Laws, the Articles of Incorporation or the Master Deed, the entire Board of Directors shall have the power to take action on any matter on which it is authorized to act,



without the necessity of a formal meeting and vote, if the entire Board, or all the Directors empowered to act, whichever the case may be, shall consent in writing to such action.

Section 10. Procedures. All Board meetings will be conducted according to the 21<sup>st</sup> 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 11 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

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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.

All policies shall show the named insured as: "Clearbrook Malden Village Condominium Association No. 11, 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.
- (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 11, 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 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 11 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 99 Units in Section 11. 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 pursuant to Article IX, Section 4, of the Amended Bylaws.

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.

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 99 Units within Section 11.

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.

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(h) 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.

Section 9. Common Expenses. Unit Owners shall pay to the Association an equal monthly sum which is the total common expenses for Section 11 divided by the number of units, or ninety-nine (99).



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

- (c) Capital Improvement Account. At the election of the Board, a Capital Improvement Account 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 Account. The Association may, but shall not be obligated to, maintain a Deferred Maintenance Reserve Account 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 accounts 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 Account only for repair, replacement and maintenance expenses related to capital items; and may expend monies out of the Capital Improvement Account 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 Account, Replacement Account or Capital Improvement Account to meet unexpected operating expenses.
- (f) The amount to be set aside for the Replacement Account and the Deferred Maintenance Reserve Account 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 Accounts. 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 it if, in the Board's sole discretion, the Directors determine that the imposition of the Membership Fee may have a negative impact upon the sale of units within Section 11. 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.

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.

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 Malden Village Condominium Association No. 11."

## 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 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 Committees' 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 11'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 11, 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.

#### 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) Variances. The reviewing entity may, but shall not be required to, authorize variances 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 variances shall be granted only when, in the sole judgment of the 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 11 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 11 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 Malden Village Condominium Association No. 11, 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.

(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 11, 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 Malden Village Condominium Association No. 11; 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 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 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 31<sup>st</sup> 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 quorum is present. 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.

- (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.

## ARTICLE XVIII

### Dissolution

Section 1. Procedure. In the event it is deemed advisable and for the benefit of the Members of the Association that the Association should be dissolved, the procedures concerning dissolution set forth in the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A:1-1 et seq., shall be followed.

Section 2. Distribution of Assets. In the event of dissolution, the assets of the Association, after the payment of all debts including mortgages and other encumbrances, shall be distributed to the Unit Owners in proportion to the fair market value of their respective Units.

## ARTICLE XIX

### Notice

Any notice required to be sent to any Unit Owner under the provisions of the Master Deed, the Articles of Incorporation or these Amended By-Laws shall be deemed to have been properly sent and notice thereby given, when sent by U.S. mail, regular post with postage prepaid, addressed to the Unit Owner at the address on the records of the Association at the time of such mailing, unless otherwise set forth in the Master Deed or in these Amended By-Laws. Notice to one (1) of two (2) or more owners of a Unit shall constitute notice to all owners. Notice shall be deemed to have been received five (5) days after mailing in a regular depository of the United States mail. It shall be the obligation of every Unit Owner to immediately notify the Board in writing of any change of address. Valid notice, which shall be effective upon delivery, may also be given to a member by (i) personal delivery to any occupant of a Unit over fourteen (14) years of age or (ii) by affixing the notice to or sliding same under the front door of any Unit.

## ARTICLE XX

### Gender and Number

The use of the masculine gender in these Amended By-Laws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

## ARTICLE XXI

### Immunity

In accordance with N.J.S.A. 2A:62A-13, the Association will not be liable in any civil action brought by or on behalf of a Unit Owner to respond to damages as a result of bodily injury to the Unit Owner occurring on the Property, the Common Elements or within a Unit. This grant of immunity from liability will not be effective if the Association causes bodily injury to a Unit Owner by its willful, wanton or grossly negligent act of commission or omission.

## ARTICLE XXII

### Rules and Regulations

RULES AND REGULATIONS. The Unit Owners have adopted the following Rules and Regulations for their common benefit and the benefit of Clearbrook Malden Village Condominium Association No. 11:

- (a) Any person using and occupying a Unit must comply with one of the following standards:

Age Restriction. Any person using and occupying a Unit must comply with one of the following standards: (a) be 55 years of age or older; (b) be 48 years of age or older provided at least one other person residing in the Unit is 55 years of age or older; (c) person, regardless of age, residing with and providing physical or medical assistance to an occupant who satisfies the standard contained in either subpart (a) or (b) of this sentence ("Permissible Occupant"), provided (i) such person is necessary in accordance with a medical doctor's certification to allow the Permissible Occupant to have full use and enjoyment of the Unit; and (ii) where the Permissible Occupant suffers from a handicap, as defined under the federal Fair Housing Act and the regulations promulgated thereunder.

Visitor occupants of any age shall be permitted to visit a Unit for up to three months in any calendar year.

In order to qualify as a valid age-restricted community under the federal Fair Housing Amendments Act each Owner shall complete a survey or census concerning the age of the residents occupying each Unit. Each Owner shall promptly respond to any survey or census provided by the Condominium Association in compliance with law and any other requirements as may hereafter be imposed by the state or federal government to maintain its qualified age-restricted status.

- (b) Units shall be used primarily as private single-family residences and such other uses as may be permitted under the zoning ordinances of the Township of Monroe provided that no business, trade, or similar activity, may be conducted in any Unit, except that an Owner or occupant residing in a Unit may conduct "discrete business activities" within the Unit so long as the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; the business activity does not involve regular visitation of the Unit or door-to-door solicitation of residents of the Properties; and the business activity is consistent with the residential character of the Properties and does not violate these Rules and Regulations. Examples of "discrete business activities" include, but are not limited to, computer-based telecommunications and literary, artistic, or craft activities. The Board may restrict any business activities that it

determines interfere with the enjoyment or residential purpose of the Properties in its sole and absolute discretion.

- (c) No clothes poles or lines shall be installed or maintained. No clothes, sheets, blankets, or laundry of any kind or other articles may be hung or displayed on the outside of windows or placed on the outside window sills, walls or balconies of any Unit or in any parking area or hung or displayed in the interior of a Unit in such a way or in such a location as to be fully visible from the Common Elements.
- (d) No animal may be kept, bred, harbored or maintained in any Unit except customary household pets as defined by the Board, in its sole discretion, by adoption of a resolution. No Unit Owner shall permit any pet to cause any injury to any persons or other animals, or to cause damage to any Common Elements or any property of any other Unit Owner. Owners shall be solely liable for any and all damage to the Common Elements or other property and any injuries to persons caused by the Owners' pets. All pets must be leashed at all times and kept under control so as not to disturb the peace of residents. Cats must be kept indoors or leashed as they are not permitted to roam free across the Common Elements. Owners are not permitted to tie pets or leave pets unattended outside on patios, stoops or stairways or any Common or Limited Common Elements. No more than one (1) dog may be kept or maintained in a Unit at one time, provided, however, that in no event may the Association, by its Board members, require the removal of pets validly kept or maintained within a Unit pursuant to a resolution of the Board that pre-dates the effective date of these Amended By-Laws. The Board may, in its sole discretion, adjust the number of dogs or further restrict the other types of pets permitted to be kept or maintained in a Unit by resolution following the effective date of these Amended By-Laws. However, if the Board determines, in its sole discretion, that any particular breed of dog constitutes a safety or health hazard to other owners or occupants ("malicious breed"), the Board may prohibit the keeping of such malicious breeds or require an Owner to remove it from the Condominium within thirty (30) days of the effective date of the resolution. No Unit Owner shall permit a pet to relieve itself upon the sidewalks, driveways, flower beds, or on any landscaped area more than three (3) feet from any street curb. The Unit Owner shall be responsible for cleaning up after his or her dog or other pet and this shall include an obligation to immediately remove all waste deposited on the Common Elements in a sanitary manner. Animal waste shall be removed and disposed by placing it in a sealed, nonabsorbent, leakproof container. Animal waste shall not be disposed in any catchbasin, detention basin or other Common Element. This provision shall not apply to blind persons using dogs as guides.
- (e) Except as may be permitted by Board resolution, no trailer, tractor, truck (used for commercial purposes), mobile home, recreation vehicle (other than golf carts), boat, boat trailer, school bus, inoperable vehicle, unregistered vehicle, vehicle

containing any commercial message or lettering, or containing ladder racks, tool storage racks or other fixtures of similar type, or the like, shall be stored or maintained on the Common Elements.

- (f) No vehicle shall be repaired (including changing oil or flat tires) or rebuilt on any portion of the Common Elements or other portion of the Property thereof.
- (g) Parking of permitted vehicles (i.e. golf carts and non-commercial passenger vehicles), shall be in accordance with the CCA's Rules and Regulations.
- (h) No exterior loudspeakers other than as contained in portable radios or television sets shall be permitted. No floodlights shall be installed in any exterior area of any Unit, except as approved in writing by the Board.
- (i) No sign of any kind shall be permitted upon a Unit or within a Unit that is visible upon the Common Elements, except pursuant to the Rules and Regulations now or hereafter adopted by the Board.
- (j) No portion of the Common Elements or other portion of the Property thereof shall be used or maintained for storing residents' personal property or dumping rubbish or debris. Trash, garbage or other waste shall be kept in covered hard plastic trash containers on the Common Elements for weekly or more frequent collection. Any type of trash or other waste (including recyclables) must be kept inside the Units at all times except when it may be placed in the appropriate containers, curbside after 7:00 p.m. the night before a scheduled pickup. The empty containers must be removed from curbside and returned inside once pickup is complete.
- (k) No Unit Owner or occupant shall build, plant, or maintain any matter or thing upon, in, over or under the Common Elements without the prior written consent of the Board, including, without limitation, antennas, satellite dishes or other receiving or transmission devices, except: (i) as expressly permitted under the federal Telecommunications Act of 1996, as amended, and the regulations promulgated under the Act; or (ii) as the Board and the CCA may permit in accordance with a duly adopted resolution.
- (l) Unit Owners or occupants shall not paint or otherwise decorate or change the appearance of any portion of the exterior of any Unit, without the express written consent of the Board.
- (m) Privacy fences approved by the Association, the CCA and the ARC in accordance with established standards may only be installed within the Exclusive Easement area located to the rear, and the Unit Owner will thereafter be responsible at his or her sole expense for all maintenance of said fence and of the entire rear lawn. Further, the maintenance of all balconies and doorsteps together with removal of all snow up to two (2") inches in depth from all private walkways within the

exclusive easement area appurtenant to each Unit shall be the Owners' sole obligation and expense. No Unit Owner shall construct any improvement whatsoever nor install any landscape material in the Exclusive Easement area without the express, prior written consent of the Board.

- (n) Except as herein provided or as may be otherwise permitted by the CCA rules and regulations, no Unit Owner or group of Owners shall build, plant or maintain any matter or thing upon, over or under the Common Elements, except with the express permission of the Board as previously described in these Amended By-Laws, nor shall any Unit Owner place trash, garbage, excess materials of any kind on or about the Common Elements, nor burn, chop, or cut anything on, over or above the Common Elements.
- (o) The Board, may, by resolution, permit Owners to install certain types of landscaping within the exclusive easement area (as defined in sub-paragraph "m" above) around the perimeter of each Unit, setting forth the Owners' maintenance obligations for their own plantings (including watering, pruning and replacing dead or unsightly plantings) as opposed to those shrubs, trees, flower beds or other plantings maintained by the CCA.
- (p) To the extent that equipment, facilities and fixtures within any Unit(s) shall be connected to similar equipment, facilities or fixtures affecting or serving other Unit(s) or the Common Elements, then the use thereof by the individual Unit Owners shall be subject to the Governing Documents of the Condominium Association.
- (q) Nothing shall be done or kept in any Unit or in or upon the Common Elements which will increase the rates of insurance of the Unit(s) or the contents of the Unit(s) beyond the rates applicable for Units, without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his or her Unit or in or upon the Common Elements that will result in the cancellation of insurance on any Units or the contents thereof, or that will be in violation of any law.
- (r) No noxious or offensive activities shall be carried on, in or upon the Common Elements or in any such Unit nor shall anything be done therein which may be or become an annoyance or nuisance to the others in the Condominium. (Whether a particular activity constitutes a "nuisance" will be determined by the Board, whose determination will be final and binding.) At no time shall an Owner, Resident Spouse, Resident Relative or other occupant, guest or agent of an Owner, Resident Spouse or Resident Relative use any object or thing which creates noise, smoke, odor, soot or vibrations in such a manner as to disturb any other Member or lawful user of the Common Elements nor shall they have any signs, flags, banners, pennants, flashing lights, wire, clothes or any other unsightly object kept, stored or maintained in a Unit in such a way that is in any

way visible from the Common Elements; provided, however, that American flags and other patriotic type flags will be permitted to be flown or displayed on appropriate occasions at the discretion of the Board and further provided that lights of a steady flashing nature will be permitted to be used during the year-end holiday season.

- (s) No immoral, improper, offensive or unlawful use shall be made of any Unit; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over a Unit shall be observed.
- (t) Nothing shall be done to any Unit or on or in the Common Elements which will impair the structural integrity of any Unit or which will structurally change a Unit. No Unit Owner may make any additions, alterations or improvements to the Common Elements, without the prior written approval of the Board and in accordance with procedures set forth in these Amended By-Laws and Rules and Regulations. Board approval, however, shall not incur any liability on the part of the Condominium Association to any contractor, subcontractor or materialman on account of the addition, alteration or improvement, or to any person having any claim for injury to person or damage to property arising therefrom. The Unit Owner shall furnish the Condominium Association with a copy of any permit procured for non-structural changes to the Unit or for Board-approved changes to the Common Elements, if such permit is required by a municipal authority. All costs incidental to the approval, including any consultant's fees, shall be paid by the Unit Owner.
- (u) The Common Elements shall be used only for the furnishing of the services and facilities for which they are reasonably intended and suited and that are incident to the use and occupancy of the Units.
- (v) In order to provide an orderly procedure in the case of title transfers, and to assist in the maintenance of a current, up-to-date roster of Unit Owners, the Owner of a Unit shall give the Association and the CCA, timely notice of his intent to list his or her Unit for sale and, upon closing of title, shall immediately notify the Board of the names and home addresses of the purchasers.
- (w) A Unit may be rented by the Owner(s) for a term of a) one (1) year or more; or b) if less than one (1) year, then only one (1) time in any twelve (12) month period, provided, however, that no Unit may be rented at any time for a period of less than thirty (30) days. Units may not be rented by the Owner(s) more than once in any twelve (12) month period for less than one (1) year (except a lender in possession of such Unit following a default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or otherwise utilized for transient or hotel purposes, which shall be defined as "(i) rental for any additional rental period of less than one (1) year in one(1) twelve (12) month period; or (ii) any rental if the occupants of the Unit are provided customary hotel



services, such as room service for food and beverages, maid service, furnishing laundry or linen, and bellboy service. No Unit Owner may lease less than an entire Unit. Any person not an Owner who resides in a Unit for more than thirty (30) days (whether or not the Owner is present) will be deemed a tenant and the Owner must comply with all use restrictions under the Master Deed and these Rules and Regulations, if any, applying to tenancies, unless the Owner provides proof to the reasonable satisfaction of the Board that the person residing in the Unit is not a tenant. Other than the foregoing obligations, the Unit Owners shall have the right to lease provided that: (i) the lease is in writing and made subject to all the provisions of the Master Deed, these Amended By-Laws and the Association's Articles of Incorporation and other documents referred to herein; (ii) a copy of the written lease, containing the foregoing provision has been delivered to the Board; and (iii) that any failure of a tenant to comply fully with the terms and conditions of the Master Deed, or these Amended By-Laws or the Association's Articles of Incorporation shall constitute a default under the lease.

- (x) In the event a tenant of a Unit defaults under his or her lease by failure to comply with the provisions of the Master Deed, these Amended By-Laws or the Association's Articles of Incorporation, then, in addition to all other remedies which it may have, the Condominium Association or its representative shall notify the Unit Owner of the default(s) and demand that they be cured through the Unit Owner's efforts within thirty (30) days after such notice. If the default(s) is not cured within the thirty (30) day period, then the Unit Owner shall immediately thereafter, at his or her own cost and expense, institute and diligently prosecute an eviction action against the tenant on account of the default(s). The eviction action shall not be compromised or settled without the prior consent of the Condominium Association or its representative. In the event the Unit Owner fails to fulfill the foregoing obligation, then the Board shall have the right, but not the duty, to institute and prosecute an action as attorney-in-fact for the Unit Owner, at the Unit Owner's sole cost and expense, including all legal fees incurred. The costs and expenses shall be deemed to constitute a lien on the particular Unit involved, and collection thereof may be enforced by the Condominium Association in the same manner as the collection of Common Expenses. By acceptance of a deed to any home, each and every Unit Owner automatically and irrevocably names, constitutes, appoints and confirms the Board as his or her attorney-in-fact for the purposes described in this paragraph. Whenever a tenancy terminates in less than one (1) year, there shall be a rebuttable presumption that the owner has violated the terms of this restriction and the owner may not re-lease the Unit for the balance of the one (1) year term (beginning with the commencement date set forth in the written lease) unless the owner demonstrates to the reasonable satisfaction of the Board, that the termination of the prior tenancy was due to factors beyond the control of the owner.
- (y) Every owner leasing a Unit must, prior to the commencement of the tenancy, provide a copy of a written lease, consistent with the terms set forth in these Rules

and Regulations, and a processing and administration fee, payable to the Association, in an amount to be determined by the Board, to cover the costs of reviewing the lease and inspection of any Common Elements located within or about the Unit being leased. If the leasehold remains in effect for more than one (1) year, the owner must pay an additional processing and administration fee to be determined by the Board on the anniversary date of the lease, which fee will not be pro-rated if the remaining term is less than one (1) year. Other than the foregoing obligations, any owner shall have the right to lease his or her Unit subject to the limitations set forth in this section, provided that the lease is in writing for a term of no less than one (1) year and made subject to all provisions of the Governing Documents, and provided further that any failure of the tenant to fully comply with the terms and conditions of such documents shall constitute a default under the lease.

- (z) Upon the commencement of each leasehold a refundable security deposit in an amount to be determined by resolution of the Board but not to exceed \$1,000 will be payable to the Association to secure conformity with the terms of the Governing Documents. In the event, following an appropriate hearing as required by law or pursuant to the Master Deed or these Amended By-Laws, it is determined that a tenant has caused any damage to the Common Elements, or there remains any unpaid fine due the Association, the Association may retain from the security deposit the amount necessary to reimburse it for the costs of repair to the Common Elements, or for any unpaid fines. Upon the termination of the leasehold, and the vacation of the Unit, the balance of the security deposit will be refunded to the owner. The amount of the security deposit will not limit the responsibility of the owner for any damage to the Common Elements, or for any fines resulting from a violation of the Governing Documents.
- (aa) No hazardous substance or hazardous waste (as those terms are defined pursuant to regulations issued by the New Jersey Department of Environmental Protection) may be stored in any Unit, except hazardous substances that are used in connection with commonly available household products intended for interior use and storage.
- (bb) Nothing in these Rules and Regulations or in the Master Deed generally shall be construed to prohibit the reasonable adaptation of any Unit for handicapped use.
- (cc) No garage may be modified, altered or used in a manner that prevents the parking of a motor vehicle.
- (dd) No Unit Owner shall have the right to mortgage or encumber his Unit, unless such mortgage or encumbrance is permitted under the terms and conditions of the Master Deed.

- (ee) Each Unit Owner shall pay for his own telephone, and other utilities, if any, which are separately metered or billed to each user by the respective utility company. Utilities that are not separately metered or billed shall be treated as part of the Common Expenses.
- (ff) Any Owner leaving a Unit vacant for more than ten (10) consecutive days between November 1 and March 31 of any year, who fails to either winterize his Unit or leave the Unit at a static temperature of at least 55 degrees Fahrenheit, shall be strictly liable, whether or not negligent, for any and all damages occurring to the Unit, to any other Unit or to the Common Elements as the result of the failure to winterize the Unit. In addition, all Owners must make arrangements to have their Units inspected at least once every week when no person is present in the Unit.
- (gg) MEGAN'S LAW REGISTRATION.

A. No person required to register with a designated registering agency pursuant to N.J.S.A. 2C:7-3, and who is thereafter determined to be a Tier-3 registrant pursuant to N.J.S.A. 2C:7-8(c)(3) ("Tier-3 Megan's Law Registrant"), may permanently or temporarily reside in a Unit. As used in this section "resides" means living in or possessing any portion of a Unit for more than fourteen (14) days out of any thirty (30) consecutive-day period.

B. If, subsequent to the recording of these Amended By-Laws in the records of the Clerk of Middlesex County, a Tier-3 Megan's Law Registrant resides in a Unit as a tenant, or under any other possessory interest, the Unit Owner must immediately cause the person to vacate the Unit and, if the person does not vacate the Unit within thirty (30) days of the date the Unit Owner was notified by the Association of the presence of a Tier-3 Megan's Law Registrant, then the Unit Owner will immediately commence eviction proceedings. If the Unit Owner fails to commence the eviction proceeding within thirty (30) days following the date the Unit Owner is required to do so and diligently pursue the eviction to conclusion, then the Association may act as attorney-in-fact for the Unit Owner and pursue the eviction action at the Unit Owner's cost and expense. If any action seeking eviction of a Tier-3 tenant does not result in a judgment of possession in favor of the Unit Owner, the Association may, but will not be obligated to, prosecute an appeal seeking the eviction of the tenant. In the event the Association obtains a final judgment resulting in the eviction of the tenant the Unit Owner will be responsible for all reasonable fees and costs of the Association in prosecuting the appeal.

Each Unit Owner hereby appoints the Association as the Unit Owner's attorney-in-fact for the purpose of commencing eviction proceedings, executing any and all documents pertaining to the proceedings or performing any or all responsibilities as may be required or necessary to be performed pursuant to this Article XXII. This power of attorney is expressly declared and acknowledged to run with the title of any and all

Units and will be binding upon the heirs, personal representatives, successors and assigns of the Unit Owner.

C. Any Unit Owner, who by virtue of residing in a Unit, has been notified by the Association that he is in violation of this Section, must vacate the Unit within ninety (90) days of receipt of the Association's notice. If the Unit Owner fails to vacate the Unit within ninety (90) days, the Association may, in addition to all other remedies available to the Association, purchase the Unit at a purchase price equal to the average of two (2) independent appraisals to be obtained by the Association, less the Association's anticipated costs of selling the Unit, including, without limitation, brokerage fees, of not more than seven (7%) percent of the appraisal value, the cost of the appraisal, the realty transfer tax (based on the appraisal value), and other customary and incidental selling costs not in excess of one (1%) percent of the appraisal value.

D. The Association will not be liable to any Unit Owner, anyone occupying or visiting Clearbrook Malden Village Condominium Association No. 11 as the result of the Association's failure to dispossess a Tier-3 Megan's Law Registrant.

#222955 v1 - Clearbrook Section 11 - Amended ByLaws

**SCHEDULE A**

**COVENANTS ENFORCEMENT PROCEDURES**  
**for**  
**CLEARBROOK MALDEN VILLAGE**  
**CONDOMINIUM ASSOCIATION NO. 11**  
**(the "Association")**

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## **I. GRIEVANCE COMMITTEE MEMBERSHIP**

A Grievance Committee has been established by Article XIII, Section 1 of the Amended By-Laws.

## **II. PROCEDURE FOR VIOLATIONS**

### **A. Definition of a Violation**

A violation (a "Violation") is a failure by a Unit owner, his family, guests, or lessees to comply with the provisions of the Articles of Incorporation, Master Deed, Amended By-Laws, Clearbrook Malden Village Condominium Association No. 11 Rules and Regulations, or any Resolutions approved by the Board (collectively the "Governing Documents").

### **B. Noticing the Alleged Violation**

Alleged Violations can be noticed by:

1. Association Member/Committee Member. Any Association or Committee member who notices an alleged Violation will notify the Board. This notification may be in the form of a telephone call, a personal note or an in-person conversation.

2. Lessees. A Lessee of a Unit may not file a complaint under this Resolution unless the Unit owner has provided written authorization to the Lessee to file the Complaint.

### **C. Hearing Process**

#### **1. Informal Notice**

The Board shall attempt to obtain compliance through informal notice, which may consist of telephone, written or in-person communication.

#### **2. Violation Letter Issued by Board**

If a matter is not resolved within a reasonable time (taking into consideration the severity of the violation) by informal notice and negotiation, the Board shall send a formal Violation Letter (the "Violation Letter") to the Respondent by either personal service or by certified mail, return receipt requested, at the address appearing on the records of the Association. If mailed, the letter will be deemed to have been received five days after mailing in a regular depository of the United States mail. A copy of the letter will also be sent to the Grievance Committee. The Violation Letter will contain the following:

a. The acts or omissions with which the Respondent is charged and the identity of the specific Governing Document(s) that is (are) being violated. It should be as specific as possible as to time(s), date(s), place(s) and person(s) involved.

- b. A deadline for the Violation to cease or be corrected.
- c. A statement of the fines, penalties, costs of restoration of General Common or Limited Common Elements, damages, other expenses and/or other sanctions that the Association is imposing for the Violation or will impose if the Violation continues.
- d. A request that the Respondent notify the Board if and when the alleged Violation ceased or was corrected.
- e. A statement advising that a Notice of Hearing and Hearing date will be sent by the Grievance Committee in accordance with subparagraph 5 below.
- f. A statement advising that failure to respond to the Notice of Hearing within fifteen (15) days and in accordance with subparagraph 5c below, will be deemed an acknowledgement that the Noticed Violation(s) occurred. If the Respondent fails to respond to the allegation(s) in accordance with the Violation Letter, fines, penalties, damages or other costs will be automatically posted to the Respondent's/Unit owner's account. The letter will also state that if a hearing is held, damages, fines, penalties and other sanctions will be stayed until the Grievance Committee reaches a decision, but such decision by the Grievance Committee may reinstate or perhaps increase or decrease the fines, penalties and other sanctions set forth in the Violation Letter.

### **3. Preliminary Consideration of Complaint by Grievance Committee**

Upon receipt and consideration of the Complaint of the Violation Letter, the Grievance Committee may request additional information from the Board and Respondent, then shall proceed as set forth below.

### **4. Cease and Desist Request**

The Grievance Committee may, at its own discretion, issue a cease and desist request. Such cease and desist request shall be substantially in the following form:

“The Grievance Committee has received the attached complaint.

By Authority of the Master Deed and Amended By-Laws, the Grievance Committee hereby requests that you CEASE AND DESIST such acts or actions until such time, if any, as a ruling of the Grievance Committee, Board of Directors, or court of law permits.

Failure to comply with this request may result in penalty greater than that which would be imposed for a single violation.”



## 5. The Notice of Hearing

The Grievance Committee will send a Notice of Hearing to the Respondent and the Board of Directors.

a. Service of the Notice of Hearing. The Grievance Committee's Notice of Hearing will be served on all the parties by either personal service or by certified mail, return receipt requested, at the address appearing on the books of the Association at least twenty (20) days prior to the Hearing. If mailed, service of Notice will be deemed to have been received five (5) days after mailing in a regular depository of the United States mail.

b. Contents. The Notice will set forth the time, date and place of the Hearing and will contain the facts or other matters on which the Complainant intends to rely, the names of those witnesses willing to be identified, and any other evidence (including sworn statements) which the Complainant intends to present at the Hearing.

The Notice will advise the Respondent that: (i) he may be represented at the Hearing by counsel, if he so desires; (ii) he is entitled to request the appearance of witnesses; (iii) he is entitled to cross-examine any witnesses appearing against him; (iv) he may request the production of Association books or records by notice to the Board not less than five (5) days prior to the Hearing; and (v) he may request that the Grievance Committee conduct a Hearing in his absence.

c. Response. The Notice will require that the Respondent send a written response to the Grievance Committee Chair at the address of the Association's Board President within fifteen (15) days of its receipt indicating his intent to be present at the Hearing or submitting a request that the Hearing be conducted in his absence. Failure to file a response within fifteen (15) days will be deemed an acknowledgment that the noticed Violations have occurred. If any parties can promptly show good cause as to why they cannot attend the Hearing on the set date, and they indicate times and dates on which they would be available, the Grievance Committee may reset the time and date of Hearing and promptly deliver notice of the new Hearing date.

d. Amended or Supplemental Complaints. At any time prior to the Hearing date, the Grievance Committee may permit the filing of an amended or supplemental complaint. All parties shall be notified thereof in the manner herein provided. If the amended or supplemental complaint presents new charges, the Grievance Committee shall afford the Respondent a reasonable opportunity to prepare proper defense.

e. Discovery. Upon written request to the other party, made prior to the Hearing and within fifteen (15) days after service of the Notice by the Grievance Committee or within ten (10) days after service of any amended or supplemental complaint, any party is entitled to: (1) obtain the names and addresses of witnesses to the extent known to the other party and (2) inspect and make a copy of any statements, writings or investigative reports relevant to the subject matter of the Hearing. Nothing in this section, however, shall authorize the inspection or copying of any writing or thing which by law is privileged from disclosure or is otherwise made confidential or protected. Any party claiming his request for discovery has not been complied

with shall submit a petition to request discovery by the Board of Directors. The Board of Directors shall make a determination and issue a written order stating the matters or parts thereof which the petitioner is entitled to discover.

f. Statements. At any time ten (10) or more days prior to a Hearing or a continued Hearing, any party shall mail or deliver to the opposing party a copy of any sworn statement which that party proposes to introduce in evidence. Unless the opposing party, within seven (7) days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine the statement's author, his right to cross-examine such author is waived and the sworn statement, if introduced in evidence, shall be given the same effect as if the author had testified orally. If an opportunity to cross-examine the statement's author is not afforded after request is made as indicated in this Section, the statement may be introduced in evidence, but shall be given only the same effect as hearsay evidence.

## 6. The Hearing

a. The Hearing Panel and Hearing Officer. The Hearing Panel will consist of three (3) members of the Grievance Committee or its alternates who will hear and consider the matter and render a decision. Alternates may be invited to attend Hearings as non-participating members. The Grievance Committee shall select a person to serve as Hearing Officer and preside over the Hearing. Such Hearing Officer need not be a member of the Association or of the Grievance Committee. At the beginning of the Hearing, the Hearing Officer shall explain the rules and procedures by which the Hearing is to be conducted. The Grievance Committee may determine the manner in which the Hearing will be conducted, so long as the rights set forth in this section are protected. The Hearing need not be conducted according to technical rules relating to evidence and witnesses. Generally, any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding. Counsel for the Association may be present at Hearings and may serve as Hearing Officer.

b. Rights of the Parties. It is not necessary for the parties to be in attendance at the Hearing. At the request of either party, the Grievance Committee may conduct the Hearing in their absence. Each party shall have the right to do the following, but may waive any or all of these rights:

- (1) make an opening statement;
- (2) introduce evidence, testimony, and witnesses;
- (3) cross-examine opposing witnesses;
- (4) rebut evidence and testimony;
- (5) make a closing statement.

Even if a party does not testify in his own behalf, he may still be called and questioned. The Hearing Panel may also request the presence and possible testimony of other persons.

Whenever the Hearing Panel of the Grievance Committee has commenced to hear the matter and a member of the Panel withdraws prior to a final determination, the Committee Chair shall appoint an alternate(s), provided the alternate has heard all testimony, so there shall be three (3) members on the Panel.

Oral evidence shall be taken only on oath or affirmation administered by the Hearing Officer.

#### **7. The Decision of the Grievance Committee**

a. To be effective a decision of the Grievance Committee shall be by a majority vote. The written decision shall normally be issued within forty-five (45) days of the conclusion of the Hearing. The decision shall be written and accompanied by both the majority and minority opinions, if any. Copies of the decision shall be distributed to the party(ies) and to the Board of Directors.

b. If the charges in the complaint were upheld at the Hearing, the Committee shall have the power to recommend to the Board of Directors that the costs of the Hearing in an amount not to exceed Two Hundred Fifty (\$250.00) Dollars and an accumulated fine in an amount not to exceed the maximum amount permitted by law, plus penalties and costs of restoration, if applicable, shall be assessed to the Respondent (or to all Respondents in the event there are more than one) in such proportions as the Committee deems appropriate. The Board of Directors, at a regular meeting, or special meeting called for that purpose, may follow said recommendation or alter them (provided such power to fine and impose penalties is authorized by applicable law) as the Directors deem appropriate except that the Directors may not increase the amounts of costs or penalties recommended by the Committee.

#### **8. Appeal of a Grievance Committee Decision to the Board of Directors.**

a. (i) A decision of the Grievance Committee may be appealed to the Board by the Respondent. A written Appeal shall be submitted to the Board of Directors within twenty-five (25) days of the written decision of the Grievance Committee. The right of appeal shall not be based upon a claim that the decision contains or is based upon an erroneous or otherwise inappropriate factual determination, but must be based upon one or more of the following claims: (i) that a member of the Grievance Committee who heard the matter failed to be disqualified in accord with the standards described in Section D.1.; (ii) that the Grievance Committee failed substantially to comply with the procedure described herein; or (iii) the Grievance Committee based its determination on a misinterpretation of the Governing Documents.

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(ii) 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 fully authorized membership of the Board may modify or reverse any action, ruling or decision in accordance with Article XII, Section 1(c) of the Amended By-Laws.

b. Appeals petitions must be legibly written and be submitted to the Board in substantially the following form:

“(I/We), hereby petition the Board of Directors to hear an appeal of the decision of Grievance Committee (Application) (Case) No. \_\_\_\_\_. (I/We) further understand that within the Association the decision of the Board of Directors on this issue is final.”

c. Notice of Hearing shall be as in Section II.C.6 of this procedure except that it is served by the Board of Directors.

d. All of the rights and procedures enabled in Section II.C.6 of this procedure (The Hearing) shall apply to appeals considered by the Board with the substitution of the words “Board of Directors” wherever the words “Grievance Committee” appears.

e. A final decision of the Board must be taken within sixty (60) days of receipt of Appeal. The Board must take action in closed session at one of its regularly scheduled meetings or at a special meeting scheduled for such purpose. The Board may uphold the Grievance Committee’s decision in its entirety, modify, or reverse such decision.

#### **D. Other Matters**

##### **1. Constraints on the Grievance Committee and the Board of Directors as a Hearing Panel.**

It shall be incumbent upon each member of the Grievance Committee or the Board of Directors (in the case of hearing an appeal) to make a determination as to whether that member is able to function in a disinterested and objective manner in consideration of the case before it. Any member incapable of such objective consideration of the case shall disclose such to the other members and shall become inactive during the proceedings and have it so recorded in the minutes. Any member of the Grievance Committee or the Board of Directors has the right to challenge any other member who is unable to function on a Hearing Panel in a disinterested and objective manner. No member of a Hearing Panel shall participate in any proceeding if he (a) is by blood or marriage related to any party to the proceeding or to any attorney appearing in the proceeding on behalf of a party; (b) has a direct financial interest in the proceeding; (c) is involved in the dispute before the Grievance Committee; or (d) feels he is personally involved and unable to act in a non-biased manner. If one or more members are ineligible to participate in a Hearing according to a-d above, the number of remaining members participating in the Hearing shall not be less than three (3) for the Grievance Committee and not less than the majority of the Board members for hearing an appeal.

Prior to a Hearing by the Grievance Committee, the Respondent may challenge any member of the Grievance Committee for cause. In the event of such a challenge, the Board of Directors shall meet within fifteen (15) days to determine the sufficiency of the challenge. If the Board sustains the challenge, the Board shall at that time appoint a replacement for the challenged member from the pool of Committee alternates. All decisions of the Board in this regard shall be final.

## **2. Further Action/Alternative Dispute Resolution.**

A Unit owner is encouraged to pursue all available remedies of the Association, as prescribed by these procedures, before resorting to a court of law. A Unit owner may also request alternative dispute resolution (ADR) and the Association, through the Board of Directors, will provide ADR, pursuant to Article XIV of the Amended By-Laws, as required by law, as an alternative to litigation.

## **3. Emergencies.**

In the event of an emergency, special emergency procedures will apply and will supercede the procedures established in this Resolution if a Director determines, in the exercise of its reasonable discretion, that a Violation constitutes a possible danger to health, safety or property. In such a case, the Director may dispense with the procedures set forth in Section II above and may notify the alleged violator to cease and desist immediately under penalty of fine and/or other sanctions. If the Violation is not stopped immediately, the Director may take whatever action they deem appropriate to immediately remediate the dangerous condition (including, but not limited to, immediate suspension of the use of Association facilities). The Director may seek any appropriate police, fire or other municipal action or court order against the alleged violator.

In addition to the foregoing, the Association may charge any expenses or fines to, or impose any sanctions on, the alleged violator provided the procedures established in this Resolution are followed.

## **4. Interpretive Ruling.**

Purpose of Rulings. Ruling of the Grievance Committee may serve to: (1) clarify the intent of provisions of the Governing Documents, (2) decide whether any provisions are inconsistent with other provisions of the Governing Documents, or (3) decide whether or not a rule or regulation was duly adopted. The purpose is not to amend, expand or limit the provisions of the Governing Documents, although the Committee may, in the statements accompanying the ruling, propose such amendments, expansions or limits.

Any Association member, the Board, or member of the Board of Directors, may petition the Grievance Committee for an interpretive ruling by filing a written petition to the Committee at the Association's property management office clearly stating the issue in question.

A ruling must be submitted to the Board of Directors by the Committee within forty-five (45) days of such request, and the Board will have sixty (60) days from its receipt to reject such ruling. If it is not rejected, the ruling shall become final.

**5. Fines and Penalties.**

Subject to the provisions of these procedures, the Grievance Committee is authorized in the case of a decision to (1) impose an obligation for the Unit owner to pay damages or other expenses caused by the Violations, (2) 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) impose fines not to exceed \$50 per day/occurrence for any one Violation, and not to exceed the maximum amount permitted by law for any one Violation. The Grievance Committee, in the exercise of its reasonable discretion, may recommend a higher or lower fine (within the limits established in this section) for a particular Violation if it believes the circumstances surrounding the Violation warrant a departure.

**III. CONSTRUCTION**

This resolution shall be effective as of the date it is adopted by the Board of Directors.

This resolution replaces any prior resolutions governing the Grievance Committee and the Procedure for Violations or other disputes.

The Grievance Committee or the Board of Directors, as appropriate, may determine the specific manner in which the provisions of this resolution are to be implemented, provided that due process is protected.

Any inadvertent omission or failure to conduct a proceeding in exact conformity with this resolution shall not invalidate the results of such proceedings, so long as a prudent and reasonable attempt has been made to assure substantial compliance with the general steps set forth herein.

This resolution is intended to be gender neutral. Consequently, pronouns and terms used in this resolution will be substituted with the appropriate feminine pronoun and terms (and vice-versa) as the context indicates.

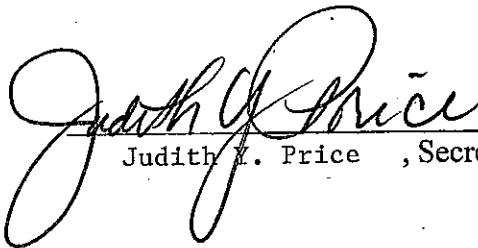
**IV. NOTICE AND RECORDING**

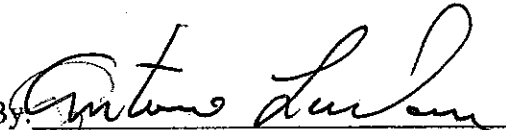
The Board of Directors is directed to distribute a copy of this resolution to every Unit Owner. The Association also directs its legal counsel to arrange for recordation of a copy of this resolution with the Middlesex County Clerk's Office.

The Middlesex County Clerk is authorized, requested and directed to note a reference to this resolution in the margin of the Master Deed (and/or any other appropriate place).

**ATTEST:**

**CLEARBROOK MALDEN VILLAGE  
CONDOMINIUM ASSOCIATION NO. 11**

  
\_\_\_\_\_  
Judith L. Price, Secretary

By:   
\_\_\_\_\_  
Antonio Lavadera, President

STATE OF NEW JERSEY )  
 ) ss:  
COUNTY OF MIDDLESEX )

I CERTIFY that on June 10<sup>th</sup>, 2008, Judith A Price personally came before me and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the Secretary of Clearbrook Malden Village Condominium Association No. 11, a nonprofit corporation of the State of New Jersey, named in this document;

(b) this person signed this document as attesting witness for the proper corporation officer who is Antonio Lavadera the President of the corporation;  
Antonio Lavadera

(c) this person knows the proper corporate seal of the corporation and the proper corporate seal was affixed;

(d) this document was signed and delivered by the corporation as its voluntary act and deed by virtue of authority from its Board of Directors;

(e) this person signed this acknowledgment to attest to the truth of these facts; and

(f) this Resolution was duly introduced and was thereafter adopted at a regular scheduled meeting of the Board of Directors, at which a quorum was present, by vote of the members of the Board of Directors eligible to vote on this matter.

Judith A Price  
Judith A Price Secretary

Signed and sworn to me on

June 10, 2008

RUTH MEISELES

MY COMMISSION EXPIRES 10-04-09

Ruth Meiseles

B05961P0870A