

THE GREENBRIAR II HOMEOWNERS ASSOCIATION

3RD REVISED BY-LAWS

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ARTICLE I
APPLICABILITY, FISCAL YEAR & DEFINITIONS

SECTION 1 **Applicability:**

These By-Laws apply to the Greenbriar II Homeowners Association, Inc., (the “Association”), a not-for-profit corporation of the State of New Jersey. These By-Laws provide for the management, administration, utilization, and maintenance by the Association of the Common Land described in the Declaration of Covenants and Restrictions (the “Declaration”), as same may nor or hereafter be recorded.

SECTION 2 **Fiscal Year:**

The fiscal year of the Association shall be July 1 to June 30.

SECTION 3 **Definitions:**

The following words, when used in these By-Laws or any supplemental By-Laws (unless the context shall prohibit), shall have the following meanings:

- (a) “Age-Qualified Person”: any Resident of 55 years of age or older.
- (b) “Association Dues” (also “Dues” or “Assessments”): all assessments assessed by the Association against the Owner(s).
- (c) “Association” shall mean and refer to the Greenbriar II Homeowners Association, Inc., a not-for-profit corporation, formed to enforce the covenants, restrictions, and conditions regarding the use and occupancy of Homes in the Community and to maintain, repair, own, and replace the Common Property as provided in this Declaration and the By-Laws.
- (d) “Board”: the Board of Trustees of the Association.
- (e) “By-Laws”: the By-Laws of the Association with all future amendments or supplements thereto.
- (f) “Certificate of Incorporation”: the Certificate of Incorporation of the Association.
- (g) “Common Expenses”: all those expenses (including reserves) incurred or assessed by the Association, or its respective trustees, officers, agents, or employees, in the lawful performance of their respective duties or powers.
- (h) “Common Land”: all the real property, improvements, and facilities of the Property owned and operated by the Association, including, but not limited to those areas of land shown on any recorded subdivision plot of the property and intended to be devoted to the common use and enjoyment of the Owners of the

properties.

- (i) “County”: the County of Ocean in the State of New Jersey.
- (j) “Declaration”: this Declaration of Covenants and Restrictions of Greenbriar II Homeowners Association, including the covenants, conditions, and restrictions and all other provisions set forth herein, as may be amended from time to time.
- (k) “Facilities”: all buildings, structures, fixtures, items of personalty, improvements of whatsoever nature, associated with the Common Land.
- (l) “Fair Housing Act”: the Fair Housing Act Amendments Act of 1988, P.L. 100-430 (September 13, 1988) and amendments thereto including, but not limited to the Housing for Older Persons Act of 1995, HR 660 (signed December 1995); regulations adopted by the U.S. Dept. of HUD implementing the Housing for Older Persons Act, found at 24 CFR Part 100, and any amendments thereto; and any judicial or administrative interpretations or decisions affecting said legislation.
- (m) “Federal Mortgage Agencies”: those federal agencies who have or may come to have an interest in the Community, including, but not limited to, the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, or successors to their interests.
- (n) “First Mortgagee”: an Institutional Lender who holds the mortgage on a Lot and Home and who has notified the Association of its holdings.
- (o) “Guest”: any invitee of a Member, Non-Owner Resident, or Owner.
- (p) “Home”: any individual residential dwelling unit located on a fee simple Lot designed and intended for use and occupancy as a residence.
- (q) “Institutional Lender”: any commercial or savings bank, mortgage banker, savings and loan association, trust company, insurance company, governmental agency, or other financial institution or pension fund, any other lender regularly engaged in financing the purchase, construction or improvement of real estate, or any assignee of loans made by such a lender, or any individual who loans money for home purchase or any combination of the foregoing entities.
- (r) “Lease”: any agreement for the leasing or rental of any Home in the Community, including any sublease.

- (s) “Lot”: any plot of land shown upon any present or future recorded subdivision map of the property, excluding Common Land as described herein.
- (t) “Manager” or “Management”: the person employed by the Association to assist with the management, administration, and operation of the Association.
- (u) “Member”: every Owner of a Home within the Association.
- (v) “Non-Owner Resident”: any individual permanently residing in the Association who is not a Member or Owner.
- (w) “Occupant”: any individual permanently residing in the Association, including Owners and Non-Owner Residents.
- (x) “Owner”: those persons or entities in whom record title to any Lot or Home is vested as shown in the records of the Clerk’s Office, but, notwithstanding any applicable theory of mortgage law, it shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title to any such Lot or Home pursuant to foreclosure proceedings or any proceeding in lieu of foreclosure or any mortgagee that has taken possession of any vacant Lot or Home. The term “Owner” shall not refer to any lessee or tenant of an Owner.
- (y) “Property”: all such existing property and permitted additions thereto of the Association, as is subject to this Declaration under the provisions of Article II hereof.
- (z) “Rules and Regulations”: the rules and regulations duly adopted by the Association with all future amendments and supplements thereto.
- (aa) “Tenant”: any Non-Owner Resident who is residing in the Association pursuant to a leasing agreement with the Owner of the Home.
- (bb) “Township”: the Township of Brick in Ocean County, New Jersey.

ARTICLE II

MEMBERSHIP, VOTING RIGHTS AND MEETINGS

SECTION 1 Membership in the Association shall be conferred upon all Owners in accordance with Article II, Section 2 – Voting Rights, provided as follows:

- A. It is intended that these By-Laws shall in no way limit or deprive any Owner or Member of the Association or prospective Member of his or her rights, privileges, or immunities as provided under the Constitutions of the United States and of New Jersey, and by written or common law.

- B. In the event that an Owner dies testate or intestate, leaving as heir(s) a person or persons or entity which do not qualify as a resident of the Association, these By-Laws shall in no way restrict ownership of said heirs provided however, that said heir or heirs or entities shall not occupy said Home until he or she meets the membership requirements of the Association, except for a surviving spouse or domestic partner. A surviving spouse or domestic partner may retain membership even though he/she is not age 55 or older. If a surviving spouse remarries or lives with a person under the age of fifty-five (55), that person is not eligible for membership in the Association until the age requirement is met.

This shall in no way preclude the right of the Owner to lease the Home or to grant occupancy as a resident to his Guest, provided however that in each instance, such Guest or Tenant must first meet the requirements of the Association.

The inability of any Owner to occupy the Home for whatsoever reason, shall not in any way serve to exempt the person of the obligation to pay the annual or special assessments. In the event a person or persons obtain title to a Home, said Owner shall not occupy that Home until he or she meets the requirements of the Association and receives a copy of the By-Laws and Rules and Regulations from the administrative office and acknowledges receipt of same in writing.

- C. The Owner(s) of a Home by acceptance of the deed conveying ownership accepts said instrument subject to the right of the Association, its successors and assigns to redeem any tax sale certificate or assignment thereof issued by the Township of Brick and to acquire by reason of such redemption any and all rights accruing thereby in conformity with provision N.J.S.A. 54:5-54 any conveyance or alienation by the grantee, his heirs, successors, administrator and assigns to the contrary notwithstanding.
- D. Membership in the Association shall lapse and terminate when any Member shall cease to be the Owner of record of the Home.

SECTION 2 **Voting Rights:**

- A. The Association has one (1) class of voting membership. Members are entitled to one (1) vote for each Home in which they hold the interest required for membership by Article II Section I herein. The age requirement for membership does not bar an underage person from ownership of a Home. The exercise of said Owner's voting rights shall be exclusively by the Owner of record who has the option of providing any Member, whether or not they are resident, with a proxy.
- B. When more than one (1) person holds such interest or interests in a Home, their vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to such Home. Where a Home has more than one (1) Owner and they are unable to agree on how to cast the vote they are entitled to, each Owner may cast individual votes, except that each will be entitled only to the fraction of a vote that is based upon the number of eligible Owners in the Home.
- C. Voting rights may be suspended in accordance with Article IX.

SECTION 3 **Voting:**

- A. Votes shall be cast by ballot either in person or by proxy or absentee ballot at a polling place.
- B. Except as otherwise provided herein, a majority vote of the votes cast at a polling place shall determine the course of action to be taken in the subject matter of the vote, provided that the quorum requirements of Article III are met.
- C. A majority of votes used in these By-Laws means that number of votes which exceeds fifty percent (50%) plus one (1) of all votes cast.

SECTION 4 **Absentee and Proxy Ballots:**

- A. A Member that resides outside of the Community will be mailed an absentee ballot. A Member that resides within the Community must either call management to request an absentee ballot be mailed to them or must obtain an absentee ballot at the administration office during normal business hours. Only one absentee ballot will be provided per Home and it must be requested by the owner of that Home.
- B. The candidate(s) or referendum choice will be clearly indicated on the absentee ballot and signed by the Member. It should be placed in the envelope provided by the Association, sealed, and returned to the administration office no later than one (1) business day prior to the election or referendum vote date.
- C. Proxy ballots will be provided for each individual vote, upon request, by the administration office to any Association Member in good standing, who for personal reasons wishes to have his/her vote cast by a proxy.
- D. Proxies and ballots by mail may be revoked at any time prior to the opening of the polls, and no proxy or ballot by mail shall be voted on after eleven (11) months from the date of its execution unless the proxy or ballot by mail provides for a longer period, which in no event can exceed three (3) years from the date of its execution.

SECTION 5 **Member in Good Standing:**

- A Member shall be presumed to be in good standing only if:
- 1. The Member shall have paid the applicable membership fee for each Home upon acquiring ownership.
 - 2. The Member is not in arrears on any monthly maintenance charges, any assessments, late fees, fines, penalties, and attorneys' fees and/or costs, if any, due and payable.
 - 3. The Member is not under suspension or restricted by the Association in the use or access to the Common Land or Facilities.

SECTION 6 **Rights of Members to Use and Enjoy the Common Land:**

Every Member in good standing shall have the right to use and enjoy the Common Land consistent with Association Rules and Regulations, e.g., hours of operation, which right shall extend to any Non-Owner Resident, Tenant or Occupant residing in the Home of the Member.

SECTION 7 **Capital Contribution:**

Upon acquisition of title to a Home within the Association, the purchaser/transferee shall pay a non-refundable and non-transferable contribution to the Association's working capital fund, at the time of closing, in an amount equal to nine (9) months of assessments. The one-time, non-refundable fee that is paid by each new Owner shall be called the Capital Contribution Fee. The Board shall have the right, by Resolution, to set and/or increase or decrease the Capital Contribution Fee to an amount not to exceed nine (9) times the amount of the most recent monthly common expense assessment.

Payment of the Capital Contribution Fee shall be a condition precedent to the exercise of any rights of membership in the Association. The contributions shall be treated as an assessment, and the Association may collect the contributions via any and all of the Association's rights and remedies with regard to unpaid assessments. Unpaid contributions shall be deemed a lien on the Home collectable in the same manner as any unpaid assessments attributable to the Home. Any rights and privileges of membership in the Association that require an Owner to be current with regard to his/her payment of assessments and/or other financial obligations to the Association shall be deemed to also require payment of the Capital Contribution Fee.

ARTICLE III
MEETINGS OF MEMBERS

SECTION 1 **Place of Meetings:**

All meetings of the Members of the Association shall be held at the Clubhouse or at such other place convenient to the Members as may be designated by the Board.

SECTION 2 **Notice of Meetings:**

- A. Written notice of all Association meetings shall be given to the members in a manner determined by the Board of Trustees. Such written notice shall set forth the purpose(s) of the meeting and state whether or not a vote will be taken.
- B. The written notice shall be given not less than 10 nor more than 60 days before the date of any meeting.
- C. When any issue is scheduled for a vote by the membership, the written material relative to the item or items to be voted on shall be distributed to the membership not less than seven (7) business days prior to the casting of ballots. Failure to provide the material within the allotted time shall be cause for postponement of the meeting or the casting of ballots.
- D. Waiver of notice may be made by a member in writing. Presence at the meeting shall be considered waiver of any formal notice to the member.

SECTION 3 **Quorum:**

At each meeting of the Members, two hundred (200) Members authorized to vote, present in person, by proxy or ballot by mail, shall constitute a quorum for the transaction of business except where otherwise provided by law.

In the absence of a quorum, the Members entitled to vote and present in person, by proxy or ballot by mail may, by majority vote, adjourn the meeting to a time not less than twenty-four (24) hours and not more than ten (10) business days from the time the original meeting was called.

If a quorum is not reached in such a ballot vote, then another ballot vote shall be held within ten (10) business days at which time the votes of one hundred and fifty (150) valid votes shall constitute a quorum.

If a quorum is not reached in such a ballot vote, then another ballot vote shall be held within ten (10) business days at which time the votes of one hundred (100) valid votes shall constitute a quorum.

SECTION 4 **Organization:**

At each Members' meeting, the President, or, in his/her absence, the First Vice President, or in the absence of both of them, the 2nd Vice President shall act as chairperson. In the absence of the Secretary, the chairperson shall appoint a person to act as Secretary of the meeting.

SECTION 5 **Voting:**

With respect to the election of Trustees or as otherwise required by the Declaration or any law, a quorum being present, a majority of votes present in person, by proxy, or ballot by mail shall be sufficient on those matters which are to be voted on by the Members. The election of Trustees shall be by ballot. Unless determined to be advisable by a majority of the votes of the Members present at such meeting, the vote on any other question need not be by ballot.

SECTION 6 **Judges:**

If a vote by ballot shall be taken on any question at any meeting of the Members, the chairperson of such meeting shall appoint two (2) persons to act as judges with respect to such vote. The judges shall decide upon the qualifications of voters, shall report the number of votes represented at the meeting and entitled to vote on such question, shall conduct and accept the votes, and when the voting is completed, shall ascertain and report the number of votes respectively for and against the question; however, the number of votes received by each candidate in an election of Trustees need not be reported. Reports of judges shall be in writing and subscribed to and shall be delivered by them to the Secretary of the meeting. Each judge shall certify in writing that he executed faithfully the duties of a judge with strict impartiality and according to the best of his ability. The judges need not be Members of the Association. Any officer or Trustee of the Association may be a judge on any question other than a vote for or against his or her election to any position with the Association or any other question in which he or she may be directly interested.

SECTION 7 **Conduct of the Meeting:**

The order of business at the Election Meeting or at any Special Meetings as far as practicable shall be:

- (a) Calling of the roll and certifying the proxies.
- (b) Proof of notice of meeting and waiver of notice.
- (c) Reading and disposal of any unapproved minutes.
- (d) Appointment of Judges of Election, if appropriate.
- (e) Election of Trustees, if appropriate.
- (f) Receiving reports of officers.
- (g) Receiving reports of committees.
- (h) Old business.
- (i) New business.
- (j) Adjournment.

ARTICLE IV **BOARD OF TRUSTEES**

SECTION 1 **Express and Implied Powers and Duties:**

The property, affairs and business of the Association shall be managed by the Board of Trustees, which shall have all those powers granted to it by the Certificate of Incorporation, the Declaration, these Bylaws, and by law.

SECTION 2 **Number and Qualifications:**

The Board of Trustees shall consist of five (5) Members, who are in good standing in the Association. The duties, selection, and term of office of the Board of Trustees shall be regulated by these By-Laws.

SECTION 3 **Method of Election:**

A. Board of Elections: A Board of Elections shall be appointed by the Trustees to be effective April 1st of each year and shall serve for a period of one (1) year. Its function shall be to conduct and supervise the election of the Trustees, Finance Committee, and Recreation and Activities Officers, and required referendums, including the counting of ballots and certification of elections.

The Board of Elections shall consist of five (5) Members of the Association in good standing, each Trustee appointing one (1) Member. This Board shall select a Chairperson, Vice Chairperson, and a Secretary. No member of this Board shall be eligible to run for a Board of Trustees position during his/her term. No member of this Board shall circulate petitions, nor obtain signatures thereon, nor engage in any type of public or private electioneering for any of the candidates for Trustee, Finance Committee, or Recreation and Activities officers. Violation of any of these regulations shall be cause for immediate dismissal and replacement by a majority vote of the Trustees.

B. Candidates for Election: A statement signed by the candidate, or Declaration, that he/she is running for office and is a Member in good standing of the Association and meets the membership requirements must be filed with the Board of Elections no later than fifteen (15) business days prior to the election. A candidate shall be automatically disqualified from serving as a Trustee, Finance Committee member or Recreation and Activities Officer, if

within the six month period prior to the date of election, the candidate has been an adverse party to litigation with the Association. A candidate shall also be automatically disqualified from serving as a Trustee, Finance Committee member, or Recreation and Activities Officer if he/she has violated the Covenants and Restrictions, By-Laws, or Rules and Regulations of the Association and has not cured such violation at least thirty (30) days in advance of the election. Members may run for reelection to their current elected position. No elected member may run for a different elected position while they can be reelected to their current position unless they formally withdraw their name from the candidate list for their current re-electable position.

Declarations shall be placed in a locked box in the clubhouse lobby and will remain there until 4:30 p.m. of the deadline closing date. Declarations will be opened by the Board of Elections at 4:30 p.m. on the closing date in full view of those present in the lobby. Candidate names and positions will be announced to those present and Declarations will be posted on the bulletin board until Election Day.

The Board of Elections shall arrange for and conduct a candidate's meeting where the announced candidates for Trustee, Finance Committee, and Recreation and Activities Officers will have the opportunity to present themselves and their reasons for seeking office to the residents. This meeting shall be held within ten (10) business days after the closing date for the filing of intention to run for office. The Board of Elections shall establish the agenda for this candidate's meeting. Questions for candidates will be pre-screened by the Board of Elections to ensure no personal or derogatory comments are directed to any candidate. All accepted questions will be put into a bowl and at the candidates' meeting, and each candidate will take turns picking a question and will answer that question. No two candidates will answer the same question.

C. The Election: The rules on absentee ballots or proxy ballots as specified in Article II, Section 4 shall be followed in the Election of Trustees, Finance Committee members, Recreation and Activities Officers, and required referendums.

Each candidate may have one observer present at the polling place at all times. If a candidate is unopposed, a single vote shall be cast by the Secretary of the Board of Trustees.

On the day of the election, there shall be no electioneering or campaigning on the clubhouse grounds. Any Member who violates this rule may be subject to a fine or penalty.

SECTION 4 **Time for Elections and Taking Office:**

All regular elections for Trustees, Finance Committee members, and Recreation and Activities Officers shall take place no later than the first full week of June and the term of office shall commence on the following July 1st.

SECTION 5 **Election to Two or More Vacancies:**

Where there are multiple vacancies to be filled at a regular election, the candidates receiving the highest number of votes shall be elected.

SECTION 6 **Vacancies:**

A vacancy on the Board of Trustees, Finance Committee, or Recreation and Activities Committee shall arise upon the death, resignation, removal, or inability of such Trustee, Finance Committee member, or Recreation and Activities Officer to fulfill their duties. Should a Trustee, Finance Committee member, or Recreation and Activities Officer be absent from three (3) consecutive months of meetings, such absence may be declared by a majority of the remaining members of the Board of Trustees to be a vacancy.

Whenever a vacancy occurs and the unexpired term of the vacancy is more than four (4) months, it shall be filled by a special election within forty-five (45) days after the occurrence of the vacancy. If the unexpired term is less than four (4) months, it shall be filled at the regular election in accordance with Section 4. In either case, the successful candidate shall take office upon election and oath pursuant to Article VII, Section 1.

SECTION 7 **Term of Office:**

A. Trustees:

All Trustees shall be elected to serve a term of two (2) years except for interim elections. The term of each Trustee shall commence on July 1st following the election, except for special elections where the term shall begin immediately upon certification of said election. No Trustee may serve more than two (2) consecutive terms in the same office. A period of at least one (1) year must elapse before he/she can be a candidate for the Board again. The same interval requirements apply thereafter.

B. Committee Members and Officers:

Recreation and Activities Officers shall be elected to serve a term of two (2) years, except for interim elections. Finance Committee members shall serve for a term of three (3) years, except for interim elections. All terms shall begin July 1st following the election, except for special elections where the term shall begin immediately upon certification of said election. No Finance Committee member or Recreation and Activities Officer may serve more than two (2) consecutive terms. A period of at least one (1) year must elapse before he/she can be a candidate for the same Committee. All Recreation and Activities Officers and Finance Committee members shall be Owners in good standing.

SECTION 8 **Removal of Trustees or Officers:**

A Trustee, Finance Committee member, or Recreation and Activities Officer may be removed for good cause by a majority of Trustees. By way of example, but not by way of limitation, grounds for removal shall include: non-attendance at three (3) consecutive monthly meetings, violation of the Covenants and Restrictions or By-Laws, violation of the Code of Ethics, interference with or obstruction of the Board's conduct of Association business, violation of the Rules and Regulations, default in payment of annual or special assessments or penalties.

A Trustee, Finance Committee member, or Recreation and Activities Officer may also be removed from office by a majority vote of the Members in good standing in accordance with

Article II, Section 3. To establish such a ballot, a petition for removal signed by ninety (90) Members in good standing must be submitted to the Administration Office. Upon the submission of a valid petition for removal, the Trustees shall hold a special meeting to discuss allegations raised by the petition and conduct a vote of the membership for the Association. A special meeting and vote of the membership shall be completed within thirty (30) calendar days of submission of a valid petition to the Administration Office. In the event a Trustee, Finance Committee member, or Recreation and Activities Officer is removed from office pursuant to this Section, he or she shall be disqualified from serving in any office for a period of four (4) years commencing from the date of removal.

Any Trustee, Finance Committee member, or Recreation and Activities Officer subject to removal pursuant to this Section, shall be entitled to be heard on the grievances raised in the petition, prior to a vote by the Trustees and members of the Association.

SECTION 9 **Trustee Meetings:**

Meetings of the Board of Trustees shall be held not less than monthly on dates to be set by a majority of the Trustees. Notice of regular meetings of the Trustees shall be given to each Trustee by telephone, mail, or email at least seven (7) days prior to the day of the meeting. Special meetings of the Trustees may be called by the President on three (3) business days' notice to each Trustee, given by telephone, mail, or email, which notice shall state the time, place, and purpose of the meeting. On written request of at least three (3) Trustees, the President or Secretary shall call a Special Meeting in a like manner and on like notice. Presence of three (3) Trustees shall be considered a quorum. Any Trustee, at any time, may waive notice of any meeting of the Trustees in writing, and such waiver shall be deemed equivalent to the giving of notice. Actual attendance by a Trustee at any meeting of the Trustees shall (1) be an acknowledgment that the Trustee received notice of the meeting and (2) constitute a waiver of notice of the time and place thereof of any follow-up meeting scheduled at said meeting.

If all Trustees are present at any meeting of the Trustees and a future meeting date is established, no notice shall be required of the subsequent meeting set by the Board and any business may be transacted at such meeting. In the discretion of the Trustees, and subject to applicable law, meetings of the Trustees whether regular or special, may be open to Members of the Association for observation or participation in such manner and to the extent the Trustees may deem appropriate. At least six (6) Trustee meetings each fiscal year shall be held on an open basis.

SECTION 10 **Meetings:**

There shall be three (3) different kinds of meetings of the Board of Trustees as follows:

A. Financial Board Meetings: There shall be two (2) Financial meetings, one during the first five (5) business days of June each year, for the presentation and review of the proposed annual budget; another meeting, during the first five (5) business days of October of each year, for the financial report by the Treasurer covering the audited report of the financial status for the prior fiscal year. At both meetings any other necessary business may be transacted.

B. Regular Open Board Meetings: There shall be at least four (4) open Board meetings to be held on dates fixed by the Board of Trustees. At these meetings, any necessary business may be transacted.

C. Executive Session Board Meetings: The Board may meet in closed executive session meetings where the following types of decisions can be made: (1) any matter where the meeting's disclosure would constitute an unwarranted invasion of individual privacy; (2) any pending or anticipated litigation or contract negotiations; (3) any matters 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; and, (4) any matter involving the employment, promotion, discipline or dismissal of a specific officer or employee.

SECTION 11 **Quorum and Adjourned Meetings:**

At all duly convened meetings of the Board of Trustees, a majority of the Trustees shall constitute a quorum for the transaction of business, except as otherwise expressly provided in these By-Laws or by law. The votes of a majority of the Trustees present and voting at a meeting at which a quorum is present shall constitute a valid decision. If at any meeting of the Board of Trustees there shall be less than a quorum present, the Trustee or Trustees present may adjourn the meeting to a new date and appropriate notice shall be given to all Trustees. At any such adjourned meeting at which a quorum is present, any business which may have been transacted at the original meeting may be transacted without further notice to any Trustee. Trustees may only vote in person. Despite anything to the contrary in these By-Laws, the Certificate of Incorporation or the Declaration and if permitted by law, the entire Board of Trustees 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 Trustees empowered to act, whichever the case may be, shall consent in writing to such action.

SECTION 12 **Non-Waiver:**

All the rights, duties and, privileges of the Board of Trustees shall 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 of Trustees.

SECTION 13 **Consent in Lieu of Meeting and Vote:**

In spite of anything to the contrary in these By-Laws, the Certificate of Incorporation, or the Declaration notwithstanding, the entire Board of Trustees 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 all of the Trustees shall consent in writing to such action.

ARTICLE V **POWERS AND DUTIES OF THE BOARD OF TRUSTEES**

SECTION 1

The Association shall be governed by the Board of Trustees. The Board of Trustees shall have all those powers granted to it or necessarily implied by law or by the Certification of Incorporation, these By-Laws, or the Declaration including, but not limited to:

- A. Management Supervision: Employ, by contract or otherwise, a manager, managing agent, or an independent contractor, to oversee, supervise, and carry out the responsibilities of the Board of Trustees. The manager or independent contractor shall be compensated upon such terms as the Board of Trustees deems necessary and proper;
- B. Managerial Personnel: Employ all managerial personnel necessary, or enter into a managerial contract for the efficient discharge of the duties or powers exercised by the Board of Trustees hereunder;
- C. Repair and Maintenance: Employ any person, firm, or corporation to replace, repair, maintain, renovate, and protect the Common Property or any other property within the Community, the repair or maintenance of which has been delegated to the Association (including access to underground or overhead facilities, landscaping, signage, lighting, recreation facilities, private roads, parking areas, and similar items); to lay pipes or culverts; to bury utilities; to put up lights or poles; to erect signs and traffic and safety controls of various sorts on the Common Property or any other property within the Community; all such activity may be undertaken only to the extent permitted by law;
- D. Professional Advisors: Employ professional counsel and obtain advice from persons, firms, or corporations such as, but not limited to, landscape architects, architects, engineers, lawyers, and accountants;
- E. Rules and Regulations: Adopt, amend, and publish Rules and Regulations and enforce compliance with such published Rules and Regulations relative to the use, occupancy, and maintenance of the Homes, the operation and maintenance as well as the use of the Common Properties and Facilities. The Rules and Regulations shall become binding on all residents and may include, but not be limited to fines in an amount determined by the Board of Trustees, the suspension of the privileges of membership and the right to the enjoyment of the Common Properties and Facilities by the Owners, Non-Owner Residents, Guests, and Lessees and be subject to penalties as provided in the Rules and Regulations;
- F. Collections: Establish, levy, assess and collect annual and special assessments from the Members and/or Owners to defray the costs and expenditures of the Association incurred in accordance with Article VII. The Board of Trustees may collect delinquent assessments and/or penalties and to employ the provisions and powers set forth in the Declaration of Covenants and Restrictions, to collect, foreclose, execute, or levy against any Owner of a Home who is delinquent;
- G. Own & Rent Property and Homes: Subject to any laws or ordinances appertaining thereto, to buy, sell, mortgage, lease, rent, borrow, or do any other act which may alter or change the Common Property and Facilities of the Association and to pay taxes and assessments levied against properties that are owned or used for the benefit of the Association;
- H. Enforcement: Enforce obligations of Members and do anything and everything else necessary and proper for sound management, including the right to bring or defend lawsuits to enforce the terms, conditions, and restrictions contained in the Declaration, these By-Laws, and any Rules and Regulations. The Board of Trustees shall also have the power to establish the amount of and levy fines against any Member(s) for violations of the Declaration, these By-Laws, and the Rules and Regulations. Collection of fines may

be enforced against any Member(s) involved as if the fine were a Common Expense owed by the particular Member(s), and such fines shall constitute a lien upon the particular Member's Home. Before any fine is imposed by the Board of Trustees, the Member accused shall have been given notice and afforded an opportunity to be heard with respect to the alleged violation in a manner consistent with the principles of due process of law. The Board may also exercise self-help in order to ensure compliance with the Association's rules;

- I. Borrowing: Borrow and repay monies, giving notes, mortgages, or other security upon such term or terms as it deems necessary;
- J. Investing: Invest and re-invest monies; sue and be sued; collect interest, dividends, and capital gains; exercise rights; pay taxes; make and enter into contracts; enter into leases or concessions; make and execute any and all proper affidavits for various purposes; compromise any action without leave of court; and all other powers contained herein, and those necessary and incidental thereto;
- K. Legal Action: Bring and defend actions by or against one or more Members pertinent to the health, safety, or general welfare of the Members, or any other legal action to which the Members may consent in accordance with these By-Laws;
- L. Insurance Trustee: Appoint an Insurance Trustee, who shall not be a Member of the Association or the manager, who shall discharge his duties in accordance with the Declaration or these By-Laws. In the absence of such an appointment, the Board of Trustees shall be responsible for the disposition of all insurance proceeds;
- M. Committees: Create, appoint members to, and disband such committees as shall from time to time be deemed appropriate or necessary to aid the Board of Trustees in the discharge of its duties, functions, and powers, including, but not limited to, a Finance Committee, Architectural Control Committee, and Recreation and Activities Committee. Trustees are *ex officio* members of all such committees;
- N. Easements, Licenses and Other Property Rights: To transfer, grant, or obtain easements, licenses, and other property rights with respect to the Common Property in a manner not inconsistent with the rights of Members and not inconsistent with any recorded easements, declarations, or restrictions unless consent is obtained from all parties with vested rights under any recorded documents;
- O. Media: The Trustees shall have authority and supervision over any official publication or television programming and broadcasting originated by any group or organization in the Community using the Facilities of the Association. Any political or controversial subject matter or person that may present a biased view of the subject matter is prohibited. Prior to any governmental election, it would be permissible to have a special meeting of the Association at which candidates from all political parties shall be invited to attend;
- P. Event Admission: When an admission charge is required at an Association function, the Trustees shall have the right to approve a reasonable charge for Owners and a different charge for Non-Owner Residents and Guests. The Trustees shall establish all guidelines for such events.

SECTION 2 **Duties and Responsibilities:**

It shall be the affirmative and perpetual obligation and duty of the Board of Trustees to perform the following:

- A. Maintenance and Operation of Common Property: To provide for the Common Property such maintenance, painting, replacement, or repair work as may be necessary, maintenance of lawn areas which are Common Property, clearing of snow from Common Property as deemed appropriate by the Board, maintenance of detention basins within the Common Property, maintenance of all roadways, signage, fences, and landscaped areas on the Common Property;
- B. Personnel and Equipment: To investigate, hire, pay, supervise, and discharge the personnel necessary to be employed, and provide the equipment and materials necessary, to properly function and operate as contemplated by the Declaration and these By-Laws. Compensation for the services of such employees (as evidenced by certified payroll) shall be considered an operating expense of the Association;
- C. Corporate Records: To 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 twenty-five (25%) percent of the total outstanding votes of the Association;
- D. Damage or Destruction of Common Property: To make repairs, additions, improvements to, or restoration of Common Property in accordance with the provisions of these By-Laws and the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;
- E. Compliance with Governmental Requirements: To take such action as may be necessary to comply promptly with any and all orders or requirements affecting the Common Property issued or mandated by any federal, state, county, or municipal authority having jurisdiction thereover, or order of the Board of Fire Underwriters or other similar bodies;
- F. Health, Safety, Welfare: To discharge its powers in a manner that protects and furthers the health, safety, and general welfare of the Members;
- G. Alternate Dispute Resolution: To provide a fair and efficient procedure for the resolution of disputes between individual Members or a Member and the Association, that shall be readily available as an alternative to litigation;
- H. Insurance: To place and keep in force all insurance coverages required to be maintained by the Association applicable to Common Property including, but not limited to:
 - 1. Physical Damage Insurance: To the extent obtainable in the normal commercial marketplace, broad form insurance against loss by fire and against loss by lightning, windstorm and other risks normally included within all risk extended coverage, including vandalism and malicious mischief, insuring all Common Property existing at the time of the initial conveyance together with all service machinery appurtenant thereto, as well as common personalty and supplies belonging to the Association, and covering the interest of the Association, the Board of Trustees, the Developer, and all Owners, and any Mortgage Holder who has requested the Association in writing to be named as a loss payee, as their respective interests may appear, in an amount equal to the full replacement value of the Common Property 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 Mortgage Holder, its successors and assigns as its interest may appear. The aforesaid mortgagee clause shall name as mortgagee either Federal

National Mortgage Association (FNMA) or its servicers in the event FNMA holds mortgages on any Homes. When a servicer is named as the mortgagee, its name must be followed by the phrase "its successors and assigns." When a majority of the Board of Trustees is elected by Beneficial Members, prior to obtaining any renewal of a policy of fire insurance, the Board of Trustees 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 Property existing at the time of the initial conveyance of the Home located thereon, without deduction for depreciation, for the purposes of determining the amount of fire insurance to be effected pursuant to this subsection. The amount of any deductible and the responsibility for its payment shall be determined by the Board of Trustees, in its sole discretion.

2. **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 Community and for the defense of any actions arising out of any injury or death of a person or property damage occurring within such areas, and not arising by reason of any act or negligence of any individual Member. Such insurance shall be in such limits as the Board of Trustees may, from time to time, determine, covering each member of the Board of Trustees, the managing agent, the manager, each Member, and shall also cover cross liability claims of one insured against another. Until the first meeting of the Board of Trustees following the first annual meeting of the Association, such public liability insurance shall be in amounts of not less than \$1,000,000 per occurrence for claims of personal injury or for property damage. The Board of Trustees shall review such limits once a year.
3. **Trustees and Officers Liability Insurance:** To the extent obtainable in the normal commercial marketplace, liability insurance indemnifying the Trustees and Officers of the Association against the liability for errors and omissions occurring in connection with the performance of their duties, in an amount of at least \$1,000,000 and with any deductible amount to be in the sole discretion of the Board of Trustees.
4. **Workers Compensation Insurance:** Workers compensation and New Jersey disability benefits insurance as required by law.
5. **Vehicular Liability Insurance:** To the extent obtainable in the normal commercial marketplace, vehicular liability insurance to cover all motor vehicles, if any, owned or operated by the Association.
6. **Flood Insurance:** Flood hazard insurance in the event any of the insurable Common Property is located within a federally designated zone of greater than minimal flood hazard.
7. **Water Damage:** Water damage legal liability insurance.
8. **Other Insurance:** Such other insurance as the Board of Trustees may determine is appropriate.
9. **General Provisions:** All policies shall:
 - a. 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 Trustees with the approval of the insurance trustee, if any, and that the net proceeds thereof, if \$25,000.00 or less shall be payable to the Board of Trustees, and if more than \$25,000.00 shall be payable to the insurance trustee, if any;

- b. require that the proceeds of physical damage insurance be applied to the restoration of such Common Property and structural portion and service machinery as is required by the Declaration and these By-Laws;
- c. to the extent obtainable, contain agreed amount and inflation guard endorsement; Construction Code. Endorsement; demolition cost endorsement; contingent liability from operation of building laws endorsement; and increased cost of construction endorsement;
- d. 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;
- e. provide that the policy will be primary, even if insurance covering the same loss is held by any Member(s);
- f. to the extent obtainable, contain waivers of subrogation and waivers of any defense based on co-insurance or invalidity arising from any acts of the insured;
- g. provide that such policies may not be cancelled without at least thirty (30) days prior written notice to all of the named insureds, including all the Members and Mortgage Holders.
 - All policies shall show the named insured as: "Greenbriar II Homeowners' Association, Inc., for the use and benefit of the individual Members" 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 Member, Mortgage Holder, or other loss payee. Also, the policies must require the insurer to notify in writing the Association, its Insurance Trustee, and each Mortgage Holder or other entity named in the mortgagee 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 subsection; the Association shall not be required to provide any type or amount of insurance not commonly available in the normal marketplace.
 - The premiums for any and all insurance coverage maintained by the Association shall be a Common Expense of the Association.
 - Members shall not be prohibited from carrying insurance for their own benefit provided that all policies shall contain waivers of subrogation and that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any additional insurance carried by any Member.

I. Fiscal Management: To manage the fiscal affairs of the Association as hereinafter provided in Article VI. The Board shall obtain adequate fidelity bonds for all Trustees, officers, and employees of the Association handling or responsible for Association funds.

J. Budget: Prepare an annual budget for the Association prior to the June Financial meeting, reflecting the amounts estimated to be necessary to meet the cost of operation and maintenance and distribute same to the general membership for discussion prior to adoption by the Board of Trustees. In the event it is concluded by the Board of Trustees that a change in the annual assessment and monthly payments will be necessary, it may make such change and it shall notify the members of the Association of same, the need and reason therefore, and the amount thereof. Prepare and distribute to the general

membership, prior to the October Financial meeting, an audited financial report by an independent certified public accountant, including an audited balance sheet and income/expense statement.

- K. **Compliance and Enforcement of Recorded Declarations: Easements and Restriction:** To take such actions as may be necessary and appropriate to comply with and/or enforce any and all recorded documents requiring the Association's compliance, enforcement or action

SECTION 3 **Contracts and Expenditures:**

- A. The Board of Trustees shall request at least three (3) proposals from vendors for any services or projects to be rendered that are reasonably estimated to exceed \$5,000 (e.g. pool service, security, residence painting, lawn and sprinkler care). After review of the proposals, the Trustees have the option to negotiate with any of the vendors or to accept a proposal or reject all of them.
- B. The Board of Trustees shall submit all proposals, contracts, or any other proposed expenditure estimated to exceed \$25,000 in the aggregate to the Finance Committee. No award, renewal, or expenditure shall be made by the Board of Trustees until they are in receipt of the Finance Committee's written advice, submitted to the Trustees within seven (7) calendar days. After receipt of the Finance Committee's written advice, the Board shall vote on the proposed expenditure and shall not be bound by the Finance Committee's written advice.
- C. Any contract, project, or expenditure not currently included in the reserves and/or in the approved Operating Budget that exceeds \$50,000 must be presented to the Members of the Association for their approval. This will be accomplished by a letter from the Board of Trustees to the Members of the Association explaining the need for the contract, project, or expenditure and the method of payment. This letter will also provide a place for the Members to record his/her vote for said contract, project, or expenditure.

Before any expenditure chargeable to a reserve, the Trustees will meet with the Finance Committee to determine the amount of money available in that reserve. If an expenditure for the replacement or repair of a capital item exceeds the established reserve for that repair or replacement, the Board of Trustees must explain to the Members of the Association the need for said expenditure and how such money will be replaced.

In the event of an emergency, the Board of Trustees will have the right to make the needed expenditure, but will not be required to seek the approval of the Members of the Association before acting. By way of example, but not by way of limitation, an emergency shall include: repairs required by acts of God, uninsured losses, temporary measures required to preserve the property of the Association pending repair or replacement, damage of other casualty or loss caused by a dangerous condition or terrorist act. However, the Board of Trustees will still have the responsibility to explain to the Members of the Association the need for the expenditure and how it will be financed.

SECTION 4 **Prohibited Activities of Trustees:**

- A. No Trustee at any meeting of the Association shall endorse or otherwise attempt to influence the outcome of any election of a vacancy on the Board of Trustees. Nothing in the foregoing prohibition shall operate to abridge the constitutional right of a Trustee to express his or her personal opinion at times when he/she is not in attendance at a meeting of the Association, nor shall a Trustee be precluded from speaking in his/her own behalf for re-election.
- B. No Trustee shall individually commit the Board of Trustees to any issue involving Association resources or deviation from Governing Documents unless authorized by the Board of Trustees.
- C. No Trustee shall express an opinion in his/her capacity as Trustee at any Association meeting on any public question not related to or involving the affairs of the Association, nor endorse any candidate or public issue under the authority of his/her Trusteeship.
- D. No person, having declared his/her intention to run for public office other than the Association, shall be allowed to solicit or campaign within the confines of the clubhouse unless an invitation for all candidates for that office has been issued and approved by a unanimous vote of the Trustees present at a meeting of the Board of Trustees.

ARTICLE VI
OFFICERS

SECTION 1 **Officers:**

The principal officers of the Association shall be President, First Vice-President, Second Vice-President, Secretary, and Treasurer, all of whom shall be elected Trustees. No one may be a Trustee or Officer unless that person is a Member of the Association in good standing.

SECTION 2 **How Elected:**

The officers shall be elected annually by the Board of Trustees at the first Board of Trustees meeting following each annual meeting.. A majority vote will be sufficient to elect an officer. Such officers shall hold office at the pleasure of the Board of Trustees.

SECTION 3 **Removal of Officers:**

Upon an affirmative vote of four (4) members of the Board of Trustees, any Officer may be removed from his or her position with cause, after opportunity for a hearing, and his successor elected at any regular meeting of the Board of Trustees, or at any special meeting of the Board of Trustees called for such purpose.

SECTION 4 **President:**

The President shall: (a) be the chief executive officer of the Association; (b) preside at all meetings of the Association and of the Board of Trustees; and (c) have all of the general powers and duties which are usually vested in the office of President of a non-profit corporation.

SECTION 5 **Vice-Presidents:**

In the President's absence, the First Vice President shall preside at all meetings of the Association and of the Board of Trustees. In the absence of both the President and First Vice-President, the Second Vice President shall preside at all meetings of the Association and of the Board of Trustees. The First Vice-President (and in his absence, the Second Vice President) shall take the place of the President and perform the duties of President whenever the President shall be absent or unable to act. The First Vice-President (and in his absence, the Second Vice President) shall also perform such other duties as shall from time to time be imposed by the Board of Trustees.

SECTION 6 **Secretary:**

The Secretary shall: (a) in the absence of the Administrator at any meeting of the Board of Trustees of the Association, record all votes, take minute, draft resolutions, and include all proceedings in a minutes book, which shall be open to all members; (b) be custodian of the corporate seal of the Association and affix the seal when required; (c) have charge of such books and papers as the Board of Trustees may direct; (c) keep a list of the members of the Association, which shall be open to all members, but not furnished to any other person or firm; and (e) in general, perform all the duties incident to the office of the Secretary.

SECTION 7 **Treasurer:**

The Treasurer shall (a) have the responsibility for the Association funds and securities; (b) be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association; (c) cause an annual audit of the Association's books to be made by a certified public accountant approved by the Board of Trustees at the completion of each fiscal year; (d) be responsible for the deposit of all monies and other valuable effects in the name; (e) credit of the Association in such depositories as may from time to time be authorized by the Board of Trustees; and (f) see to the preparation of an annual budget and an annual balance sheet and shall present the proposed budget to the Trustees for their review and consideration. Prior to adoption of the proposed budget, the Trustees shall hold an open discussion period with the Association Members, with copies available in the Administrator's office seven (7) business days prior to said meeting.

SECTION 8 **Other Duties and Powers:**

The officers shall have such other duties, powers and responsibilities as shall from time to time be authorized by the Board of Trustees.

SECTION 9 **Eligibility of Trustees:**

Nothing herein contained shall prohibit a Trustee from being an officer.

ARTICLE VII
COMMITTEES

SECTION 1 **Finance Committee:**

There shall be a Finance Committee composed of three (3) Members, elected by the Association members, to assist the Treasurer and the Trustees in managing the financial affairs of the Association. The Finance committee shall appoint its own chairperson.

The committee's primary responsibility shall be to assist the Treasurer and the Trustees in the preparation of the annual operating budget of the Association. The Association's certified public accountant and the Administrator shall serve in an advisory capacity to the committee. The committee shall arrange its meeting schedules.

The committee shall also: 1) make recommendations to the Treasurer and the Trustees as to the investment of Association funds to achieve maximum return consistent with safety; 2) insure that adequate reserves are provided in the budget; 3) review proposals, contracts, projects, or any other proposed expenditure estimated to exceed \$25,000 and provide written advice to the Trustees with regard to any financial implications prior to any award or renewal and thereafter receive copies of all executed contracts; and 4) perform such other duties related to financial matters as the Treasurer and the Trustees may elect.

SECTION 2 **Architectural Control Committee:**

The Architectural Control Committee is established and shall be composed of five (5) Members to be appointed for a period of two (2) years by the Board of Trustees. It shall be the duty of the Architectural Control Committee to review and decide requests for approvals made by Members under the applicable provisions of the Declaration of Covenants and Restrictions and Architectural Control Resolutions and bring to the attention of the Board of Trustees violations of the Declaration or Resolutions which may come to the Committee's attention.

SECTION 3 **Recreation and Activities Committee:**

The primary responsibility of the Recreation and Activities Committee is to develop and operate a community activities program, for all groups and interests. The governing body of the Recreation and Activities Committee shall consist of the President, Vice President, Secretary, and Treasurer, each elected by the Association Members, and the chairpersons from all activities, each with an equal vote. Any Resident may join any activity group during the year by volunteering and/or by notifying the President and/or Vice President of the Recreation and Activities Committee.

ARTICLE VIII
CODE OF ETHICS, COMPENSATION, INDEMNIFICATION, AND EXCULPABILITY
OF OFFICERS, TRUSTEES, AND COMMITTEE MEMBERS

SECTION 1 **Elected Officers' Code of Ethics:**

Each elected officer of the Association shall be required to sign a copy of the following *Code of Ethics* upon taking office.

As an elected officer I will:

1. Represent the interests of the Association.

2. Not use the Association or my service as an elected officer for my own personal advantage, or for the individual advantage of my friends or supporters.
3. Keep confidential information confidential.
4. Approach all issues with an open mind, prepared to make the best decision for the Association.
5. Focus my efforts on the mission of the Association and not on my personal goals.
6. Not exercise my authority as an elected officer except when acting in a meeting with the full Board or as delegated by the full Board or Committee or by the Governing Documents of the Association.
7. I fully understand that should I knowingly breach any of these requirements, I may be removed from office.

SECTION 2 **Compensation:**

No compensation shall be paid to any Board Trustee, officer, or committee member for acting as such. Nothing herein stated shall prevent any officer, 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 that the expenses incurred or services rendered have been authorized in advance by the Board of Trustees. Reasonable expenses as incurred in the discharge of their official duties will be paid by the Association upon presentation of a voucher signed and certified by the submitting Trustee, to the Treasurer and approval of the reimbursement by the Board of Trustees.

SECTION 3 **Indemnification:**

Each Trustee, officer, and committee member of the Association, shall be indemnified by the Association against the actual amount of net loss, including counsel fees, reasonably incurred by or imposed in connection with any action, suit, or proceeding to which that person may be a party by reason of being or having been a Trustee, officer, or committee member of the Association, except as to matters as to which that person shall 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 shall 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 4 **Exculpability:**

Unless acting in bad faith, neither the Board of Trustees as a body nor any Trustee, officer, or committee member of the Association, shall be personally liable to any Member in any respect for any action or lack of action arising out of the execution of the office. Each Member shall be bound by the good faith actions of the Board of Trustees, officers, and committee members of the Association, in the execution of their respective duties.

ARTICLE IX
TRANSFER OR LEASING OF HOMES

SECTION 1 **Owner's Responsibilities:**

In any negotiations for the transfer of ownership or leasing of an Owner's Home, it is the responsibility of the current Owner to advise the prospective Owner or Lessee of the following:

- A. That a Resident must be fifty-five (55) years of age or older except in the case of occupancy by a couple, married or not, where only one of said couple must be no less than fifty-five (55) years of age.
- B. That a Lessee must meet all the requirements that any Resident must meet for occupancy of a Home in this Community.
- C. That children under the age of nineteen (19) may not reside in a Home for more than a maximum of four (4) weeks in any six (6) month period.
- D. That no Home shall be permanently occupied at any time by more than four (4) individuals.
- E. That no Home shall be used for any purpose other than as a single family dwelling.
- F. That Owners and Lessees are subject to these By-Laws and the Rules and Regulations.

SECTION 2 **Transfer of Ownership:**

Any Owner desiring to sell, give, assign, or transfer title or interest to his/her Home must give a Certification to the Association of his/her intent to make said transfer; and to further certify to the Association that the prospective Owner has been advised in writing of the conditions for occupancy and membership as set forth in these By-Laws.

The prospective Owner, before acquisition and/or occupancy, is obligated to advise the Association in writing of their intention to conform to all of the requirements of all documents of the Association. Failure on the part of the Owner or prospective Owner to comply with the above, shall in no way waive any rights of the Association.

SECTION 3 **Leasing:**

If an Owner decides to lease the Home, the lease is to provide that its terms are subject to the Declaration of Covenants and Restrictions, these By-Laws, and the Rules and Regulations. The Owner is to file with the Association, before the commencement of the lease, a copy of the executed lease showing that the proper terminology is included.

At occupancy or acceptance of the lease, the Lessee shall notify the Association in writing that he/she is aware of such terminology and has been advised of the restrictions on age, children, and number of permitted occupants of the Home on a permanent basis. The Lessee shall further state that he/she is in conformance with said restrictions and requirements. Failure on the part of the Owner or Lessee to make such disclosures shall in no way waive any rights of the Association.

Failure to comply with the Governing Documents or Rules and Regulations constitutes a material breach of any lease for any Home and is grounds for eviction. In the event that a tenant violates a provision of the Governing Documents and, after notice by the Association or the Landlord continues to violate same, the Landlord shall have the obligation to commence eviction proceedings against the tenant. If the Landlord fails to commence eviction proceedings within thirty (30) days from the date of notice by the Association, then the Association may commence eviction proceedings in the name of the Landlord against the Tenant as attorney-in-fact for the Landlord. The Landlord will then be responsible to pay the Association's legal fees and costs incurred in such proceedings.

The leasing of a Home does not operate to relieve a Landlord of his/her obligation to pay the Home's proportionate share of the common expenses and assessments required by the Association. As security for the performance of a Landlord's continued obligation to pay the Home's proportionate share of common expenses and assessments, all Landlords shall be deemed to have assigned to the Association the rent payable to the Landlord by the Tenant. Said assignment of rent shall, however, only become operative upon a Landlord's failure to timely pay the Landlord's Home's proportionate share of common expenses and assessments, as well as any fines, late fees, attorneys' fees and any other expenses or costs to the Association, after having been given thirty (30) days written notice by the Association as to the Landlord's default. Upon the Landlord's failure to cure said default within said thirty (30) day period, the Association can, without having to institute any court action or proceeding, demand of the Landlord's tenant that the tenant pay over to the Association any and all rent due to the Landlord under the terms of the lease for the Home. Noncompliance by the Tenant shall be grounds for eviction by the Association as attorney-in-fact for the Landlord.

SECTION 4 **Violations of Resident Owner or Lessee Requirements:**

Should a Home be occupied contrary to the requirements of this article or any pertinent passage of these By-Laws, the Association will take whatever steps are necessary to vacate such Home. Should the Association incur expenses for legal action in the pursuit of its objective, then it is the responsibility of the Owner involved to reimburse the Association the amount of any and all attorney's fees and costs incurred by the Association.

The provisions of Article XI, Sections 1, 2, 3 and 4 are not intended in any way to deprive any Owner or Lessee of his/her rights, privileges, and immunities under the Constitution of the United States and the State of New Jersey, and under the laws of said jurisdiction. The intention of this Article and Association is strictly to maintain a Community provided for and meeting the needs of those people fifty-five (55) years of age and older.

ARTICLE X
FISCAL MANAGEMENT

SECTION 1 **General Common Expense Assessments:**

The Board of Trustees shall have the duty to collect from each Owner, his heirs, administrators, successors, and assigns, as an annual General Common Expense Assessment, that portion of General Common Expenses assessed against such Member as provided in the Declaration and these By-Laws.

SECTION 2 **Annual Budget:**

In carrying out the responsibilities contained in this Article XII, the Board of Trustees shall prepare an annual budget of operating expenses and income and reserves. The Board of Trustees shall allocate each Owner's share of such annual budget in accordance with the manner of allocation described in the Declaration.

SECTION 3 **Determination of Common Expenses:**

The amount of money for Common Expenses deemed necessary by the Board of Trustees and the manner of expenditure thereof, including but not limited to, the allocation thereof, shall be a matter for the sole discretion of the Board of Trustees.

SECTION 4 **Additional Services:**

The Association may furnish, but shall not be required to furnish, additional programs and services if same shall be duly authorized by the Board of Trustees.

SECTION 5 **Disbursements:**

The Board of Trustees shall take and hold the funds as collected and shall disburse same for the purposes and in the manner set forth herein and as required by the Declaration, Certificate of Incorporation, and applicable law.

SECTION 6 **Depositories:**

The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such parties as are authorized by the Board of Trustees, provided that a management agreement may include among its provisions authority for the manager to sign checks on behalf of the Association for payment of the obligations of the Association if the proper fidelity bond is furnished to the Association.

SECTION 7 **Accounts:**

The receipts and expenditures of the Association shall be common charges and Common Expenses respectively, and shall be credited and charged to accounts under the following classifications as the Board shall deem appropriate:

- a. Current expenses, which shall include all expenditures within the year for which the budget is made, including reasonable allowances for contingencies. Current expenses shall not include expenditures chargeable to reserves, or to working capital, or to additional improvement, or to operations. At the end of the year, the unexpended amount remaining in the account may be distributed to the Members as the Board of Trustees shall determine.
- b. Reserve for deferred maintenance, which shall include funds for maintenance items that occur less frequently than annually.
- c. Reserve for replacement, which shall include funds which are required because of damage, depreciation or obsolescence: the amounts in this account shall be allocated among each of the separate categories of replacement items.
- d. Reserve for capital improvements, which shall include funds to be used for capital expenditures or for the acquisition of additional personal property.
- e. Operations, which shall include all funds from the use of the Common Property or from any other sources. Only the additional direct expense required by any revenue producing operation will be charged to this account. At the end of each year, any unexpended amount remaining in this account shall be applied to reduce the assessments for current expenses for the succeeding year or may be distributed to the

Owners to the extent that the Board of Trustees shall determine. In either event, any such expenses shall be allocated to the same Beneficial Members and in the same manner as the relevant common expenses were assessed. Losses from the operations or otherwise shall be met by levying special assessments against the Members, which assessments may be made in advance in order to provide a working fund.

SECTION 8 **Reserves:**

The Board of Trustees shall not be obligated to expend all of the revenues collected in any accounting period, and must maintain reasonable reserves for, among other things, repairs, replacements, emergencies, contingencies of bad weather or uncollected accounts. Despite anything herein to the contrary, the Board of Trustees in its determination of the Common Expenses and the preparation of a budget shall specifically designate and identify that portion of the Common Expenses which is to be assessed against the Members as a capital contribution and is to be allocated to reserves for each separate item of capital improvement of and to said Common Property. The amounts assessed and collected for the reserves shall be kept in one or more interest-bearing savings accounts or certificates of deposit, and shall not be utilized for any other purpose other than that which was contemplated at the time of assessment. The foregoing shall not be construed to mean that the Board of Trustees 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 9 **Creation of Lien and Personal Obligation of Assessments:**

Each owner of a Home, by acceptance of a deed therefore, whether or not it is so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: 1) the annual assessment or charges payable monthly on or before the first of each month or as determined by the Board of Trustees; 2) special assessments; and 3) any penalties imposed under the Governing Documents of the Association.

The annual assessments, special assessments or penalties, together with such interest thereon and the cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or penalty is made. Each such assessment, together with such interest thereon or penalty and cost of collection thereof, as hereinafter provided shall also be the personal obligation of the person(s) who were the owner(s) of such Home at the time the assessment or penalty became due.

SECTION 10 **Purpose of Assessment:**

The assessments levied by the Association shall be used exclusively for the purpose of providing services, promoting the recreation, safety, and welfare of the members and, in particular, for the improvement and maintenance of the common properties and facilities and the exteriors of Homes as set forth in Article III, Section 9, Duties of Trustees and in the rules and regulations of the Association, and, for the purpose of providing services and facilities devoted and related to the use and enjoyment of the common properties and facilities.

SECTION 11 **Basis of Annual Assessments:**

If the Board of Trustees determines that the existing annual assessment rate exceeds or does not meet the demands of operation and maintenance of the Common Properties, Facilities and exteriors of the Homes, a new rate may be set by the Board, and the members of the Association shall upon notice of same and the reasons therefore, be subject to payment of the new rate.

SECTION 12 **Special Assessments:**

In addition to the annual assessment as outlined in Section 9 hereof, the Board may levy, in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Land, including the necessary furniture, fixtures, equipment and other personal property related thereto, or for other unexpected maintenance obligations or for any other lawful purposes, provided that any such special assessment shall be apportioned in the same manner as a regular assessment and shall receive the assent of two-thirds (2/3) of the Board members at an open Board of Trustee meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and which notice shall set forth the purpose of the meeting. The due date(s) of any special assessment, or any installment(s) thereof, shall be fixed in the resolution authorizing such special assessment.

SECTION 13 **Notice:**

The Board of Trustees shall give to each Member written notice of the amount estimated by the Board of Trustees for the annual Common Expense assessment or any other assessment for each such Member. Such notice shall be conclusively presumed to have been delivered five (5) days after deposit in the United States mails. If the annual Common Expense assessment is not revised from the previous year, or is not made as required, an assessment shall be presumed to have been made in the amount equal to the last prior year's assessment; and monthly installments on such assessment shall be due upon each installment payment date until changed by an amended assessment. In the event the annual Common Expense assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board of Trustees subject to the provisions herein, provided that nothing herein shall serve to prohibit or prevent the Board of Trustees from imposing an Emergency Assessment in the case of any immediate need or emergency which cannot be met by reserve funds earmarked for such contingency.

SECTION 14 **Acceleration of Assessment Installment upon Default:**

If a Member shall be in default in the payment of an installment of any type of assessment, the Board may notify such delinquent Member that the remaining installments of the assessment for the current budget year shall be accelerated if the delinquent installment has not been paid by a date stated in the notice, which date shall be not less than five (5) days after delivery of the notice to such Member, or not less than ten (10) days after the mailing of such notice to him by registered or certified mail. If such notice is given and default shall continue for a period of thirty (30) days, the Board shall be required to accelerate the remaining installments of the assessment and notify the delinquent Member that the lien for the accelerated amount shall be filed on a date certain stated in the notice if the accelerated balance has not then been paid. The lien for such accelerated assessment as permitted by law shall then be filed if the delinquent assessment has not been theretofore paid. The Board may also notify any permitted Mortgage Holder holding

any mortgage encumbering the Home affected by such default. If the default continues for a period of ninety (90) days, the Board may foreclose the foregoing lien pursuant to law, or commence a suit against the appropriate parties to collect the assessment, or both.

SECTION 15 **Interest and Counsel Fees:**

The Board of Trustees, at its option, shall have the right in connection with the collection of any Common Expense assessment or other charge to impose a late charge of any reasonable amount and interest not to exceed the maximum rate permitted by law for delinquent real estate taxes or both. In the event that the Board of Trustees shall effectuate collection of assessments or charges by resort to counsel or the filing of a lien, or both, the Board of Trustees may add to the aforesaid assessments or charges as counsel fees: (i) such a sum as the Court may deem reasonable and appropriate; (ii) the reasonable costs for the preparation, filing and discharge of the lien; and (iii) such other costs as may be permitted by law. All assessments are due on the first day of each month and shall be deemed late and subject to penalty if not paid by the tenth day of the month.

ARTICLE XI
EASEMENTS

SECTION 1 **Locations:**

The Association shall have an easement upon the land of the Owner of each Home for the purpose as may be required to carry out the provision of the By-Laws, Rules and Regulations, and the Declaration of Covenants and Restrictions.

ARTICLE XII
SUSPENSION OF VOTING RIGHTS

SECTION 1 **Members in Default:**

The membership rights of any Member, including voting rights as defined in Article II, may be suspended by the Board for any period during which any Common Expense Assessment, Special Assessment, late fees, fines, attorney's fees, or other charge against his Home remains unpaid; but upon payment of such arrears, whether by check or cash, his rights and privileges shall be immediately and automatically restored. Further, the Board may suspend the rights and privileges of any person in violation of the Governing Documents, including the Rules and Regulations, for a period not to exceed thirty (30) days for any single violation, but if the violation is of a continuing nature such rights and privileges may be suspended indefinitely until the violation is abated. This suspension in no way relieves said Member of any obligations and duties as set forth in the other provisions of these By-Laws, the Rules and Regulations, or the Declaration. The Board shall take no action until the Member is offered an opportunity for a hearing consistent with the principles of due process of law.

ARTICLE XIII
LIMITATION/DISCLAIMER OF ASSOCIATION LIABILITY

SECTION 1 **Limitation of Liability:**

Pursuant to the applicable provisions of the New Jersey State law as it currently exists and as amended from time to time, now or in the future, and more particularly, Public Law 1989, Chapter 9, approved January 30, 1989, N.J.S.A. 46:8B-1, et seq., 2A:62A-14, or any other applicable provision of New Jersey law, the Association, its Trustees, its agents, nor any subdivision thereof shall not be liable in any civil action or any action, that may be brought, instituted or otherwise commenced by or on behalf of a member of the Association or Owner of property which is part of the Community, whether owned by the Association or not, or Owner of a Home or that person's spouse or cohabitant or any other applicable definition of an Owner in the statutory language or any visitor or Guest of the property or Lessee/Tenant that may be instituted for damages resulting from bodily injury to the Member, Owner, Owner's spouse, cohabitant of the Owner, or Lessee/Tenant, occurring on the property of the Association or within the Community. Provided, however, that the Association cannot limit its liability for willful, wanton or grossly negligent acts of commission or omission on the part of the Association or its Trustees or any subdivision thereof or any agents thereof as required by the applicable provision of New Jersey law. If any provision of this section shall be declared invalid it shall not invalidate the entire article of the By-Law.

This is not an indemnification by the Association to any member of the Association or owner of property of the Association who shall be adjudicated by a court of law as liable for damages arising from any such action for bodily injury.

SECTION 2 **Miscellaneous: Indemnification of Officers, Trustees, Employees, Volunteers, Staff Members, and Committee Persons – Past and Present**

The Association shall indemnify with an adequate insurance policy every officer, Trustee, employee, volunteer, staff member, and committee person, past and present, their heirs, executors, and administrators against all loss, costs, and expenses, including counsel fees, reasonably incurred by them in connection with any action, suit, or proceeding to which they may be made a part by reason of their being or having held such position in the Association except as to matters as to which they shall be finally adjudged in such action, suit, or proceedings to be liable for gross negligence or willful misconduct. In the event of a settlement, indemnification shall 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 in the performance of their duty in such office or position in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such officer, Trustee, employee, volunteer, staff member or committee person past and present may be entitled.

All liability, loss, damage, cost, and expenses incurred or suffered by the Association by reason of or arising out of, or in connection with the foregoing indemnification provision shall be treated by the Association as common expenses, provided, however, that nothing in this Article contained shall be deemed to obligate the Association to indemnify any owner of a Home, who is

or has been an officer, Trustee, employee, volunteer, staff member, or committee person, past and present of the Association, with respect to any duties or obligations assumed or liabilities incurred by them under and by virtue of their membership in the Association or as an owner of a Home. The Board of Trustees is authorized to secure Directors and Officers Liability Insurance covering all officers, Trustees, employees, volunteers, staff members, and committee persons, past and present.

SECTION 3 **Reimbursement by Members:**

Each Member and/or Owner shall be obligated to reimburse the Association for any expenses incurred by it in repairing or replacing any part or parts of the Common Property damaged by his negligence or by the negligence of his residents, guests, or tenants within one (1) month of the receipt of the Association's statement thereof.

SECTION 4 **Non-transferability of Membership:**

Membership in the Association is non-transferable and ceases upon the sale of a Home and any attempt to transfer shall be null and void.

ARTICLE XIV
AMENDMENTS AND CONFLICTS

SECTION 1 **Amendments to these By-Laws:**

These By-Laws may be altered, repealed, or amended or new By-Laws may be adapted at any time after the date hereof by a majority vote by members in good standing once quorum is attained at any meeting of the members established for such purpose where previous written notice shall have been provided to each member.

SECTION 2 **Prohibited Amendments, Alterations, Repeals:**

Despite the foregoing, the membership provisions may not be changed or altered in any manner, and the obligation or the proportionate responsibility for the payment of Common Expenses or the exemption therefrom may not be changed by reason of any such amendment or repeal.

There shall be no amendment or change made to these approved By-Laws which would affect zoning, site plan consideration, or any other item which is within the jurisdiction or right of review by the Brick Township Planning Board or any other municipal agency without first obtaining approval, in writing, by said Planning Board or any other municipal agency.

SECTION 3 **Recording:**

No amendment, repeal, or new By-Law shall be effective until it has been recorded in the Office of the Ocean County Clerk.