

A201200049848

May 22, 2012 2:16 PM  
Julie L. Voorhies,  
Marion County Recorder



Pages: 24

Fee: \$90.50  
By: KDB

(24)  
KB

**Cross-Reference:**

Briarbrook Village, Section 1 (Plat), Instrument # 1997-0101321  
Briarbrook Village, Section 2 (Plat), Instrument # 2001-0118696  
Briarbrook Village, Section 3 (Plat), Instrument # 1999-0091399  
Briarbrook Village, Declaration of Covenants, Instrument # 1997-0101319  
Briarbrook Village, Plat Covenants, Section 1, Instrument # 1997-0101320  
Briarbrook Village, Plat Covenants, Section 2, Instrument # 2001-0118695  
Briarbrook Village, Plat Covenants, Section 3, Instrument # 1999-0091400

**REVISED AND RESTATED**

**CODE OF BYLAWS**

**for**

**BRIARBROOK VILLAGE COMMUNITY ASSOCIATION, INC.**

COMES NOW the Briarbrook Village Community Association, Inc., by its Board of Directors, on this 8 day of November, 20 11, and states as follows:

**WITNESSETH THAT:**

**WHEREAS**, the residential community in Marion County, Indiana commonly known as Briarbrook Village was established upon the recording of certain Plats and other documents with the Office of the Recorder for Marion County, Indiana; and

**WHEREAS**, the Plat for Briarbrook Village, Section 1, was recorded with the Office of the Marion County Recorder on July 22, 1997, as **Instrument # 1997-0101321**; and

**WHEREAS**, the Plat for Briarbrook Village, Section 2, was recorded with the Office of the Marion County Recorder on July 11, 2001, as **Instrument # 2001-0118696**; and

**WHEREAS**, the Plat for Briarbrook Village, Section 3, was recorded with the Office of the Marion County Recorder on May 11, 1999, as **Instrument # 1999-0091399**; and

**WHEREAS**, the Declaration of Covenants, Conditions and Restrictions for Briarbrook Village was recorded with the Office of the Marion County Recorder on July 22, 1997, as

**Instrument # 1997-0101319**; the First Supplement to the Declaration of Covenants, Conditions and Restrictions for Briarbrook Village was recorded with the Office of the Marion County Recorder on May 11, 1999, as **Instrument # 1999-91398**; the Second Supplement to the Declaration of Covenants, Conditions and Restrictions for Briarbrook Village was recorded with the Office of the Marion County Recorder on July 9, 2001, as **Instrument # 2001-0118694**; (collectively the “Declaration”); and

**WHEREAS**, the Plat Covenants and Restrictions for Briarbrook Village, Section 1, was recorded with the Office of the Marion County Recorder on July 22, 1997, as **Instrument # 1997-0101320**; the Plat Covenants and Restrictions for Briarbrook Village, Section 2, was recorded with the Office of the Marion County Recorder on July 11, 2001, as **Instrument # 2001-0118695**; and the Plat Covenants and Restrictions for Briarbrook Village, Section 3, was recorded with the Office of the Marion County Recorder on May 11, 1999, as **Instrument # 1999-91400**; (collectively the “Plat Covenants”); and

**WHEREAS**, said Declarations state that by taking a deed to any Lot as set forth on the above listed Plats for the Briarbrook Village development, each owner becomes a mandatory member of the subdivision’s homeowner’s association known as Briarbrook Village Community Association, Inc. (“Association”), an Indiana nonprofit corporation; and

**WHEREAS**, the Association was incorporated pursuant to the above listed Declarations as a non-profit corporation pursuant to Articles of Incorporation (“Articles”) filed with, and approved by, the Indiana Secretary of State on July 31, 1997; and

**WHEREAS**, the Association’s Initial Board of Director(s) adopted a Code of Bylaws (“Bylaws”) to provide for the administration of the Association; and

**WHEREAS**, the Bylaws, Article XIII, Section 1, states that the Bylaws may be amended at a regular or special meeting of the members by a vote of a majority of a quorum of members present in person or by proxy; and

**WHEREAS**, pursuant to the authority granted to the Association by the Bylaws, the members of the Association desire to adopt this Revised and Restated Code of Bylaws to replace the current Bylaws; and

**WHEREFORE**, the following Revised and Restated Code of Bylaws is hereby approved and adopted by a majority vote of a quorum of the members present at a meeting of the members held on \_\_\_\_\_, 2011. This Revised and Restated Code of Bylaws does not conflict in any manner with any provision contained in the Declaration or the Articles of Incorporation, and it is the intention of the Association that this Revised and Restated Code of Bylaws shall replace all formerly adopted Bylaws and any amendments thereto.

**[End of Recitals]**

# REVISED AND RESTATED

## CODE OF BY-LAWS

for

### BRIARBROOK VILLAGE COMMUNITY ASSOCIATION, INC.

#### ARTICLE I

##### Identification

**Section 1. Name.** The name of the corporation is “Briarbrook Village Community Association, Inc.” (also referred to as “Corporation” or “Association”).

**Section 2. Principal Office and Resident Agent.** The name and post office address of the registered office of the Association is: Briarbrook Village Community Association, Inc., P.O. Box 361140, Indianapolis, IN 46236-1140, or as updated from time to time with the Indiana Secretary of State’s Office.

The registered agent of the corporation is currently: Scott A. Tanner, Tanner Law Group, 6745 Gray Road, Suite H, Indianapolis, IN 46237. However, it should be noted that the registered agent may be a member of the Board of Directors, a hired management agent, or legal counsel and can potentially change from year to year. Therefore, the current registered agent of the Association may be determined through the most recent annual business entity report filed with the Indiana Secretary of State’s office.

Until the Board of Directors otherwise determines, the registered office of the Association shall be the registered place of business of the Association, but such registered office may be changed from time to time by the Board of Directors in the manner provided by law and need not be identical to the registered place of business of the Association.

#### ARTICLE II

##### Definitions

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

**Section 2. “Articles of Incorporation”** or “Articles” means the Articles of Incorporation of the Corporation filed with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended from time to time.

**Section 3.** “Association” or “Corporation” shall mean and refer to Briarbrook Village Community Association, Inc.

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

**Section 5.** “Bylaws” means the most current Code of Bylaws, including any amendments or revisions, adopted by the Association.

**Section 6.** “Declarant” or “Developer” means Davis Homes, LLC, an Indiana limited liability company, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Developer under the Declaration.

**Section 7.** “Declaration” shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for Briarbrook Village, recorded with the Office of the Marion County Recorder on July 22, 1997, as **Instrument # 1997-0101319**, and all subsequent amendments thereto.

**Section 8.** “Director” means a member of the Board of Directors, elected or appointed in accordance with these Bylaws.

**Section 9.** “Owner” also referred to as “Member” or “Lot Owner”, means the record owner, whether one or more persons or entities, of fee simple title to any lot, including contract sellers, but excluding for all purposes those persons or entities having an interest merely as security for the performance of an obligation unless specifically indicated to the contrary.

**Section 10.** “Property”, “Properties”, “Real Estate” “Development” and “Tract” shall mean and refer to the real estate described in the Declaration, identified in the exhibits attached to the Declaration, and/or set forth on the various recorded Plats of the Development, and any property subsequently annexed thereto pursuant to the Declaration.

**Section 11.** All other terms used in these Bylaws not set forth herein are to be interpreted as defined and used in the Declaration.

### ARTICLE III

#### Membership, Meetings, and Voting Rights

**Section 1. Membership:** Reference is hereby made to the Declaration and the Articles which sets forth terms, provisions, and conditions governing and relating to membership in the Association, transfer of membership and voting rights of classes of Members, all of which terms, provisions and conditions are incorporated herein by reference.

**Section 2. Quorum and Adjournments:** At any meeting of the membership, unless otherwise stated in these Bylaws or in the Declaration, the presence of Members, in person or by proxy, entitled to cast ten percent (10%) of the total number of valid and eligible Owner votes shall constitute a quorum. For purposes of this section, the term “eligible” means any Owner whose privileges are not suspended for any reason as set forth in the Declaration, Articles or these Bylaws. If a Member has had his voting rights suspended pursuant to the Declaration, Articles or these Bylaws, that vote is not considered a valid or eligible vote toward calculating quorum requirements. After a Member’s vote is represented, either in person or by proxy, for any purpose at a meeting, the vote will be considered present for quorum purposes

for the remainder of the meeting and for any adjournment of that meeting. Except as otherwise provided in the Declaration, Articles or these Bylaws, each question or action will be deemed passed if approved by a simple majority of the eligible votes cast by the Members present, in person or by proxy, at a meeting at which a quorum is present.

In the event a quorum is not present at any meeting called under authority of these Bylaws, that meeting may be adjourned to another date not more than sixty (60) days later. At this subsequent meeting, or meetings, the quorum will drop to five percent (5%) of the total number of valid and eligible Owner votes.

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

- A. **Place.** Meetings of the Members are to be held in Marion County, Indiana, at a place selected by the Board of Directors of the Association.
- B. **Annual Meeting.** The Board of Directors of the Association will set a date for the Association's Annual Meeting to be held each year. The only limitation to setting the date for the Annual Meeting is that the Annual Meeting must be held no more than fifteen (15) months after the previous annual meeting. However, the specific date, time and place of the Annual Meeting are to be determined by the Board of Directors. At each Annual Meeting, the Members will conduct director elections and transact any other Association business to be properly addressed at the meeting.

- C. **Special Meetings.** A Special Meeting of the Lot Owners may be called by: a) the President; b) resolution approved by a majority of the Board of Directors; or c) by written petition signed by at least ten percent (10%) of the Lot Owners. The petition must be presented to the President or Secretary of the Association and must state the purpose(s) for which the Special Meeting is to be called.

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

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

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

Notices of any meeting may be mailed by first class U.S. Mail. Notices of meetings may also be hand-delivered to an owner's residence. If the owner consents to electronic service, then notice of meetings may be provided to owners by email or postings on the Association's website, if one.

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

- E. **Order of Business.** The order of business at meetings of the members shall, to the extent applicable, be as follows:

1. Call to Order.
2. Reading of minutes of preceding meeting.
3. Reports of officers.
4. Reports of committees.
5. Treasurer's Report and review of Annual Budget (if an annual meeting).
6. Election of director(s) (if an annual meeting).
7. Unfinished business.
8. New business.
9. Adjournment.

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

- A. **Voting Rights.** Unless otherwise suspended, each Lot is entitled to cast one (1) vote on each issue properly brought before the membership. In the event any Lot is owned by more than one person, the owners must decide among themselves which owner is entitled to vote at a meeting of the members. In the event the lot is owned by a corporation or other entity, that entity may appoint a representative to cast the vote(s) for the lot.

- B. **Proxies.** A member may vote either in person or by his duly appointed proxy. Where a member's vote is by proxy, the member must designate his proxy in writing and deliver it to the Secretary of the Corporation or any other officer or agent of the Association authorized to tabulate votes. The proxy is effective once it is received by the Association.

A proxy must contain the member's printed name, address or Lot number, the member's signature, and the date the proxy is executed (signed). A proxy is only valid for eleven (11) months from the date of its execution unless a longer or shorter period of validity is expressly set forth in the proxy. A proxy may be revoked in writing by the member prior to being exercised or by the member's personal attendance at the meeting where the vote is to be taken.

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

- C. **Majority Required.** Except as otherwise provided in the Declaration, Articles, these Bylaws, or Indiana law, each question or action voted upon at any member meeting will be deemed passed if approved by a simple majority of the eligible votes cast by the members present, in person or by proxy, at the meeting at which a quorum is present.

- D. **Suspension of Voting Rights.** No member shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due to the Association shall be eligible to vote, either in person or by proxy.

For purposes of this provision, the thirty (30) day period begins on the first day of the fiscal year or the due date of the assessment as set by the Board of Directors pursuant to its authority as set forth in the Declaration, whichever is later in time. If the amount due to the

Association is for an obligation other than assessments, such as reimbursement for a covenant violation or court judgment, then the thirty (30) day period shall start on the date the amount became due.

The term "payment" means the payment of all amounts due to the Association, including any assessments, collection fees, interest, late fees, attorney fees, court costs, or other sums that are owed to the Association. As a result, if any owner is paying the Association on a payment plan or agreement, and that payment arrangement does not pay the entire amount due to the Association within thirty (30) days of becoming due, then that owner's voting rights will stay suspended until the entire amount due to the Association is paid in full.

In addition, payment of delinquent accounts by any method other than cash at a meeting where a vote will be held does not end any suspension under this provision until the funds from the payment are actually received by the Association. The Board of Directors is free to adopt additional rules regarding the suspension of voting rights as they deem necessary or appropriate for the failure of an owner to pay any sums owed to the Association.

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

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

Approval by written ballot is only valid if:

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

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

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

If a meeting is to be held, then ballots may be mailed or personally delivered to the Association's registered office prior to the meeting date; however, unless otherwise stated on the ballot, all ballots cast by owners NOT attending the meeting must be RECEIVED at the Association's registered office by the end of business at least three (3) business days prior to the date of the meeting in order to be counted. Unless otherwise stated on the ballot, any ballots received less than three (3) business days prior to the meeting date will not be counted.

If a meeting is NOT to be held, then owners must mail or personally deliver their ballot to the Association's registered office by the due date stated on the ballot. Any ballots RECEIVED after the due date will not be counted.

Only official ballots sent to the owners by the Association will be accepted. Unofficial ballots will not be counted. Each owner must fully fill out the ballot, print their name and address and sign the ballot. The Board of Directors may adopt additional voting procedures for submitting and processing ballots.

If an owner signs or submits more than one ballot, the latest in time, if possible to determine, is considered to be valid. However, if an owner signs or submits more than one ballot, and it is not possible to determine which ballot is to be used, the Board may reject all ballots submitted by that owner.

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

## **ARTICLE IV**

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

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

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

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

**Section 2. Election.** Voting on each position for the Board of Directors shall be by paper ballot containing the signature, printed name and address of the Owner casting the ballot. Written balloting may be waived by proper motion at the annual meeting and voting conducted by a voice vote or show of hands in circumstances where the number of nominees does not exceed the number of Board positions open for election (i.e. 2 nominees for 2 open directorships).

Each Owner, or their proxy, may cast the total number of votes to which he is entitled to cast for as many nominees as are to be elected; however, cumulative voting shall not be allowed. Those persons receiving the highest number of votes shall be elected.

At any director election where the terms of those directors being elected are to be staggered, the highest vote recipient shall be elected to the longest term, the second highest vote recipient shall be elected to the second longest term, and so on until all director positions being elected are filled. If there is a tie for directorship positions of differing term lengths (i.e. two (2) persons both receive fifteen (15) votes, but one (1) is to serve a two (2) year term and one (1) is to serve a one (1) year term), the directors may agree to which term each will serve without the need for a new run-off vote. If the directors cannot resolve the term dispute by agreement, then the presiding officer shall have the sole discretion to decide the issue by either: 1) conducting a run-off ballot vote by the members; 2) draw from a hat; or 3) the flip of a coin.

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

**Section 3. Conducting Elections by Ballot.** The election of directors may be conducted by ballot so that owners may select their nominees and send in their votes prior to the annual or special meeting. If the number of written nominations received by the Association before the deadline date



exceeds the number of open board positions to be filled at the annual meeting, then a ballot will be mailed to each owner for voting on new board members. *If the election of directors is conducted by ballot voting, then NO write-in nominations or nominations from the floor will be accepted so everyone has a chance to vote on the same list of candidates.*

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

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

## ARTICLE V

### Board of Directors

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

(a). **Number.** The affairs of the Association shall be governed and managed by the Board of Directors (collectively called the “Board” or “Directors” and individually called “Director”). The Board of Directors will be composed of five (5) persons, with the minimum number of Directors being three (3) and the maximum number being seven (7). The exact number of Directors may be increased or decreased, as permitted by law, by resolution of the Board of Directors. If the number of directors currently serving changes due to the resignation or removal of directors, or if an insufficient number of members volunteer to fill all possible Board positions, the Board shall continue to function with the remaining number of directors until those vacancies are filled so long as there are at least three (3) directors serving.

(b). **Qualifications.** A director must be an owner who maintains his primary place of residence in the Briarbrook Village community and does not have his membership rights in the Association suspended for any reason as set forth in the Declaration, Articles or these Bylaws. No Lot may be represented by more than one person or representative on the Board of Directors at the same time.

In addition, and in a display of honesty and integrity to the members of the Briarbrook Village community, all persons elected to serve as a Director must sign a Director’s Statement of Conduct adopted by the Board of Directors and attached as “Addendum 1” to these Bylaws. This Statement of Conduct will govern the conduct and activities of Board members. Any person elected or appointed to serve on the Board of Directors who refuses to sign the Statement of Conduct shall not be eligible to serve as a Director.

(c). **Term of Office Generally.** The Board of Directors will serve their terms on a staggered basis as provided by law, with approximately one-third (1/3) of the Board being open for election each year. Therefore, at the first Annual Meeting following adoption of these bylaws, two (2) directors will be elected to serve three (3) year terms, two (2) directors will be elected to serve two (2) year terms, and one (1) director will be elected to serve a one (1) year term. At all director elections thereafter, directors will be elected to serve a three (3) year term. All directors shall serve their full term and/or until their respective successors are properly elected and qualified.

In the event that the number of Directors is increased or decreased by resolution of the Board, the election terms, or rotation, of said Directors shall be determined by the Board at the time the increase or

decrease is approved, so long as the election of Directors continues to be staggered and approximately one-third (1/3) of the Board is open for election each year. If multiple directors are being appointed by the Board to fill staggered Board vacancies, then the Board shall determine which appointee shall serve each respective staggered term.

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

(a). **Vacancies.** Any vacancy that occurs on the Board of Directors due to the death, resignation, or removal of a director will be filled by a new appointee approved by a majority vote of the remaining Directors, and the appointee will serve the remaining term of the vacant directorship. However, if a vacancy is caused by a Director being removed from the Board by a vote of the membership at a special meeting called for that purpose, then a majority of the members in attendance at that special meeting must select a replacement(s) to fill the position(s) of the removed Director(s). Any Director elected by the members to fill a vacancy on the Board will serve the unexpired portion of the vacant directorship.

(b). **Removal.** Any Director may be removed from the Board of Directors, with or without cause, by a majority vote of the members of the Corporation.

Pursuant to Indiana Code 23-17-12-10, as may be amended or re-codified from time to time, and the Articles, the Board of Directors also has the right to remove a Director from the Board “for cause” by a majority vote of the remaining Board members.

For purposes of this provision, an act that constitutes “for cause” includes, but is not limited to: a) failing to attend three (3) or more consecutive meetings of the Board of Directors; b) becoming ineligible to serve on the Board pursuant to any terms set forth in the Declaration, Articles or these Bylaws; c) acts of fraud, theft, deception, or criminal behavior; d) violation of any provisions of the Directors Statement of Conduct; e) breach or disclosure of confidential Board or owner information or discussions to person(s) not on the Board; or f) any other actions not authorized or ratified by the Board which hinder or bypass the authority of the Board to act as a whole.

Determination of whether “for cause” has been sufficiently established to justify removal of a Director is left to the sole discretion of the members or the remaining Directors. The vacancy of a Director removed by the members at a special meeting or a vacancy of a directorship due to a Director being removed by a vote of the Board shall be filled pursuant to the vacancy provisions within these Bylaws.

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

The Board shall fulfill these duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar conditions, and in a manner the Board believes to be in the best interest of the Association. The availability of funds, the unforeseen or unexpected nature of expenses caused by natural, administrative, or regulatory reasons, or any other factor or factors which may hinder or prevent the Board from taking action to fulfill any of these duties shall be considered in determining the reasonableness of the Board’s actions or failure to provide certain services or maintenance as provided herein.

The Board may employ a managing agent upon such terms as the Board shall find, in its discretion, reasonable and customary. The managing agent shall assist the Board in carrying out its duties, which include, but are not limited to:

- (a) maintenance, repair and replacement of the Common Areas, unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Association, the Board or any managing agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;
- (b) landscaping, painting, decoration, furnishing, and maintenance and upkeep of, the Common Areas;
- (d) assessment and collection from the Owners of the Owners' respective shares of the Common Expenses;
- (e) preparation of the annual budget, a copy of which will be mailed or delivered to each Owner;
- (f) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year;
- (g) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Areas and the business and affairs of the Association, specifically itemizing the Common Expenses;
- (h) procuring and maintaining for the benefit of the Association, the Owners, any managing agent and the Board the insurance coverage required under the Declaration and such other insurance coverage as the Board, in its sole discretion, may deem necessary or advisable;
- (i) paying taxes and assessments assessed against and payable with respect to the Common Areas and paying any other necessary expenses and costs in connection with the Common Areas;
- (j) enforcing the covenants, restrictions, bylaws and rules and regulations in the Declaration, Articles, Bylaws or adopted rules and regulations;
- (k) all other duties and obligations imposed upon the Association or the Board under the Declaration, Articles, Bylaws or the Act.

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

- (a) employ a managing agent to assist the Board in performing its duties;
- (b) purchase, lease or otherwise obtain for the Association, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
- (c) employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;
- (d) employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas, and to perform all other maintenance, upkeep, repair and replacement duties of the Association and the Board;
- (e) include the costs of performing all of its functions, duties and obligations as Common Expenses and to pay all such costs there from;
- (f) open and maintain a bank account or accounts in the name of the Association;
- (g) create, adopt, revise, amend or alter from time to time such additional rules and regulations with respect to use, occupancy, operation, enjoyment, and architectural additions or modifications of the Real Estate, including the individual lots, streets (whether public or private), and the Common Areas, said rules and regulations being in addition to the rules and restrictions set forth in the Declaration, as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such

- additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners;
- (h) take any and all appropriate action, including legal action, if necessary, to enforce or gain compliance by all Owners of the provisions, restrictions or requirements within Declaration, Articles, Bylaws, or rules and regulations of the Association;
  - (i) grant to such public or private companies, entities or bodies as the Board may approve, such easements as may be necessary to provide the Lots, Dwelling Units and Common Areas with facilities for utility and similar services, including but not limited to cable television facilities and service; provided that such easements are located within or are co-extensive with any one or more utility easements, maintenance and access easements, landscape and maintenance easements, or Common Areas shown upon, and identified as such on, or provided for in, any subdivision plat of the Development, whether such plat is heretofore or hereafter recorded.

**Section 5. Annual Meeting.** The Board of Directors shall meet annually, without notice, immediately following, and at the same place as, the annual meeting of the Voting Members.

**Section 6. Regular Meetings.** Regular meetings of the Board of Directors shall be held at such regular intervals, without notice, at such place and hour as may be determined from time to time by resolution of the Board of Directors. If a regular meeting of the Board is to be held on a date other than a regularly scheduled meeting date previously set by the board, then notice of the meeting must be provided to each director at least forty-eight (48) hours prior to the meeting.

**Section 7. Special Meetings.** Special meetings of the Board of Directors may be called by the President or by a majority of the members of the Board of Directors, at any place within or without the State of Indiana, upon twenty-four (24) hours notice, specifying the time, place and general purposes of the meeting, given to each Director personally, by telephone or email; or notice may be given by U.S. Mail if sent, via first class, postage pre-paid, mail at least three (3) days before such meeting.

**Section 8. Notice and Waiver of Notice.** Notices of Board meetings shall be given to each Director as set forth in these Bylaws. A Director waives formal meeting notice requirements by attending the meeting or by voting in writing or email on any issue addressed at a meeting of the Board.

**Section 9. Quorum.** A majority of the entire Board of Directors then qualified and acting constitutes a quorum for the purpose of transacting business, except for filling vacancies in the Board of Directors which shall require action by a majority of the remaining Directors. Any act of the majority of the Directors present at a meeting at which a quorum shall be present shall be the act of the Board unless otherwise provided for by law or by these Bylaws. A majority of the Directors present may adjourn any meeting from time to time. Notice of an adjourned meeting need not be given other than by announcement at the time of adjournment.

**Section 10. Attendance at Board Meeting.** Any board member may participate in a board meeting telephonically, such as a conference call, or electronically, such as internet video transmission, or other internet or electronic communication by which all directors participating may hear each other during the meeting.

**Section 11. Action Taken Without a Meeting.** Any action required or permitted to be taken at a meeting of the Board of Directors or any committee may be taken without a meeting if the action is approved by a majority of the entire Board in writing or via email. If an action is approved via writing or email, evidence of the written or email approval must be made a part of the corporate Board minutes or

records. However, failure to keep documentation of the approval does not automatically invalidate the decision.

**Section 12. Compensation.** No Director shall receive compensation for any service he may render to the Association as such director. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties, and any Director may be paid and compensated for services rendered to the Association in a capacity other than as a director.

**Section 13. Non-Liability of Directors.** The Directors shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Association.

**Section 14. Additional Indemnity of Directors.** The Association shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

**Section 15. Bond.** The Board of Directors may provide surety bonds (or an equivalent form of coverage) and may require the managing agent (if any), the treasurer of the Association, and such other officers as the Board deems necessary, to provide surety bonds (or an equivalent form of coverage), indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful, abstraction, willful misapplication and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond (or equivalent form of coverage) shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds (or equivalent form of coverage) shall be a Common Expense.

## ARTICLE VI

### Officers

**Section 1. In General.** The officers of the Corporation must be members of the Board of Directors and may consist of a President, a Vice President, a Secretary, a Treasurer, and such other officers or assistant officers as the Board shall from time to time create and so appoint. Any two (2) or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

**Section 2. Election and Terms.** Each officer will be appointed by the Board of Directors at the Board's annual meeting, and shall hold that officer position until: a) the next annual meeting of the Board; b) the expiration of the director's term on the Board of Directors; or c) the director's removal or resignation from the Board, whichever occurs first.

**Section 3. Vacancies and Removal.** Whenever any vacancy shall occur in any office by death, resignation, increase in the number of officers of the Corporation, or otherwise, the vacant office shall be filled by the Board of Directors, and the officer so elected shall hold office until the next annual meeting of the Board or until his or her successor is duly elected and appointed.

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

**Section 4. President.** The President shall be the chief executive officer of the Corporation; shall preside at all meetings of Voting Members and of the Board of Directors; shall have general and active supervision, control, and management of the affairs and business of the Corporation, subject to the orders and resolutions of the Board; shall have general supervision and direction of all officers, agents and employees of the Corporation; shall see that all orders and resolutions of the Board are carried into effect; and in general shall exercise all powers and perform all duties incident to such office and such other powers and duties as may from time to time be assigned to him by the Board.

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

**Section 5. Vice-President.** The Vice-President shall act in the place or stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by him the Board of Directors or as are delegated to him by the President.

**Section 6. Secretary.** The Secretary shall attend meetings of the Board and of the Voting Members and shall act as Secretary of such meetings; shall give or cause to be given all notices provided for in these Bylaws or required by law; shall record all votes and minutes of all proceedings of the meetings of Voting Members and the Board in a book or books to be kept for that purpose; shall be custodian of the records of the Corporation; shall have charge of the list of Voting Members; and in general shall exercise all powers and perform all duties as may be from time to time assigned to him or her by the Board or by the President. The Secretary, or Board in the Secretary's absence, shall have the authority to appoint someone to serve as the Secretary's assistant for note/minute taking purposes at a meeting.

**Section 7. Treasurer.** The Treasurer shall keep correct and complete records of account showing accurately at all times the financial condition of the Corporation; shall be the custodian of the corporate funds and securities; shall immediately deposit, in the name and to the credit of the Corporation, all moneys and other valuable effects of the Corporation in such depositories as may be designate by the Board of Directors; shall disburse the funds of the Corporation as may be ordered by the Board; and in general, shall exercise all powers and perform all duties customarily incident to such office and such other powers and duties as may from time to time be assigned to him or her by the Board or the President.

**Section 8. Special Appointments.** The Board of Directors may appoint such other officers and/or assistant officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

## ARTICLE VII

### **Committees**

**Section 1. In General.** The Board of Directors, by resolution adopted by a majority of the Board of Directors, may create or appoint one (1) or more various committees to assist the Board in carrying out the purposes of the Association. Members of committees may, but need not, be members of the Board of Directors. Each committee, to the extent provided in such resolution or as authorized pursuant to the Act, Articles, Declaration, or these Bylaws, shall have and may exercise such authority of the Board of Directors as shall be expressly delegated by the Board from time to time; except that no such committee shall have the authority of the Board of Directors in reference to:

- a. Adopt, amend or repeal the Articles of Incorporation;
- b. Approve or recommend a plan of merger or consolidation of the corporation not requiring Member approval;
- c. Approve or recommend to the Members the sale, pledge, lease, transfer or exchange of all or substantially all of the assets of the Corporation;
- d. Approve or recommend to the Members the dissolution of the Corporation or a revocation thereof;
- e. Adopt, amend, or repeal the Bylaws of the Corporation;
- f. Fill vacancies on the Board of Directors or committees;
- g. Elect, appoint or remove Directors or members of committees;
- h. Fix the compensation of any member of such committee; or
- i. Alter or repeal any resolution of the Board of Directors that by its terms provides that it shall not be so amendable or repealable.

A majority of all members of any such committee may determine its action and fix the time and place of its meetings, unless the Board of Directors shall otherwise provide. The Board of Directors shall have power at any time to change the number and members of any such committee, to fill vacancies and to discharge any such committee. The designation of such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon it or him by the Indiana Nonprofit Corporation Act of 1991, as amended.

## ARTICLE VIII

### Records of the Association

**Section 1. In General.** Current copies of the Declaration, the Articles, the Bylaws, rules and regulations, other corporate documents concerning the Real Estate or the Association and its operation required to be kept and made available for inspection shall be available for inspection by any member or other properly designated party at the principal office of the Association during reasonable business hours or under other reasonable circumstances, where copies of the same may be purchased at reasonable cost.

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

The Association reserves the right to require any member to request inspection of the accounts, books, records, financial statements, and other papers of the Association according to the requirements set forth under the Indiana Nonprofit Corporation Act of 1991, specifically Indiana Code 23-17-27 et seq., and any amendments or re-codification subsequently adopted thereto. The Association reserves the right to deny an owner access to any records that are not required to be opened for inspection under Indiana law, or if the Association determines the owner's request; a) was not made in good faith or for a proper purpose; b) the member fails to describes with reasonable particularity the purpose and the records the member desires to inspect; or c) the records requested are not directly connected to the stated purpose for the request.

## ARTICLE IX

### Execution of Instruments

**Section 1. Checks, Draft, etc.** All checks, drafts, bills of exchange or other orders for the payment of money, obligations, notes or other evidences of indebtedness of the Association shall be signed or endorsed by such officer or officers, employee or employees of the Association as shall from time to time be designated by the Board of Directors.

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

## ARTICLE X

### Assessments and Fiscal Year

**Section 1. Assessments.** Each Owner is obligated to pay to the Association annual and special assessments as more specifically described in the Declaration. The assessments are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid within thirty (30) days shall be delinquent.



If the assessment is not paid within thirty (30) days after the assessment falls due, the assessment shall bear interest from the date of delinquency at twelve percent (12%) per annum or the highest rate allowable under Indiana law, whichever is greater. In addition, the Association may impose reasonable late fees on all delinquencies. The Board shall have the right to determine the amount of the late fees, the time period before the late fees are imposed, the rate of the late fees (i.e. annually, monthly, etc.) and to make any other provisions for late fees and interest charges on late payments as the Board, in its sole discretion, deems appropriate. The Board may also adopt specific collection procedures to be used in collecting assessments and pursuing delinquent accounts.

If the Association incurs administrative fees or expenses as a result of collecting delinquent amounts, the Owner shall be personally obligated to reimburse the Association these fees.

If the Association employs legal counsel to pursue the collection of unpaid amounts owed to the Association, the Owner shall be personally obligated to pay any collection costs or expenses for the sending of collection letters or other correspondence or communication prior to the filing of legal action, or for the Association's attorney to take any other action in an attempt to collect the unpaid amounts.

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

In addition, an Owner who becomes more than thirty (30) days delinquent on any assessment or other payment due to the Association shall not be eligible to vote, either in person or by proxy; to be elected or serve on the Association's Board of Directors; or to use any of the Common Area facilities, if any, pursuant to the provisions set forth in the Declaration, Articles and/or these Bylaws.

**Section 2. Fiscal Year.** The fiscal year of the Association shall begin at the beginning of the first day of January in each calendar year and end at the close of the last day of December of the same calendar year.

## **ARTICLE XI**

### **Enforcement**

**Section 1. In General.** The provisions of the Declaration, Articles, Bylaws, and rules, regulations and architectural guidelines for Briarbrook Village, including amendments or modifications thereto, shall be binding and enforceable upon each and every Lot and Lot Owner in Briarbrook Village. For any violation of the Declaration, Articles, Bylaws, or rules, regulations or architectural guidelines adopted by the Board or the Architectural Committee, each owner in violation shall be subject to an action at law or in equity by the Association to enjoin the violation, or pursue any other relief or remedy as may be set forth in the Declaration, Articles, Bylaws or rules and regulations.

If the Association takes any action to enforce any provision or restriction in the Declaration, Articles, Bylaws, and rules, regulations and architectural guidelines of Briarbrook Village, including, but not limited to, the preparing and sending of violation letters, towing of vehicles, self-help or legal action filed in the courts, then the Association shall be entitled to reimbursement of all its costs and expenses, including, but not limited to reasonable attorney fees, administrative charges by a management agent, and court costs, of said enforcement activity or action from the party or parties in violation of said rule or regulation.

The foregoing remedies shall be in addition to, or supplement, any remedies of the Association identified in the Declaration, Articles or Bylaws, and may be used or applied to any enforcement activity

or action taken pursuant to any violation of the Declaration, Articles or Bylaws or any properly adopted rule or regulation.

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

## **ARTICLE XII**

### **Amendments**

**Section 1. Amendments.** The Board of Directors of the Association shall have power to make, alter, amend or repeal the Bylaws of the Association, by an affirmative vote of the majority of the members of the Board of Directors of the Association, except as otherwise provided in the Declaration.

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

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

## **ARTICLE XIII**

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

The provisions of the Indiana Nonprofit Corporation Act of 1991, as amended, applicable to any of the matters not herein specifically covered by these Bylaws, are hereby incorporated by reference in and made a part of these Bylaws.

**[End of Bylaws]**

The undersigned hereby certifies that this Revised and Restated Code of Bylaws for Briarbrook Village Community Association, Inc. was duly moved and passed by a majority vote of a quorum of the members present at a meeting of the members held on \_\_\_\_\_, 2011.

BRIARBROOK VILLAGE COMMUNITY ASSOCIATION, INC.

\_\_\_\_\_  
President

\_\_\_\_\_  
Date

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

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date

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

STATE OF INDIANA            )  
  )  
COUNTY OF MARION        )

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

Witness my hand and Notarial Seal of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Stamp:

\_\_\_\_\_  
Notary of Public -- Signature

\_\_\_\_\_  
Printed

*I hereby affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. --Scott A. Tanner*

\_\_\_\_\_  
This document was prepared by and should be returned to:  
Scott A. Tanner, TANNER LAW GROUP, 6745 Gray Road, Suite H, Indianapolis, IN 46237

## ADDENDUM #1

### *Briarbrook Village Community Association, Inc.*

#### *Board Member Statement of Conduct*

Dear Board Member:

Congratulations on your election or appointment to the Board of Directors for the Briarbrook Village Community Association. The purpose of this letter is to acquaint you with the standard of conduct that is expected of community association board members in Indiana. The law imposes certain legal obligations on all board members. Failure to fulfill these obligations could lead to a lawsuit against the Association, the Board, and even you personally. Chief among these obligations is what's called a "fiduciary duty" to the Association and its members. This means that you must perform your duties as a board member in good faith and with the degree of care that an ordinarily prudent person would use under similar circumstances, being at all times loyal to the Association and its best interests.

But, in practice, it gets a little more complicated than that. While it's impossible to review every possible situation you might face, here are some guidelines to follow. As a board member, you must:

1. **Act in the Association's best interests at all times.** Your decisions must be based on what's best for the Association *as a whole*. Making decisions or taking actions that put the interests of yourself, your friends, or your supporters above those of the Association or its members as a whole is a breach of your fiduciary duty to the Association.
2. **Act with care, including seeking advice from experts when appropriate.** When making decisions or taking actions, you must exercise the degree of care that an ordinarily prudent person would under the circumstances. Among other things, this means that if, for example, the board must make a decision involving an issue that no one on the board is an expert on, the board should consult an expert. This doesn't mean you should feel paralyzed to make a decision, but it does mean that you should exercise care in making certain decisions regarding issues that the average person would find it helpful or necessary to seek some input or advice from an expert or advisor before making a final decision, such as legal, accounting, construction or particular maintenance (such as fertilization chemicals) issues or matters.
3. **Act within the scope of your authority.** Your authority is defined in the Association's governing documents and by applicable Indiana and local law. It's important that you be familiar with the content of the Declaration, Bylaws and other governing documents of the Briarbrook Village community; and that you understand the scope of your authority in those documents and not exceed it. If a Board action violates the duly adopted Bylaws, Declaration, or other governing documents, or state or local laws, the Board may have breached its fiduciary duty and the action may have to be invalidated. Examples of this would be failing to comply with procedural requirements for community meetings and elections, or failing to enforce or comply with the restrictions or requirements in the Declaration. Therefore, it is very important that board members always act to make reasonable decisions that are consistent with Indiana and local laws, the Declaration, the Bylaws, and the other governing documents of the community. Likewise, board members should not act unilaterally or contrary to Board decisions, such as signing

contracts, approving architectural requests, or making other promises or agreements with vendors or other Owners without Board approval.

4. **Act in good faith.** Board members' motives must at all times be to further the legitimate best interests of the Association. If board members make decisions based on favoritism, discrimination, or malice – or make arbitrary decisions – they are breaching their fiduciary duty. This doesn't mean that the board can't create a rule that affects some members differently from the way it affects others, such as a no-pets rule or a parking rule. It just means that the decision to create the rule must be based on board members' honest judgment of what is best for the Association as a whole. This same guideline applies to enforcement of the covenants as well, meaning a board member should not seek to enforce the restrictions of the community selectively or in a personal or self-serving fashion.
5. **Act professionally.** Being a member of the Board requires you to behave and express yourself in a professional and businesslike manner. Remember that you are a representative of the Owners, and your behavior is a reflection on everyone you represent. Obviously, inappropriate language and personal attacks against other board members, Owners, managers or guests are not consistent with the best interests of the Association. Also, board members should attend meetings regularly. You were chosen to sit on the Board because of your experience, education and talents, and not attending meetings prevents the Board from using your valuable input to make decisions.

Additionally, if a board member has any perceived, potential or actual conflict of interest regarding any aspect of the business operations of the Association, this information must be disclosed to the Board immediately. An example of this would be a situation where a board member, or a relative or close friend, is directly involved with any vendor being used by the Association, such as the lawn maintenance company. This conflict of interest disclosure is required under the law, and failure to make a proper disclosure could open the board member up to personal liability surrounding the conflict.

The great thing about serving on a board is that each member is asked to bring his or her experience, knowledge and talents to the table and use them collectively for the benefit of the entire community. This doesn't mean every member needs to agree or have the same opinion of how the Association should handle a particular matter, but it does mean that each member should respect other points of view, seek to understand those differences, and ultimately follow the decision of the entire board, even if that decision is not in agreement with the individual member's views.

6. **Act to preserve confidentiality.** Remember, each board member may be entrusted with information that is private or personal in nature and should not be passed along to others who are not on the Board. Board members should always maintain the confidentiality of all legal, contractual, personnel, vendor and management matters involving the Association. Board members should also maintain the confidentiality of the personal lives of other board members, Association members, residents and management staff. Failing to keep confidential information private creates an enormous amount of potential liability for the Association, the members, and each individual board member. This doesn't mean that the Board should not discuss any Association matters with the residents, because you obviously need to let the members know what the Board is doing on their behalf. However, a safe approach to take on this issue is to not discuss specifics of confidential matters, but merely update the members in general terms. An example would be to tell members that there is a pending lawsuit involving an issue, and that the Association's legal counsel is providing guidance to the Board as it makes decisions during the litigation process, but not to disclose the terms of specific settlement offers or arguments being made by either side in the issue.

7. **Act as a Steward for the Community.** Board members have been elected to lead the community through its community Association. You have been entrusted to manage and make decisions that will impact the entire neighborhood. As a representative of the people, you should hold yourself up as an example to the other residents of the community by complying and following the provisions of the governing documents for the community. Board members should also not defame, slander, harass, threaten, or otherwise attempt to intimidate or ridicule any other board member, Association member, resident, or management staff member. Any action by a board member that fails to fall within this good steward guideline is acting outside the scope of the board member's authority, and as such, may be opening himself up to potential individual liability or removal from the Board.
8. **Avoid the following five common mistakes.** You'll have to use your best judgment in determining what your fiduciary duty requires of you in any specific situation. But there are five common mistakes that you should avoid:
  - Don't take *personal* advantage of business opportunities that should benefit the *entire* community.
  - Don't do business with the Association unless you disclose that fact and get the appropriate approval to do so.
  - Don't give preferential treatment to friends and supporters, or expect it for yourself from others.
  - Don't accept gifts from vendors or others doing business – or seeking to do business- with the association.
  - Don't make decisions on behalf of the Association based solely upon your personal goals or views, but make them based upon the desire of the residents and the benefit to the neighborhood as a whole. Dictators seldom have loyal and happy followers.

The Board has decided to adopt this Statement of Conduct to serve as a source of guidance for all board members and to be a reminder to each member of his or her responsibilities as a board member and a representative of the Owners in Briarbrook Village. Each board member should always keep in mind that they have been entrusted to act as a representative of the community by their neighbors. Therefore, every member of the Board is asked to sign this Statement of Conduct as your affirmation that you have read, understand and agree to follow these simple rules of conduct and ethical behavior. Your refusal to adopt and follow these rules of conduct shall act as a disqualification to serve on the Board of Directors.

You have undertaken an important job in the Briarbrook Village community, and we appreciate your service.

Thank you.

I hereby state that I have read this Statement of Conduct and understand these rules and what is expected of me as a board member of the Association.

I also state by my signature below that I agree to follow these rules of conduct, and that I understand my failure to abide by these rules of conduct may result in my removal from the Board of Directors of the Briarbrook Village Community Association, Inc.

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Date

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

*All Directors serving on the Briarbrook Village Community Association, Inc. Board of Directors shall sign a Statement of Conduct, which shall be maintained in the Association's records. This Statement of Conduct shall remain valid and in effect through the end of the Director's current term. If the Director is re-elected for a new term upon the expiration of his/her current term, then a new Statement of Conduct shall be signed by the Director for their new term of office.*

**[End of Statement of Conduct]**

The undersigned hereby certifies that this Revised and Restated Code of Bylaws for Briarbrook Village Community Association, Inc. was duly moved and passed by a majority vote of a quorum of the members present at a meeting of the members held on Nov. 8, 2011, 2011.

BRIARBROOK VILLAGE COMMUNITY ASSOCIATION, INC.

Susan Crouch  
President

11-8-2011  
Date

Susan Crouch  
Printed Name of Director

ATTEST:

Medeba Garth  
Secretary

11-8-2011  
Date

MEDEBA GARTH  
Printed Name of Director

STATE OF INDIANA )  
COUNTY OF MARION )

Before me a Notary Public in and for said County and State, personally appeared Susan Crouch and medeba Garth, the President and Secretary, respectively, of Briarbrook Village Community Association, Inc., who acknowledged execution of the foregoing Code of Bylaws for Briarbrook Village Community Association, Inc. and who, having been duly sworn, stated that the representations contained herein are true.

Witness my hand and Notarial Seal of this 8 day of November, 20 11.

Scott A. Tanner  
Notary of Public - Signature

Stamp:

Scott A. Tanner  
Printed

Scott A Tanner  
Notary Public Seal State of Indiana  
Johnson County  
My Commission Expires 11/18/12

*I hereby affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. -Scott A. Tanner*

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

**Scott A. Tanner, TANNER LAW GROUP, 6745 Gray Road, Suite H, Indianapolis, IN 46237**