

**BY-LAWS
Of
WINDING CREEK HOMEOWNERS ASSOCIATION, INC. of Tippecanoe County**

Article I - General

- 1.1 **Name**: The name of the Association shall be Winding Creek of Tippecanoe County Homeowners Association, Inc. (hereinafter sometimes referred to as the "Association").
- 1.2 **Principal Office**. The principal office of the Association in the State of Indiana shall be located in Tippecanoe County. The Association may have such other offices, as the Board of Directors may determine or as the affairs of the Association may require.
- 1.3 **Definitions**. The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Winding Creek filed in the office of land records of Tippecanoe County, Indiana (the "Declaration"), unless the context indicates otherwise.

Article II - Association, Membership, Meetings, Quorum, Voting, Proxies, Roster

- 2.1 **Membership**. The Association shall have one class of membership.
- 2.2 **Place of Meetings**. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the Board of Directors either within the Properties or as convenient thereto as possible and practical.
- 2.3 **Annual Meetings**. The first regular meeting of the Association each year shall be in the second quarter. Special meetings may be called as deemed necessary by the Board of Directors. Meetings shall be of the Voting Members. Subsequent additional regular meetings may be called but shall be set by the Board.
- 2.4 **Special Meetings**. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by at least 10% of the Voting members.
- 2.5 **Notice of Meetings**. (See Article VII).
- 2.6 **Waiver of Notice**. Waiver of notice of a meeting of the Voting Members shall be deemed the equivalent of proper notice. Any Voting Members may, in writing, waive such notice of any meeting of the Voting Members, either before or after such meeting. Attendance at a meeting by a Voting Member shall be deemed waiver by such Voting Member of notice of the time, date and place thereof, unless such Voting Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business

transacted unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

- 2.7 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Voting Members who are present at such meeting may adjourn the meeting to a time not less than ten nor more than 60 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Voting Members in the manner prescribed for regular meetings.

The Voting Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment.

- 2.8 Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association before the appointed time of each meeting of the members of the Association. Cumulative voting shall be permitted.
- 2.9 Majority Required. A majority of the votes of Members present (in person or by proxy) at a meeting at which a quorum is present shall be sufficient for the transaction of all business of the Association except on matters where a greater vote is required by the Declaration, the Articles of Incorporation, the By-Laws or by statute.
- 2.11 Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence of the Voting Members representing a majority of the total votes in the Association shall constitute a quorum (at least 20% + 1) at all meetings of the Association.
- 2.12 Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.
- 2.13 Roster of Members. The Association must maintain a roster of members and their last known mailing address, which shall be made available to members upon request and only used by members for a purpose related to the operation of the Association and which may not be sold, exchanged or otherwise transferred to any person.

ARTICLE III - Board of Directors, Number, Meetings

A. Composition and Selection:

- 3.1 **Governing Body; Composition.** The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. The directors shall be Members.
- 3.2 **Number of Directors.** The number of directors in the Association shall be not be less than three nor more than five, as provided in Section 3.5 below.
- 3.3 **Nomination of Directors.** Nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors and two or more Members.

The Nominating Committee shall be appointed by the Board of Directors not less than 30 days prior to each annual meeting of the Voting Members to serve a term of one year or until their successors are appointed, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of positions to be filled from each slate as provided in Section 3.4 below. Nominations shall also be permitted from the floor. All candidates shall have a reasonable time and opportunity to communicate their qualifications to the Voting Members and to solicit votes.

- 3.4 **Election and Term of Office.** Notwithstanding any other provision of these By-Laws:
- (a) The director elected by the Voting Members shall be elected for a term of two years.
 - (b) Two directors shall serve a term of two years and 1, 2 or three directors shall serve a term of one year, as such directors determine among themselves. Upon expiration of each director's term of office the voting Members shall elect a successor to serve a term of two years.

The candidate(s) receiving the most votes shall be elected. The directors elected by the voting Members shall hold office until their respective successors have been elected. Directors may be elected to serve any consecutive terms.

- 3.5 **Removal of Directors and Vacancies.** Any director elected by the Voting Members may be removed, with or without cause, by the vote of Voting Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a

successor shall be nominated by the Nominating Committee and elected by the Voting Members.

Any director elected by the Voting Members who has three consecutive unexcused absences from Board Meetings, or who is more than 30 days in delinquent in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term.

In the event of the death, disability resignation or removal of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting.

B. Meetings.

- 3.6 Organizational Meetings. The first meeting of the Board of Directors following each annual meeting of the membership shall be held within 30 days thereafter at such time and place the Board shall fix.
- 3.7 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place a majority of the directors shall determine, but at least four such meetings shall be held during the fiscal year with at least one per quarter. (See Article VII)
- 3.8 Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. (See Article VII).
- 3.9 Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.
- 3.10 Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of

directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice with/without a quorum.

- 3.12 Compensation. No director shall receive any compensation from the Association for acting as such unless approved by Voting Members representing a majority of the total votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors.
- 3.13 Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of meetings of the Board of Directors, recording all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.
- 3.14 Open Meetings. Subject to the provisions of Section 3.15, all meetings of the Board shall be open to all Voting Members, but a Voting Member other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Voting Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board of Directors and reconvene in executive session, excluding Voting Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.
- 3.15 Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by a majority of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

- 3.16 Powers. The Board of Directors shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these By-Laws, the Articles, and as provided by law. The Board may do or cause to be done all acts and things as are not by the Declaration, Articles, these By-Laws, or Indiana law directed to be done and exercised exclusively by the Voting Members. The board may, at its discretion, delegate any of the duties enumerated in 3.17 below, to a Manager or

employee, except for those duties specifically reserved for the Board in accordance with Indiana law and in accordance with the Article of Incorporation and the Declaration.

3.17 Duties. The duties of the Board shall include, without limitation;

- (a) Preparation and adoption of annual budgets and establishing each Owner's share of the Common Expenses,
- (b) Levying and collecting assessments from the Owners to fund the Common Expenses,
- (c) Providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility.
- (d) Designating, hiring and dismissing the personnel, necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and materials to be used by such personnel in the performance of their duties,
- (e) depositing all funds received on behalf of the Association in a bank depository approved by the Board of Directors, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;
- (f) making and amending rules and regulations;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the common area in accordance with the Declaration and these By-Laws;
- (i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules adopted by it, when legal proceedings are determined by the Board to be in the best interests of the Association, fiscally and otherwise and after any and all other remedies have been examined and deemed inadequate.
- (j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (k) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;

- (l) keeping books with detailed accounts of the receipts and expenditures of the Association;
- (m) cooperate with members and prospective members and their respective agents or representatives in providing needed information or documents relating to the Association or to individual properties owned by the Association or by a member or members.
- (n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties;
- (o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association in accordance with Indiana law, and in accordance with the Articles of Incorporation and the Declaration; and
- (p) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration.

3.18 Management. The Board of Directors may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board of Directors may delegate such power as are necessary to perform the manager's assigned duties, but shall not delegate policy making authority to those duties set forth in Sections 3.17 (a) and 3.17 (i). The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

The Board of Directors shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

- 3.19 Accounts and Reports. The following management standards of performance shall be followed unless the Board determines or directs otherwise;
- (a) Accrual accounting, as defined by generally accepted accounting principles, shall be employed;
 - (b) Accounting and controls should conform to generally accepted accounting principles;
 - (c) Cash accounts of the Association shall not be commingled with any other accounts;

- (d) No remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods, or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association.
- (e) Any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;
- (f) Financial reports shall be prepared for the Association at least quarterly containing:
 - (i) an income statement reflecting all income and expenses activity for the preceding period on an accrual basis;
 - (ii) a statement reflecting all cash receipts and disbursements for the preceding period;
 - (iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
 - (iv) a balance sheet as of the last day of the preceding period, and
 - (v) a delinquency report listing all Owners who are delinquent in paying any assessments. Details of such a report, including the names of members delinquent in their obligations to the Association shall remain strictly confidential and the report shall not be reprinted, discussed or otherwise communicated outside of the Board of Directors during a meeting of said Directors in their official capacity, except as may be necessary to transact the business of the Association.
- (g) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year.

3.20 Borrowing. The Association shall have the power to borrow money for any legal purpose; provided the Board shall obtain Voting Member approval in the same manner provided in Section 10.6 of the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 10% of the budgeted gross expenses of the Association for that fiscal year.

3.21 Rights of the Association. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements

with trusts, condominiums, cooperatives, or village and other owners or residents associations, both within and outside the Properties. Such agreements shall require the consent of a majority of the total number of directors of the Association.

- 3.22 **Enforcement.** In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable penalties for late payment of assessments, which penalties shall constitute a lien upon the Unit of the violator, and to suspend an Owner's right to vote or any person's right to use the Common Area for violation of any duty imposed under the Declaration, these By-Laws or any rules and regulations duly adopted hereunder, including without limitation failure to pay assessments, and to pursue all legal remedies to such violations available under law, provided, however, nothing herein shall authorize the Board to limit ingress and egress to or from a Unit. In addition, the Board may suspend any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charges owed to the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule shall not be deemed a waiver of the right of the Board to do thereafter.

ARTICLE IV - Officers

- 4.1 **Officers.** The officers of the Association shall be a President, Vice President, Secretary and Treasurer, or a combination Secretary/Treasurer. The President, Vice President, Secretary and Treasurer shall be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed by the Board of Directors. Such other officers may, but need not be members of the Board.
- 4.2 **Election and Term of Office.** The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Voting Members, as set forth in Article III.
- 4.3 **Removal and Vacancies.** Any officer may be removed by the Board of Directors whenever in its judgement the best interests of the Association will be served thereby. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.
- 4.4 **Powers and Duties.** The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

- 4.5 **Resignation.** Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.
- 4.6 **Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by other person or persons as may be designated by resolution of the Board of Directors.
- 4.7 **Compensation.** Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.12 hereof.

ARTICLE V - Committees

- 5.1 **General.** The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

ARTICLE VI - Miscellaneous

- 6.1 **Fiscal Year.** The fiscal year of the Association shall be set by resolution of the Board of Directors. In the absence of a resolution, the fiscal year shall be the calendar year.
- 6.2 **Parliamentary Rules.** Except as may be modified by Board resolution, **Robert's Rules of Order** (current edition) shall govern the conduct of Association proceedings when not in conflict with Indiana Law, the Articles of Incorporation, the Declaration, or these By-Laws.
- 6.3 **Conflicts.** If there are conflicts between the provisions of Indiana Law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Indiana Law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.
- 6.4 **Books and Records.**
- (a) **Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Declaration, By-Laws, and Articles of Incorporation, any amendments to the foregoing, the rules of the Association, the membership register, books of account, and the minutes of meetings of the Members, the Board and Committees. The Board shall

provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) Notice to be given to the custodian of the record
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.5 Notices. Unless otherwise provided in these By-Laws, all notices demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given:

- (a) If to a Member or Voting Member, at the physical or email address which the Member or Voting Member has designated in writing and filed with the Secretary or, if no address has been designated at the address of the Unit of such Member or Voting Member;
- (b) If to the Association, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or
- (c) If to the Board of Directors, at the email or physical address which the Board Member has designated in writing and filed with the Secretary or, if no address has been designated at the address of the Unit of such Board Member.

6.6 Amendment.

- (b) By Members Generally. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of voting Members representing 51% of the total votes in the Association.
- (c) Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon receipt and acknowledgement by the Board of Directors, unless a later effective date is specified therein.

If an Owner consents to any amendment to the Covenants or these By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

- (d) No amendment may remove, revoke, or modify any right or privilege of Developer without the written consent of Developer or the assignee of such right or privilege

ARTICLE VII – Communication to Membership

- 7.1 **Membership Meetings.** Written or printed notice stating the place, day, and hour of any meeting of the Voting Members along with a copy of the agenda shall be delivered, either personally or by mail or email as the case may be, to each Voting Member entitled to vote at such meeting, not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Voting Member at his address as it appears on the records of the Association, with postage prepaid.

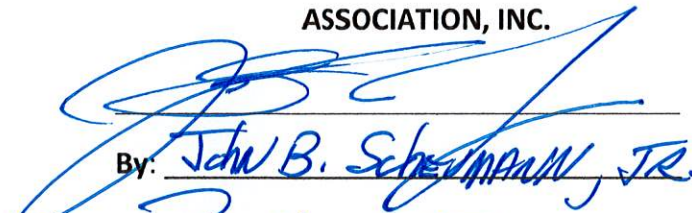
- 7.2 **Regular Meetings of Board of Directors.** Notice of the time and place of the meeting shall be communicated to directors not less than four days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.
- 7.3 **Special Meetings.** The notice shall specify the date, time, and place of the meeting and the nature of any special business to be considered. The notice shall be delivered to each Voting Member either personally or by mail or email as the case may be.

IN WITNESS WHEREOF, the undersigned officers of Winding Creek Homeowners Association, Inc. have set their hands and seals this 6th day of September, 2019.

**WINDING CREEK HOMEOWNERS
ASSOCIATION, INC.**

By: _____

Its: _____


John B. Schumann, Jr.
PRESIDENT

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