

# **BY-LAWS OF THE KIRKWOOD IMPROVEMENT ASSOCIATION**

Proposed for Amendment – June, 2019

## **Article I**

### **Title**

SECTION I. The name of this association shall be the Kirkwood Improvement Association, Inc.

## **Article II**

### **Purpose**

SECTION I. The purpose of this Association shall be to promote the best interests of the property owners within the subdivision and to implement the restrictions as recorded for properties in Kirkwood No. 1 and No. 2 subdivisions.

## **Article III**

### **Membership & Voting Rights**

SECTION I. Owners of properties within Kirkwood No. 1 & No. 2 subdivisions are members.

SECTION II. Each property is assigned one membership for voting purposes. Voting rights are limited to members that are current with all annual maintenance charges, late fees and any duly authorized special assessment passed by the Association.

SECTION III. Tenants residing in Kirkwood No. 1 & No. 2 subdivisions may participate in Association activities and meetings but shall have no voting rights.

## **Article IV**

### **Charges and Assessments**

SECTION I. The annual maintenance charge of one hundred fifty dollars (\$150.00) (Approved 09/2018) is payable from each property in the Kirkwood No. 1 & No. 2 subdivisions in January of each calendar year.

SECTION II. Property owners who fail to pay their mandatory maintenance charges by March 1 shall be assessed a late fee of fifty dollars (\$50.00). Those who continue in their failure to pay the mandatory maintenance charges and any assessed late fees after April 1 shall subject their property to placement of a lien.

SECTION III. Special assessments may be provided for at any meeting by a majority vote of the members present. Special assessments are not for the purpose of increasing the maintenance funds. Property owners who fail to pay special assessments within 60 days of the due date shall subject their property to placement of a lien.

SECTION V. Property owners whose mandatory maintenance charges are in arrears after March 1 or who have failed to pay late fees or special assessments within sixty days (60) shall be considered not in good standing and shall not have a vote upon any Association matter at any

meeting. Reinstatement may be accomplished by payment of all delinquent maintenance charges, late fees and assessments.

SECTION VI. Invoices for annual maintenance charges are mailed as a courtesy. Failure to receive an invoice for the annual maintenance charges or late fees described above does not exempt a property owner from their obligations to pay.

SECTION VII. Property owners who do not reside at their Association property are responsible for notifying the Association Secretary of a current mailing address to be used for official communications. Failure to provide such notification does not exempt a property owner from any obligations.

SECTION VIII. Annual social charges of twenty dollars (\$20.00) are entirely optional. Funds collected for social charges will be used to support Association social activities and will be accounted for separately from maintenance charges.

## **ARTICLE V**

### **Meetings**

SECTION I. The annual meeting of the Association shall be held on a date selected by the Executive Committee. At the annual meeting, officers are to be elected and such other matters that are pertinent to the Association shall be presented.

SECTION II. Other meetings can be scheduled at the discretion of the Executive Committee.

SECTION III. Special meetings may be called by demand of ten percent (10%) of the members in good standing.

SECTION IV. The place of holding any meeting of the Association shall be determined by the Executive Committee.

SECTION V. The Executive Committee shall participate in any and all meetings of this Association.

SECTION VI. Not less than ten percent (10%) of the members of the Association in good standing shall constitute a quorum for the transaction of business at any meeting providing written notice of the time and place of the meeting has been issued to all members ten (10) days or more in advance of the meeting.

## **ARTICLE VI**

### **Officers and Duties**

SECTION I. The Officers and Directors of said Association shall consist of a President, Vice-President, Secretary and Treasurer. The Executive Committee shall consist of the above named officers, the immediate past president of the Association and the chairpersons of all standing committees.

SECTION II. The duties of the officers shall be as follows:

- The President shall preside at the meetings. In the President's absence, the Vice-President shall preside. In the absence of both the President and Vice-President, a chairperson for the meeting shall be chosen by the members present.
- The Secretary shall make and keep accurate records of the acts and doings at the meetings and give a report of the same at the next meeting. In the absence of the Secretary at any meeting, a Secretary pro-tem shall be chosen by the members present.
- The Treasurer shall collect the monies as levied by the Association from time to time and also those funds required pursuant to the subdivision deeds. All funds of the Association shall be deposited in a federally insured account unless an alternative depository is approved by a majority of the Executive Committee.
- The Treasurer shall have the custody of all funds of the Association, and shall make reports of the amount of money collected, paid out, and on hand at the annual meeting. The Treasurer shall also pay expenses and accounts of the Association as shall be decided upon from time to time. In the temporary absence of the Treasurer, the Vice-President may pay expenses and accounts.
- All operating expenses in excess of two hundred fifty dollars (\$250.00) shall require authorization by the Vice-President and Treasurer. In the temporary absence of the Vice-President and at any time when the Vice-President is paying expenses and accounts in the Treasurer's stead, the President shall provide such authorization.
- The Treasurer's account may be audited from time to time by the Executive Committee or by a competent auditor selected by the Executive Committee.
- Each year, the Association shall purchase a Deeds and Omissions Policy covering the elected members of the Executive Committee.

SECTION III. Five (5) members of the Executive Committee shall constitute a quorum.

SECTION IV. In the case of the President's inability or unwillingness to complete a term, the Vice-President shall succeed to the office of the President, until the next annual meeting. It shall be the first duty of the new President to call a meeting of the Executive Committee for the purpose of appointing a new Vice-President.

In the case of inability or unwillingness of any other Executive Committee member, or any officer, to complete their elected term, the President will call a meeting of the Executive Committee, for the purpose of appointing an Association member in good standing to succeed such officer or Executive Committee member, who shall serve until the next annual meeting.

## **ARTICLE VII**

### **Chairpersons of Standing Committees, Tenure and Authority**

SECTION I. The Chairpersons of the following standing committees shall be elected at the annual meeting or appointed by the President with the approval of the majority of the Executive Committee for a term of one (1) year. Chairpersons shall in turn appoint members of their committees.

- Communications
- Maintenance & Utilities
- Membership & Welcoming
- Restrictions & Plan Approval
- Social

SECTION II. Additional, ad hoc committees may be created from time to time at the discretion of the Executive Committee. Chairpersons of such ad hoc committees shall not be considered members of the Executive Committee.

## **ARTICLE VIII**

### **Amendments**

SECTION I. An amendment to these By-Laws may be made at any Annual or Special Meeting of the Association, if passed by a two-thirds majority of the members present at the meeting. Notice of proposed changes shall be submitted in writing to the entire membership at least ten (10) days prior to such meeting.

## **ARTICLE IX**

### **Indemnification**

SECTION I. THIRD PARTY ACTIONS: The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Association) by reason of the fact that he or she is or was a director, officer or agent of the Association, against expenses (including attorneys' fees), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding provided the person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

SECTION II. ACTIONS BY OR IN RIGHT OF THE ASSOCIATION: The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, or agent of the Association, against expenses (including attorneys' fees) and amounts paid in settlement actually and reasonably incurred by the person in connection with the action or suit provided the person acted in good faith and in a manner the person reasonably believed to be in, or not opposed, to the best interest of the Association. Indemnification shall not be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Association

for any negligence or misconduct in the performance of his or her duty to the Association unless and only to the extent that the court in which such action or suit was brought or such other court having competent jurisdiction shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expense which such court shall deem proper.

SECTION III. EXPENSES. To the extent that a director, officer or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section I or II, or in defense of any claim, issue or matter in such action, suit or proceeding, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith and any action, suit or proceeding brought to enforce the indemnification provided in this Section III.

SECTION IV. DETERMINATION AND EVALUATION. Any indemnification under Section I or II (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Sections I and II and upon an evaluation of the reasonableness of expenses and amounts paid in settlement. Such determination and evaluation shall be made in any of the following ways:

- (a) By a majority vote of a quorum of the Board of Directors who are not parties to or threatened to be made parties to the action, suit or proceeding.
- (b) If a quorum cannot be obtained under subsection (a), by a majority vote of a committee duly designated by the Board and consisting solely of two or more directors not at the time parties or threatened to be made parties to the action, suit or proceeding.
- (c) By independent legal counsel in a written opinion, which counsel shall be selected in one of the following ways:
  - (i) By the Board of Directors or its committee in the manner prescribed in subsection (a) or (b).
  - (ii) If a quorum of the Board cannot be obtained under subsection (a) and a committee cannot be designated under subdivision (b) by the Board of Directors.
  - (iii) By all independent directors who are not parties or threatened to be made parties to the action, suit or proceeding.

In the designation of a committee under subsection (a) above or in the selection of independent legal counsel under subsection (c)(ii) above, all directors may participate.

If a person is entitled to indemnification under Section I or II for a portion of expenses, including reasonable attorneys' fees, judgment, penalties, fines and amounts paid in settlement, but not for the total amount, the Association may indemnify the person for the portion of the expenses, judgments, penalties, fines or amounts paid in settlement for which the person is entitled to be indemnified.

SECTION V. ADVANCE PAYMENT OR REIMBURSEMENT: The Association may pay or reimburse the reasonable expenses incurred by a director, officer, or agent who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if all of the following apply:

- (a) The person furnishes the Association a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Sections I and II.
- (b) The person furnishes the Association a written undertaking, executed personally or on his or her behalf, to repay the advance if it is ultimately determined that he or she did not meet such applicable standard of conduct.
- (c) A determination is made that the facts then known to those making the determination would not preclude indemnification under this act.

The undertaking required by subsection (b) must be an unlimited general obligation of the person but needs to be secured.

Determinations and evaluations under this Section V shall be made in the manner specified in Section IV.

SECTION VI. INSURANCE: The Association may purchase and maintain insurance on behalf of any person who is or was a Director, officer, or agent of the Association, against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Association would have power to indemnify him or her against such liability under Sections I through V.

SECTION VII. CONTINUATION OF INDEMNIFICATION. The indemnification provided in this Article IX continues as to a person who has ceased to be a Director or officer and shall inure to the benefit of the heirs, personal representatives and administrators of such person.

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