

BY-LAWS OF  
KENSINGTON DOWNS EAST VILLAS COMMUNITY ASSOCIATION, INC.

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A NOT-FOR-PROFIT CORPORATION DESIGNED TO FACILITATE  
THE MANAGEMENT OF MAINTENANCE, ACTIVITIES,  
AND USE OF COMMON AREAS IN  
KENSINGTON DOWNS EAST VILLAS COMMUNITY ASSOCIATION, INC.  
AND ITS VARIOUS SECTIONS  
A SUBDIVISION IN ABOITE TOWNSHIP, ALLEN COUNTY, INDIANA

ARTICLE I.  
Name and Address

Section 1. The name of the Corporation shall be "KENSINGTON DOWNS EAST VILLAS COMMUNITY ASSOCIATION, INC." (hereinafter referred to as the "Association").

ARTICLE II.  
Purposes and Powers

The purposes and powers of the Association and the limitations thereon shall be those expressed in Article II of the Articles of Incorporation.

ARTICLE III.  
Membership

Section 1. Members. The members of the Association shall be the owners of Lots within Kensington Downs East Villas Community Association, Inc., who shall hold their memberships as provided in Article V of the Articles of Incorporation.

Section 2. Annual meeting. The Annual Meeting of the members of the Association shall be held at the principal office of the Association on the fourth Thursday of January of each year at 7:30 p.m., Eastern Standard Time or at such place (within Allen County, Indiana, reasonably convenient for members to attend) and time as may be fixed by the Board of Directors and designated in the Notice of Waiver of Notice of such meeting. At the Annual Meeting, the Directors for the ensuing year shall be elected, the officers of the Association shall present their annual reports, the annual budget for the Association shall be adopted, and all such other business shall be transacted as may properly come before the meeting. The Secretary of the Association shall cause notice of the Annual Meeting to be given to each member of record of the Association entitled to



vote by depositing the same in the United States mail, postage prepaid, in an envelope addressed to the latest address of such member as the same appears upon the records of the Association, such notice to be mailed at least ten (10) days before the date of such meeting.

Section 3. Special Meetings. Special meetings of the members may be held at the principal office of the Association, or at such other place within Allen County, Indiana, reasonably convenient for members to attend, as may be designated pursuant to the Articles of incorporation in the Notice or Waiver of Notice of such meeting. Special meetings may be called in writing by the President, by a majority of the Board of Directors or by written petition signed by the holders of not less than ten percent (10%) of the memberships entitled to vote. The Secretary of the Association shall cause notice of the holding of any such special meeting to be given to each member of record of the Association entitled to vote upon the business to be transacted at the meeting by depositing in the United States mail, postage prepaid, in an envelope addressed to the latest address of such member as the same appears upon the books of the Association, such notice to be mailed at least ten (10) days before the date of such meeting.

Section 4. Addresses of Members. The address of each member appearing upon the records of the Association shall be deemed to be the latest address which has been furnished in writing to the Association by such member.

Section 5. Waiver of Notice. Notice of any meeting of members may be waived in writing by any member if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place thereof. Attendance at any meeting in person, or by proxy, when the instrument of proxy sets forth in reasonable detail the purpose or purposes for which the meeting is called, shall constitute a waiver of notice of such meeting. Each member who has, in the manner provided above, waived notice of a member's meeting, or who personally attends a member's meeting or is represented thereat by a proxy authorized to appear by an instrument of proxy complying with the requirements set forth above, shall be conclusively presumed to have been given due notice of such meeting. When all members shall meet in person, such meeting shall be valid for all purposes and at such meeting any corporate action may be taken.

Section 6. Quorum. At any meeting of the members, the holders of a majority of the memberships entitled to vote who are present in person or represented by proxy shall constitute a quorum for the transaction of business. If the holders of the number of memberships necessary to constitute a quorum shall fail to attend in, person or by proxy at the time and place fixed for such meeting, the holders of a majority of the memberships present in person or by proxy may adjourn from time to time, without notice other than announcement at the meeting, until the holders of the number of memberships requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally called.



Section 7. Voting. No membership shall be voted at any time when any assessment with respect to the Lot for which such membership is held is past due and unpaid. At each meeting of the members, every member shall have the right to one (1) vote for each membership held by him/her which is entitled to be voted at such meeting. Such member shall vote either in person or by proxy appointed in writing and subscribed by such member or his/her duly authorized attorney-in-fact, or appointed by telegram sent by such member or attorney-in-fact, and delivered to the Secretary of the Association at or before the time of the holding of such meeting. No such proxy shall be valid after eleven (11) months from the date of its execution unless a longer time is expressly provided therein. Memberships held by fiduciaries may be voted by the fiduciary in such manner as the instrument or order appointing such fiduciary may direct. If all persons who are together entitled to one (1) membership do not agree upon the exercise of voting rights, the following provisions shall apply:

1. where a membership is held jointly by three (3) or more persons, such membership shall be voted in accordance with the will of the majority; and
2. where such persons or a majority of them cannot agree, or where they are equally divided upon the question of voting such membership, such membership shall be voted as may be directed by any court of general equity jurisdiction, as such court may deem for the best interests of the membership, upon petition filed by such person or any party in interest.

Section 8. Voting List. The Secretary of the Association shall keep at all times a complete and accurate list of the members entitled by the Articles of Incorporation to vote at such election, arranged in alphabetical order, with the address and number of the memberships so entitled to vote held by each, which list shall be on file at the principal office of the Association and subject to inspection by any member. Such list may be inspected by any member for any proper purpose at any reasonable time.

Section 9. Member Action by Consent in Lieu of Meeting. Any action required or permitted to be taken at any meeting of members may be taken without a meeting, if prior to such action a consent in writing setting forth the action to be taken is signed by all members entitled to vote and such written consent is filed with the minutes of the proceedings of the members.

#### ARTICLE IV. Directors

Section 1. Number. The present number of Directors of the Association is three (3). The number of Directors of the Association may be increased or decreased to any number not less than three (3) nor more than fifteen (15) by amendment of this section, which amendment shall state the new number of Directors, but no decrease shall shorten the



term of an incumbent Director. Directors shall be members of the Association, with the exception that the original Board of Directors as designated in the Articles of Incorporation need not be members. Directors shall be elected at the annual meeting of the members or at a special meeting called for that purpose. Subject to termination and removal as permitted by law, each Director elected at an annual meeting shall be elected to serve for one (1) year and until his/her successor shall be elected and qualified and each Director elected at a special meeting shall be elected for the period ending with the next annual meeting and until his/her successor shall be elected and qualified.

Section 2. Vacancies. Any Director may resign his/her office at any time by delivering his/her resignation. in writing to the Association, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective. Any vacancy occurring in the Board of Directors caused by resignation, death, or other incapacity, or increase in the number of Directors, shall be filled by a majority vote of the remaining members of the Board until the next annual meeting of the members or, in the discretion of the Board, such vacancy may be filled by the vote of the members at a special meeting called for that purpose.

Section 3. Removal of Directors. A Director may be removed with or without cause by the vote of the holders of a majority of the memberships entitled to vote at a special meeting of members called for that purpose.

Section 4. Regular Meetings. A regular meeting of the Board of Directors shall be held at the place and immediately following the annual meeting of the members. Other regular meetings may be held at the principal office of the Association or any other place reasonably convenient for Directors to attend at such times and places as the Board of Directors may fix from time to time.

Section 5. Special Meetings. Special meetings of the Board of Directors shall be held at the principal office of the Association or at any other place within Allen County, Indiana, reasonably convenient for Directors to attend whenever called by the President or the Secretary of the Association or by any two (2) of the members of the Board. At least seventy-two (72) hours notice of such meeting specifying the time, place and purpose thereof, shall be given to each Director either personally, by written notice deposited in the United States mail, postage prepaid in an envelope to such Director or by telephone or telegram. Notice of the time, place and purpose of the holding of any such special, meeting may be waived in writing by any Director if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place thereof. Attendance at any meeting in person by any Director shall constitute a waiver of the notice of such meeting. Whenever all of the Directors shall meet, such meeting shall be valid for all purposes and at such meeting any corporate action may be taken.

Section 6. Quorum-and Voting. A majority of the actual number of Directors elected and qualified from time to time shall be necessary to constitute a quorum for the transaction of any business (excepting the filling of vacancies, in which case a quorum



shall be a majority of the remaining directors) and the act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by the Indiana Not-For-Profit Corporation Act of 1971, the Articles of Incorporation or other provisions of these By-Laws.

Section 7. Directors' or Committee Action by Consent in Lieu of Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if prior to such action a written consent to such action is signed by all of the members of the Board of Directors or of such committee and such written consent is filed with the minutes of the proceedings of the Board of Directors or Committee.

## ARTICLE V. Officers

Section 1. Officers. The officers of the Association shall consist of a President, a Treasurer, and a Secretary, and if desired by the Board of Directors, one or more vice-Presidents, and one or more Assistant-Secretaries and Assistant-Treasurers, all of whom shall be elected by the Board of Directors of the Association at the first meeting thereof immediately following the annual meeting of the members; and they shall hold office; subject to the removal as provided by law, until their successors are elected and qualified. One person may hold more than one (1) office, except that the offices of the President and Secretary shall not be held by the same person. The officers shall be chosen from among the Directors of the Association.

Section 2. Removal. Any officer of the Association may be removed by the Board of Directors whenever the Board of Directors in its judgment believes that the best interests of the Association will be served by such removal. Such removal will be without prejudice to the contract rights, if any, of the persons removed. Election or appointment of an officer does not of itself create contract rights.

Section 3. Compensation. Officers shall not be entitled to compensation for their services.

### Section 4. Duties.

(A) President. The President shall be the chief executive officer of the Association and shall have the powers and perform the duties usually incident to that office. He shall preside at all meetings of the members and of the Board of Directors. He shall submit to the Board of Directors, at least ten (10) days prior to the annual meeting of the members, an annual report of the operation of the Association during the preceding fiscal year, complete detailed statements of all income and expenditures and a balance sheet showing the financial condition of the Association at the close of the fiscal year. The President is authorized to sign, on behalf of the Association, contracts and other instruments in writing. The Secretary shall thereupon attest any such document requiring such attestation under



the corporate seal of the Association.

(B) Vice-President. In the absence or inability of the President to act, his duties shall be performed and his powers may be exercised by the Vice President. The Vice President shall perform such other duties as shall be delegated to him by the Board of Directors.

(C) Secretary. The Secretary shall keep or cause to be kept a full, true and complete record of all of the meetings of the members and of the Board of Directors and shall have charge of the Minute Book of the Association and of all of its other books and documents (except the books of account). He shall countersign papers requiring such acts, but only upon the order of the Board of Directors or the President, and shall perform such other duties as may be required by the Board of Directors or the President.

(D) Treasurer. The Treasurer shall have custody of the funds and other personal property of the Association and shall keep, or cause to be kept, correct and accurate books of account and shall also deposit, or see to the deposit of, the funds of the Association in a depository to be approved by the Board of Directors. He shall keep full and accurate account of all assets, liabilities, commitments, receipts, disbursements and other financial transactions of the Association in books belonging to the Association; shall (if directed by the Board of Directors) cause regular audits of such books and records to be made; shall see that all expenditures are made in accordance with procedures duly established, from time to time, by the Association; shall render financial statements at all regular meetings of the Board of Directors, and a full financial report at the annual meeting of members, if called upon so to do; and, shall perform such other duties as may, from time to time, be delegated to him by the Board of Directors or the President.

(E) Assistant-Secretaries. An Assistant-Secretary shall assist the Secretary of the Association and shall perform such other duties as are delegated to him by the Board of Directors.

(F) Assistant-Treasurers. An Assistant-Treasurer shall assist the Treasurer of the Association and shall perform such other duties as are delegated to him by the Board of Directors.

## ARTICLE VI. Assessments

Section 1. After the close of each calendar year and prior to the date of the Annual Meeting of the Association, the Board shall cause to be prepared and furnished to each member a financial statement, which shall show all receipts and expenses received, incurred and paid during the preceding calendar year.

Section 2. Initially, there shall be a yearly maintenance assessment against each lot individually owned not to exceed \$1,440.00. The annual maintenance assessment shall



be due upon conveyance of title from Developer. Developer is exempt from dues. Annually, at the date of the regular Annual Meeting of the Association, the Board shall prepare a proposed annual budget for the ensuing calendar year estimating the total amount of expenses to be incurred by the Association for the ensuing year and shall furnish a copy of such proposed budget to each member prior to the Annual Meeting. The annual budget shall be submitted to the members at the Annual Meeting for adoption and, if so adopted, shall be the basis for the assessments for the ensuing year. At the Annual Meeting, the budget may be approved in whole or in part or may be amended in whole or in part by a majority of the members present or represented.

Section 3. The annual budget as adopted shall, based on the estimated cash requirements for the expenses of the Association, contain a proposed assessment against each Lot. Immediately following the adoption of the annual budget, each member shall be given written notice of the assessment against his/her Lot. This assessment against each Lot shall be paid annually on the first day of each calendar year.

Section 4. From time to time, common expenses of an unusual amount or extraordinary nature or not otherwise anticipated may arise. At such time, the Board shall have the full right, power and authority to make by Board resolution special assessments which shall become a lien on each Lot, pro-rated in accordance with the respective obligation of each Lot to bear such expense as determined by the Board.

Special assessments may be assessed in a single lump sum or ratably over a period of time as the Board in its discretion shall determine. In making such determination, however, the Board shall give due consideration to the expenses and obligations, if any, incurred by the Association and/or the Board in connection with the matters giving rise to the special assessment, and the Board shall exercise every effort to cause special assessments to be charged to members in a manner which is fair and equitable and in a manner which will create as little undue burden or hardship as possible among the respective members, consistent with good accounting practices.

Section 5. The assessments levied by these provisions shall be used by the Association to perform its functions as defined in Article II of the Articles of Incorporation; provided, however, with respect to the authority enumerated in paragraph 8 of said Article the responsibilities of the Association shall be as follows:

(A) The Association is responsible for the maintenance of all trees, shrubbery, lawns, walkways and irrigation systems in the common areas and entrance areas, and any costs related thereto.

(B) The Association shall not be responsible for repair or maintenance to the physical structure of the Lot in Kensington Downs East Villas Community Association, Inc., nor for the maintenance and repair of members, driveways or walks, which responsibilities shall be and remain those of the individual members; provided, however, the Association shall have the power upon an affirmative vote of at least 66-2/3% or more of its members



to perform repair or maintenance upon the physical structure of the dwelling on the Lot, or to perform repair or maintenance upon the driveway or walk, of any member who has failed after notice from the Board of Directors to undertake such repair and/or maintenance to the satisfaction of the Board, to levy a special assessment against said member for the cost of such repair and/or maintenance and to encumber said member's Lot with a lien in the same manner as herein described below. An easement of ingress and egress for the performance of any such repairs is hereby by each member to the Board to effectuate the purpose of this subparagraph. Each member shall insure his residential dwelling unit in an amount equal to the full replacement value thereof, which said insurance shall contain provisions to pay the full replacement cost of any buildings or adjacent properties damaged as the result of fire or other hazards occurring on an individual dwelling unit. It is the specific duty of each member to make current payment of any premium due on such insurance and not to permit any such insurance to lapse.

Section 6. Each member shall be personally liable for the payment of all assessments. Where the member constitutes more than one (1) person, the liability of such persons shall be joint and several.

(A) If any member shall fail or refuse to make any such payment of an assessment when due, the amount thereof shall constitute a lien upon the Lot of the member, and upon the recording of notice thereof by the Association, such lien shall be constituted upon such member's Lot prior to all other liens and encumbrances, recorded or unrecorded, excepting only:

- (i) taxes, special assessments and special taxes theretofore or thereafter levied by any political subdivision or municipal corporation of this state and other state or federal taxes which by law are a lien on the interest of such member prior to preexisting recorded encumbrances thereon;
- (ii) encumbrances on the interest of such member recorded prior to the date such notice is recorded, which by law would be a lien of any first mortgage owed by a member to a financial institution.

(B) The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other members, and may be foreclosed by an action brought in the name of the Association in a like manner as a mortgage upon real property. The Association, acting on behalf of the members, shall have the power to bid on the interest so foreclosed at foreclosure sale and to acquire, hold, lease, mortgage and convey the same; and to subrogate so much of its right to such lien as may be necessary to satisfy an insurance company which will continue to give total coverage in spite of nonpayment of such defaulting member's portion of the premium.

(C) Suit to recover a money judgment for unpaid assessments shall be



maintainable without foreclosing or waiving the lien securing the same.

(D) The Board shall further have the power to suspend the voting rights and right to use of the Common Area of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association.

(E) Any payment for assessments not made when due shall bear interest at the rate of fifteen percent (15%) per annum from the date the same shall become due until the date the same is paid. It shall further be the obligation of any party who shall fail to Pay any assessment or assessments when due to reimburse the Association for all expenses incurred as a result of such failure to pay, including all expenses incurred by the Association in the collection of the same, and including further, but not limited to, all costs of overhead, accounting and legal expenses incurred with respect to, arising out of, or occasioned by said failure to pay.

(F) In the event any person shall acquire or be entitled to the issuance of a tax deed, public trustee's deed, sheriff's deed, commissioner's deed, etc., the interest so acquired shall be subject to all the provisions of these By-Laws.

(G) The Association shall establish a Club Operating Fund for the swimming pool, bath house and tennis facilities located within Kensington Downs East Villas Community Association, Inc. Said Club Assessment will be assessed against each Lot irrespective of whether a dwelling unit is located thereon. Such Club Assessment shall bear interest; shall become a lien upon the Lot against which it is assessed, shall become the personal obligation of the owner of such Lot, and may be collected in accordance with the provisions of Section 7 of Article IV of the Restrictions of Kensington Downs East Villas Community Association, Inc. recorded Restrictions. Club Assessments shall be payable on the 1st day of January of each year thereafter. All Club Assessments shall be determined by and paid to the Association, and the Association shall be responsible for carrying out the purposes of such Club Assessments.

The amount of the annual Club Assessment shall be established as follows:

(a) Commencing with the year following substantial completion of the swimming pool, bath house and tennis facilities, the Board of Directors of the Association shall establish a budget for such calendar year and shall determine therefrom the Annual Club Assessment for each Lot required to meet such budget. Such budget and Club Assessment for each calendar year shall be established by the Board of Directors. The Board of Directors shall mail to all Association Members a copy of a proposed budget and notice of the ensuing year's proposed Club Assessment at least thirty (30) days prior to such meeting.

(b) Said Club Operating Fund shall be used exclusively for the



purpose of operating and maintaining said swimming pool, bath house and tennis facilities as well as all recreational facilities therein or used in connection therewith, including but not limited to, repair, maintenance, cost of living, equipment, supervision, taxes, insurance, and all other things necessary or desirable in the opinion of the Board of Directors of the Association.

#### ARTICLE VII. Improvement of Lots

Each member of the Association, by purchase of a Lot in Kensington Downs East Villas Community Association, Inc. agrees that no dwelling, fence or wall shall be constructed, placed or altered upon any Lot until the plans and specifications therefor have been approved by the Architectural Control Committee as to quality of workmanship and materials, and harmony of exterior design with other dwellings and improvements in Kensington Downs East Villas Community Association, Inc. The purpose of this provision is to insure compliance with uniform and high quality standards of design and construction in the completion and/or alterations of improvements in Kensington Downs East Villas Community Association, Inc.

#### ARTICLE VIII. Common Area

Section 1. Certain areas have been designated in the recorded plat of Kensington Downs East Villas Community Association, Inc. as Common Area. Initially, the Common Area is to be developed and improved by the Developer. The Common Area may be used by any member of the Association and by his family members, guests and invitees at such times and in such manner as may be more fully outlined in specific rules and regulations for such use to be adopted by the Association.

Section 2. The Developer shall convey title to the Common Area to the Association no later than the time that the improvements on all Lots have been completed. Upon such conveyance, the Association shall immediately assume the responsibility for maintenance of the Common Area.

Section 3. During the period in which the Developer is the owner of any Lots in Kensington Downs East Villas Community Association, Inc., the Developer shall not be responsible for any payment into the annual budget, the funds for said annual budget to be derived solely from the assessments made against the Lots as more fully described in Article VII above.

Section 4. No motorcycle, motor bikes, mopeds, motorcycles, snowmobiles or other motorized vehicles of any sort shall be permitted in the Common Area. There shall be no obstruction, of the Common Area nor shall anything be stored in the Common Area (except



in areas designated for such purposes) without the prior consent of the Association. No waste shall be permitted in the Common Area. No clothes, sheet blankets, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed in any part of the Common Area. The Common Area shall be kept free and clear of rubbish, debris and other unsightly materials which are not in receptacles provided for such purpose.

#### ARTICLE IX. Funds

Section 1. Depository. The funds of the Association shall be deposited in a depository or depositories to be selected by the Board of Directors of the Association.

Section 2. Withdraw of Funds. The funds of the Association may be withdrawn and disbursed by such officers as may be designated by the Board of Directors.

#### ARTICLE X. Amendment

These By-Laws may be amended by the Board of Directors, by the affirmative votes of a majority of the whole Board, at any regular or special meeting notice of which contains the proposed amendment or a digest thereof, or at any meeting, regular or special, at which all Directors are present, with the exception that the provisions of Article VII may only be amended by an affirmative vote of seventy-five percent (75%) of the members of the Association itself at a special meeting of the Association called for that purpose.