

**FIRST AMENDMENT**

to the

**CODE OF BYLAWS**

for

**AMBER RIDGE HOMEOWNERS' ASSOCIATION, INC.**

COMES NOW the Amber Ridge Homeowners' Association, Inc., by its Board of Directors, on this 24<sup>th</sup> day of November, 20 09, and states as follows:

**WITNESSETH THAT:**

**WHEREAS**, the residential community in Indianapolis, Marion County, Indiana commonly known as Amber Ridge was established upon the recording of certain documents with the Office of the Recorder for Marion County, Indiana; and

**WHEREAS**, the Plat for Amber Ridge, Section 1, was filed with the Office of the Marion County Recorder on May 9, 2001, as **Instrument # 2001-0075531**; and

**WHEREAS**, the Plat for Amber Ridge, Section 2, was filed with the Office of the Marion County Recorder on September 25, 2001, as **Instrument # 2001-0168587**; and

**WHEREAS**, the Amber Ridge subdivision is subject to Covenants which run with the land, namely the Declaration of Covenants, Conditions and Restrictions for Amber Ridge (hereinafter "Declaration"), recorded in the Office of the Marion County Recorder on May 9, 2001, as **Instrument #2001-0075529**, which state that by taking a deed to any Lot within Amber Ridge each owner becomes a mandatory member of the Amber Ridge Homeowners Association, Inc., an Indiana nonprofit corporation (hereinafter "Association"); and

**WHEREAS**, all Lots within the Amber Ridge Subdivision are also subject to additional Covenants with run with the land, namely, the Plat Covenants and Restrictions for Amber Ridge (hereinafter "Plat Covenants"), recorded in the office of the Marion County Recorder on May 9, 2001, as **Instrument # 2001-0075530**; and

**WHEREAS**, the Association was incorporated pursuant to the above listed Declaration as a non-profit corporation pursuant to Articles of Incorporation (hereinafter "Articles") filed with, and approved by, the Indiana Secretary of State on October 18, 2000; and

**WHEREAS**, the Association's Initial Board of Director(s) adopted a Code of Bylaws (hereinafter "Bylaws") for the Association and the homeowners within Amber Ridge; and

**WHEREAS**, the Articles of Incorporation, Article X, Section 4, and the Bylaws, Article VII, Section 1, states that the power to make, alter, amend or repeal the Code of Bylaws, without the consent of the Members, shall be vested in the Board of Directors of the Association; and

**WHEREAS**, pursuant to the authority granted to the Board of Directors by the Articles and the Bylaws, the Board of Director(s) desires to make the following amendments to the current Bylaws;

**WHEREFORE**, the following Amendments to the Bylaws are hereby approved and adopted by a majority vote of the Board of Directors of the Amber Ridge Homeowners' Association, Inc. These amendments do not conflict in any manner with any provision contained in the Declaration or the Articles, and it is the intention of the Association that all current Bylaw provisions not affected by these amendments are deemed and desired to remain in full force and effect.

*Article I, Section 2, is hereby amended to read as follows:*

## **ARTICLE I**

### **Identification**

**Section 2. Registered Agent and Mailing Address.** The name and post office address of the registered agent and principle office of the Corporation at the time of this amendment is: Amber Ridge Homeowners Association, Inc., c/o Eric Koons, 6325 Nightshade Drive, Indianapolis, IN 46237, or as updated from time to time with the Indiana Secretary of State's Office. Because the registered agent may change from time to time, the current registered agent of the Corporation can be determined through the most recent annual business entity report filed with the Indiana Secretary of State's office.

Currently, the mailing address of the Association is Amber Ridge Homeowners Association, Inc., P.O. Box 39153, Indianapolis, IN 46239. Until the Board of Directors otherwise determines, the registered agent's location shall be the registered place of business of the Corporation, 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 Corporation.

*Article II, Section 3, is hereby amended to read as follows:*

## **ARTICLE II**

### **Members**

**Section 3. Annual Meetings.** The annual meeting of the Association shall be held on October 1<sup>st</sup> of each year, or any other date deemed necessary or desirable by the Board within one hundred eighty (180) days of October 1<sup>st</sup> of each year; however, under no circumstances shall the annual meeting be held more than fifteen (15) months of the previous annual meeting. 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 shall elect the Board of Directors of the Association in accordance with the provisions of these Bylaws and transact such other business as may properly come before the meeting.

*Article II, Section 4, is hereby amended to read as follows:*

**ARTICLE II**

**Members**

**Section 4. Special Meetings.** A Special Meeting of the Members may be called by the President, by resolution approved by a majority of the Board of Directors, or upon written petition signed and dated by not less than ten percent (10%) of the eligible members. The petition shall be presented to the President or Secretary of the Association and shall state the purposes for which the meeting is to be called. Such purposes, along with the date, time and location of the special meeting shall be stated in the notice of the meeting which is delivered to the members, not less than ten (10) days prior to the date fixed for such meeting. No business shall be transacted at a Special Meeting except as stated in the notice of the meeting, unless all the members are present.

*Article II, Section 5, is hereby amended to read as follows:*

**ARTICLE II**

**Members**

**Section 5. 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 (10) days before the date of the meeting. Notices of meetings may also be emailed to members if the member consents to receiving such notices via email. Notice of any meeting of the 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 shall constitute a waiver of notice of such meeting.

*Article II, Section 6(a), is hereby amended to read as follows:*

**ARTICLE II**

**Members**

**Section 6. Voting at Meetings**

**(a) Voting Rights.** Unless otherwise suspended, each Lot shall be entitled to cast one vote on each issue properly brought before the membership. In the event any Lot is owned by

more than one person, such persons shall designate one (1) person with respect to such Lot who shall be entitled to vote at a meeting of the members. Such person shall be known at the "Voting Member". Such Voting Member may be the Owner or one of a group comprising all of the Owners of a Lot, or may be some person designated by such Owner or Owners to act as proxy on his or their behalf and who need not be an Owner. Any or all of such Voting Members may be present at any meeting of the Voting Members and may vote or take any action as a Voting Member, either in person or by proxy. Developer, as such term is defined in the Declaration (or its nominee), may exercise the voting rights with respect to any Lot owned by it.

*Article II, Section 6(b), is hereby amended to read as follows:*

## **ARTICLE II**

### **Members**

#### **Section 6. Voting at Meetings**

**(b) Proxies.** A Voting Member is entitled to vote either in person or by proxy, executed in writing by such voting Member or by his or her duly authorized attorney-in-fact and delivered to the Secretary. Proxies must be filed with the Secretary before being allowed to vote. In any meeting of the Voting Members called for the purposes of electing the Board of Directors of the Corporation, each Voting Member shall be permitted to cast the number of votes to which he is entitled, as hereinabove set forth, for each Director of the Corporation to be elected at such meeting. A submitted proxy shall be valid for eleven (11) months from the date of its execution unless it states a longer or shorter period of validity. A proxy may be withdrawn or revoked by the Voting Member in writing, or by the attendance of the Member at the meeting in which the proxy is to be cast.

*Article II, Section 6(c), is hereby amended to read as follows:*

## **ARTICLE II**

### **Members**

#### **Section 6. Voting at Meetings**

**(c) Quorum and Adjournments:** At any meeting of the membership, unless otherwise set forth in the Declaration of Covenants, 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 shall 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 a date not more than sixty (60) days later without notice other than announcement at the meeting even though less than a quorum is present. At such subsequent meeting, the presence of Members, in person or by proxy, entitled to cast five percent (5%) of the total number of valid and eligible Owner votes shall constitute a quorum.

*Article II, Section 8, is hereby amended to read as follows:*

## **ARTICLE II**

### **Members**

**Section 8. Action by Written Ballot.** Any action required or permitted to be taken at any meeting of the Members may be taken without a meeting if the Corporation delivers a written ballot to every Member entitled to vote on the matter. The written ballot must set forth each proposed action and provide an opportunity for the Member to vote for or against each proposed action. Approval by written ballot is only valid if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing such action, and the number of approvals equals or exceeds the number of votes required to approve the matter at a meeting. A solicitation, or request, for votes by written ballot must indicate the number of responses needed to meet the quorum requirements, state the percentage of approvals necessary to approve each matter (other than the election of directors), and specify the time by which a ballot must be received by the Corporation to be counted.

In addition, the Association may conduct voting and other meetings in any other manner as authorized by the Indiana Nonprofit Corporations Act of 1991, as amended.

*Article II, Section 9, is hereby added to the Bylaws and shall read as follows:*

## **ARTICLE II**

### **Members**

**Section 9. 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, or to be elected to the Board of Directors.

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, and "payment" shall mean payment of the full assessment amount due, which shall include any collection fees, interest, late fees, attorney fees and court costs that are due and owing to the Association pursuant to the Declaration, Articles or these Bylaws. Hence, if any Owner arranges payment of an assessment amount through a payment option offered by the Association, and that payment arrangement does not pay the entire assessment amount within thirty (30) days of the assessment becoming due, then that Owner's voting rights shall remain suspended as set forth under this provision until the entire assessment amount 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 cease any suspension under this provision until the funds from the payment are actually received by the Association.

*Article III, Section 1, is hereby amended to read as follows:*

### **ARTICLE III**

#### **Directors**

##### **Section 1. In General.**

**(a) Number.** The affairs of the Association shall be governed and managed by the Board of Directors (herein collectively called the “Board” or “Directors” and individually called “Director”). The Board of Directors shall be composed of three (3) persons, with the minimum number of Directors being three (3) and the maximum number of Directors being nine (9). The exact number of Directors may be increased or decreased, as permitted by law, by resolution of the Board of Directors.

**(b) Qualifications.** A director must be an Owner in the Amber Ridge subdivision, maintain their primary place of residence in the Amber Ridge community, and not have their membership rights in the Corporation suspended for any reason as set forth in the Declaration, Articles or these Bylaws. In addition, and in a display of honesty and integrity to the members of the Amber Ridge community, all persons elected to serve as a Director must execute, or sign, the Statement of Conduct adopted by the Board of Directors and attached to this amendment of the Bylaws and marked as “Addendum 1”, to govern the conduct and activities of Board members; and any person elected to serve on the Board of Directors who shall refuse to sign the Statement of Conduct shall not be eligible to serve as a Director. In addition, no Lot may be represented by more than one person or representative on the Board of Directors at the same time.

**(c) Term of Office Generally.** The Board of Directors shall serve their terms on a staggered basis as provided by law. To initiate this staggered rotation, the Association shall elect one (1) Director to serve a three (3) year term, one (1) Director to serve a two (2) year term of office, and one (1) Director to serve a one (1) year term of office. At all directorship elections held thereafter, all directors shall be elected to serve a three (3) year term of office. 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. 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. A Director may serve any number of consecutive terms.

**(d) 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.

**(e) Election of Directors.** 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 said 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) a run-off ballot, or 2) 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 in the same fashion as they would fill a vacancy under the terms of these Bylaws. Any Director so appointed to fill an open position on the Board of Directors shall serve until the next annual meeting.

*Article III, Section 2, is hereby amended to read as follows:*

### **ARTICLE III**

#### **Directors**

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

**(a) Vacancies.** Any vacancy that shall occur in the Board of Directors due to the death, resignation, removal or otherwise shall be filled by a majority vote of the remaining Directors, unless that vacancy is caused by a Director(s) being removed from the Board by a vote of the Membership at a Special Meeting, in which case the Members in attendance at that Special Meeting shall elect from eligible Owners nominated at the Special Meeting a successor(s) to fill

the vacant term(s) of any removed Director(s). Any Director appointed to fill a vacancy on the Board shall serve the unexpired portion of his predecessor.

**(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 at a meeting of the Members called expressly for that purpose.

A Director holding an office may also be removed, with or without cause, by a two-thirds (2/3) vote of the Board of Directors.

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) breach or disclosure of confidential Board information or discussions to person(s) not on the Board; e) failure to conform or follow the Director’s Statement of Conduct; f) or any other actions not authorized 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.

*Article III, Section 5, is hereby amended to read as follows:*

### **ARTICLE III**

#### **Directors**

**Section 5. 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 mail if mailed at least three (3) days before such meeting.

*Article III, Section 8, is hereby amended to read as follows:*

### **ARTICLE III**

#### **Directors**

**Section 8. 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. Evidence of the written or email approval shall be made a part of the corporate Board minutes or records.