



County Clerk's Recording Page

Return to:

HICKORY GROVE VILLAGE
CONDOMINIUM
C/O RICHARD JACHIMIAK
72 BLOSSOM WOOD LN
CHEEKTOWAGA, NY 14227

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STATE OF NEW YORK
ERIE COUNTY CLERK'S OFFICE

WARNING – THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT REQUIRED BY SECTION 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

Michael P. Kearns
Erie County Clerk

By-Laws

of

Hickory Grove Village Condominium

Cheektowaga, NY

An Amendment to the Hickory Grove Village Condominium Declaration

AT BOOK 11132, PAGE 7595 ✓

Replacing the prior Hickory Grove Village Condominium By-Laws, as Amended, in their entirety

Approved by a Majority of the Unit Owners on December 1, 2020

RETURN TO
HICKORY GROVE VILLAGE CONDOMINIUM
C/O RICHARD JACHIMIAK
72 BLOSSOM WOOD LANE
CHEEKTOWAGA, NY 14227

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ARTICLE I DEFINITIONS AND APPLICABILITY

Section 1.01 Definitions.

Absentee Ballot: a document that allows a Unit Owner to cast or abstain their vote on scheduled votes. Under these By-Laws, an Absentee Ballot is only permitted where the Unit Owner also appoints a Proxy to attend the meeting on the Unit Owner's behalf.

Annual Charge: the amount judged by the Board of Managers to be necessary to adequately cover the expenses of the Condominium, including reserves for future expenses or shortages due to prior year expenses; the annual assessment that results in the HOA Fee.

Board of Managers: the governing body of the Hickory Grove Village Condominium, responsible for controlling its affairs. With occasional exceptions for certain vacancies, the Board of Managers is composed of five volunteers, each elected by the Unit Owners for two-year terms at the annual meeting.

Condominium: Hickory Grove Village Condominium.

Common Charge: each Unit's proportionate share ($1/76^{\text{th}}$) of the common expenses, which include the repairs and maintenance that are the responsibility of the Condominium.

Declaration: the document that established the Hickory Grove Village Condominium in 2006, pursuant to the provisions of Article 9-B of the Real Property Law of the State of New York.

HOA Fee: the common name for the monthly or other periodic installment payable by Unit Owners on each Unit to cover the Annual Charge; the Homeowners Association Fee.

Lot: each of the Subdivision Lots, referred to in the Declaration that established the Hickory Grove Village Condominium, that are intended to be separately owned. It is the land portion of each of the 76 Units.

Managing Agent: The property manager or other agent engaged by the Condominium to assist the Board of Managers in managing the affairs of the Condominium.

Property: the 15.42 contiguous acres, including common-ownership portions and the 76 separately-owned Units on Hickory Grove Lane and Blossom Wood Lane in the Town of Cheektowaga, New York, with the improvements thereon. The Property is further described on Schedule A, as annexed to the Declaration. It includes the Units, any improvements, green areas, open spaces, easements, rights, appurtenances, and all other property, personal or mixed, intended for use in connection therewith.

Proxy: a document by which a Unit Owner appoints someone else as their representative at a meeting of Unit Owners, and includes the authority to vote on items not included on the Absentee Ballot (if any). The representative is also called a Proxy.

Remote Meeting Process: a methodology authorized by the Board of Managers, that allows participation in meetings, including voting and two-way communication where appropriate, from the participants' homes or other remote locations.¹

Special Assessment: An amount assessed against each Unit to cover Condominium expenses, that are in excess of those expenses included in the Annual Charge.

Unit: each of the 76 lots with the corresponding housing structures and other improvements. Each Unit has a unique postal mailing address.

Unit Owner: person(s) and/or entity identified as the owner(s) of any one of the 76 Units by virtue of a valid deed. For each vote at meetings of Unit Owners, each Unit is entitled to one vote, regardless of the number of its owners.

Section 1.02 Applicability of By-Laws. The provisions of these By-Laws are applicable to the Property and to the use and occupancy thereof.

Section 1.03 Personal Application. All Unit Owners, mortgagees, lessees and occupants of Units and their employees, and any other persons who may use the facilities of the Property in any manner are subject to these By-Laws, the Declaration and any Rules and Regulations which may be promulgated.

The acquisition, lease or occupancy of a Unit will signify that these By-Laws, the Rules and Regulations and the provisions of the Declaration, as they may be amended from time to time, are accepted and will be complied with.

ARTICLE II UNIT OWNERS VOTING RIGHTS AND MEETINGS

Section 2.01 Voting. Each Unit is entitled to vote on each matter requiring a vote at all meetings of Unit Owners. The vote on behalf of each Unit shall be of equal weight. If a Unit is owned by more than one person, the persons owning such Unit shall determine how to cast their Unit's vote. Votes for Units owned by a non-natural person can be cast by a bona fide representative of that entity or trust. In cases of uncertainty, the Board of Managers may in good faith direct any reasonable practice for determining whether a person may cast a vote on behalf of a Unit.

¹ Remote Meeting Process examples include, but are not limited to, Google Meeting, Microsoft Teams, Messenger Rooms, Skype, video conference calls, voice conference calls, and Zoom.

Section 2.02 Right to Vote. At any meeting of the Unit Owners, every Unit Owner having the right to vote for their Unit shall be entitled to vote in person or by proxy. Such proxy shall only be valid for such meeting or subsequent adjourned meetings thereof.

Section 2.03 Proxies. Each Proxy must be in writing and shall be filed with the Secretary prior to the meeting at which the Proxy is to be used. A notation of such proxies shall be made in the minutes of the meeting. At the Unit Owner's option, an Absentee Ballot indicating the Unit Owner's directed vote on any scheduled votes may be included with the proxy authorization. Where an Absentee Ballot is submitted, the proxy appointee may not cast a vote for any scheduled votes on behalf of the Unit Owner. Any proxy shall be rendered invalid if the Unit Owner is present at such meeting. An Absentee Ballot is invalid if the Unit Owner does not also create a proxy.

Section 2.04 Annual Meetings. Annual meetings of the Unit Owners shall be held in the fourth quarter of each year, on such date and time that is convenient to the Unit Owners, as determined by the Board of Managers. At such meetings there shall be elected by ballot of the Unit Owners, members of Board of Managers in accordance with the requirements of Section 3.04 of these By-Laws. The Unit Owners may also transact such other business of the Condominium at such meeting as may properly come before them.

Section 2.05 Place and Manner of Meetings. Meetings of the Unit Owners shall be held at a suitable place or manner convenient to the Unit Owners as determined by the Board of Managers. The Board of Managers may also authorize a Remote Meeting Process as an alternative method of allowing any Unit Owner or Proxy to participate in meetings from their home or another place, including remote voting and two-way communication where appropriate.

Section 2.06 Special Meetings. The President shall call a special meeting of the Unit Owners, if so directed by resolution of the Board of Managers, or upon a petition signed and presented to the Secretary by the Unit Owners of at least 40% of the Units². The notice of any special meeting shall state the time and place or manner of such meeting and purpose thereof. No business shall be transacted at a Special Meeting except as stated in the notice.

Section 2.07 Notice of Meetings. The Secretary shall send a notice of each annual or special meeting of the Unit Owners at least ten (10) but not more than fifty (50) days prior to such meeting – stating the purpose thereof as well as the time, place or manner where it is to be held, and Remote Meeting Process (if any) – to:

- (i.) each Unit Owner of record, at such Unit Owner's last known address or other address provided by the Unit Owner in writing to the Secretary, and
- (ii.) all mortgagees of a Unit who have requested the same.

If the purpose of any meeting shall be to act upon a proposed amendment to these By-Laws, the notice of meeting shall be sent at least thirty (30) days and not more than fifty (50) days prior to such meeting. Unless a Unit Owner requests otherwise, the notice can be sent by email or

² The Special Meeting requirement (40%) is effectively at least 31 of the 76 Units.

other electronic notification. The sending of a notice of a meeting in the manner provided in this Section shall be considered service of notice.

Section 2.08 Waiver and Consent. Whenever the vote of the Unit Owners at a meeting is required or permitted by any provision of the Declaration, applicable law or these By-Laws to be taken in connection with any action of the Condominium, the meeting and vote of Unit Owners may be dispensed with if all Unit Owners who would have been entitled to vote upon the action if such meeting were held, shall consent to such action being taken. Such consent must be in writing, by email, or by other electronic communication acceptable to the Board of Managers.

Section 2.09 Quorum. Except as otherwise provided in these By-Laws, the presence – in person, by an authorized Remote Meeting Process, or by Proxy – of Unit Owners owning Units having 50% of the total interest in the common elements of the Condominium³ shall constitute a quorum at all meetings of the Unit Owners. If any meeting of Unit Owners cannot be held because a quorum has not been attained, Unit Owners owning Units having a majority in common interest of those present at such meeting, either in person or by proxy, may, with notice to all Unit Owners, whether present or not, adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called, and from time to time thereafter, until a quorum shall be present or represented. Once a quorum shall have been established at any meeting of Unit Owners, such quorum shall not be broken due to the absence of members initially constituting the quorum at a meeting adjourned to a later date for a continuation of the same affairs.

Section 2.10 Majority of Vote. The vote of a majority of Unit Owners at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all purposes except where in these By-Laws or by law, a higher percentage vote is required. The term "majority of Unit Owners" shall mean those Unit Owners holding more than 50% of the total authorized votes of all Unit Owners present in person or by proxy and voting at any meeting of the Unit Owners, in accordance with Section 2.01 hereof.

Section 2.11 Order of Business at Meetings. The order of business at all meetings of the Unit Owners shall be as follows:

- (a) Roll call
- (b) Proof of notice of meeting or waiver of notice
- (c) Reading of minutes of preceding meeting
- (d) Reports of officers
- (e) Report of Board of Managers
- (f) Reports of committees
- (g) Election of members of the Board of Managers, in the case of an annual meeting

³ A Quorum (50%) is equivalent to 38 of the 76 Units

(h) Unfinished business

(i) New business

ARTICLE III BOARD OF MANAGERS

Section 3.01 Number and Qualification. The affairs of the Condominium are governed by a Board of Managers, consisting of up to five (5) persons. Nominees, appointees and members of the Board of Managers must at all relevant times be either (i) a Unit Owner or (ii) a Unit resident who is at least 18 years of age.

Section 3.02 Powers and Duties. The Board of Managers shall have the powers and duties necessary for the administration of the affairs of the Condominium and may do all such acts and things – except as by law, by the Declaration, by these By-Laws may not be delegated to the Board of Managers by the Unit Owners. Such powers and duties of the Board of Managers shall include, but shall not be limited to, the following:

- (a) Determination and levying of Annual Charges payable in monthly installments (or such other periodic installments as the Board shall determine) to cover the cost of common expenses required for the affairs of the Condominium, including without limitation, the operation and maintenance of the Property. The Board of Managers may increase the Annual Charges or impose a Special Assessment in excess of that amount, if required, to meet any additional necessary expenses, but said increases can only be assessed among the Unit Owners in accordance with their respective common interests.
- (b) Collection and use of the assessments collected to arrange for repairs and maintenance that are the responsibility of the Condominium⁴; and for such other purposes as required pursuant to the Offering Plan, Declaration of Condominium and these By-Laws.
- (c) Operation, care upkeep and maintenance of the Property and the private roadways.
- (d) Making of repairs, additions and improvements to or alterations of the Property in accordance with the provisions of these By-Laws and the Declaration of Condominium.
- (e) Obtaining and maintaining insurance for the Property pursuant to the provisions of Section 8.01 hereof.
- (f) Paying any taxes and filing tax returns required of the Condominium.
- (g) Bringing and defending actions against the Unit Owners which are pertinent to the operation of the Condominium and bringing actions on behalf of Unit Owners as provided for in Section 339-dcl of the Real Property Law or in the Declaration.

⁴ Repairs and maintenance that are the responsibility of the Condominium are described in Section 7.01 of these By-Laws.

- (h) Borrowing money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of the Property, provided, however that (i) the consent of at least 66²/₃% in number and in common interest of all Unit Owners⁵, obtained at a meeting duly called and held for such purpose in accordance with the provisions of these By-Laws, shall be required for the borrowing of any sum in excess of 15% of the amount of the then current annual budget of the Condominium and (ii) no lien to secure repayment of any sum borrowed may be created on any Unit or its appurtenant interest in the common expenses without the consent of the Unit Owner.
- (i) Adoption and amendment of reasonable Rules and Regulations covering the details of operation of the Condominium and use of the Property. Such Rules and Regulations and amendments shall be binding upon Unit Owners upon Board approval at a Board of Managers meeting. A copy of such Rules and Regulations and all amendments shall be delivered to each Unit Owner.
- (j) Collection of delinquent assessments by suit or otherwise, abatement of nuisances and the seeking of damages from Unit Owners for violations of the Rules and Regulations referred to herein,
- (k) Employing and terminating the employment of employees and independent contractors, purchasing supplies and equipment, entering into contracts and generally having the powers of manager in connection with the matters hereinabove set forth.
- (l) Complying with any change in New York law as it may affect the Condominium.
- (m) Taking any and all actions as are necessary or appropriate in the judgment of the Board of Managers to enforce the provisions of the Declaration or these By-Laws, and compliance therewith.

Section 3.03 Committees Acting on Behalf of Board of Managers. Except as limited by this Section 3.03, the Board of Managers may, by resolution or resolutions passed by a majority of the whole Board⁶, designate one or more committees, each such committee to consist of one (1) or more Unit at least one of whom shall be a member of the Board of Managers, which to the extent provided in said resolution or resolutions, shall have and may exercise such powers of the Board of Managers in the management of the business and affairs of the Condominium as such resolution or resolutions shall provide.

Section 3.04 Nomination Election and Term of Office. Nominations for election to the Board of Managers may be made by any Unit Owner. Any such nomination received in writing at least ten (10) days prior to the annual meeting shall be included on the ballot. Nominations may also be made by any Unit Owner at the annual meeting of the Condominium Unit Owners.

⁵ At least 66²/₃% is equivalent to at least 51 of the 76 Units.

⁶ When the Board of Managers has four or five members, a majority of the whole Board is at least three of its members.

Each person elected to the Board of Managers shall serve for a term of two years, except when there are more than three positions to be filled by an election. When an election is for more than three positions, three of the positions shall have a term of two years and the remainder a term of one year⁷. The actual lengths of the terms are determined by the timing of the annual meetings when elections are held⁸. Persons elected to the Board or Managers shall hold office until their respective successors shall have been elected or until their re-election by the Unit Owners.

Section 3.05 Removal of Members of the Board of Managers. At any regular meeting, or special meeting of Unit Owners held for that purpose, any one or more of the members of the Board of Managers elected by the Unit Owners may be removed, with or without cause, by Unit Owners representing a majority of Units⁹; and a successor may then and there or at some later date be elected, by a majority of Units represented at such election, to fill the vacancy thus created for the corresponding remaining term. Any member of the Board of Managers whose removal has been proposed by the Unit Owner(s) shall be given an opportunity to be heard at the meeting.

Section 3.06 Resignation of Members of the Board of Managers. A member of the Board of Managers may resign at any time by giving written notice to the Board, or to the President or Secretary of the Condominium. Unless otherwise specified in the letter of resignation, the resignation shall take effect immediately upon receipt thereof by the Board, President or Secretary, as the case may be, and acceptance of the resignation shall not be necessary to make it effective.

Section 3.07 Vacancies. Except as hereinafter provided, vacancies in the Board of Managers, occurring other than as a result of removal pursuant to Section 3.05, shall be filled by vote of a majority of the remaining members at a meeting of the Board of Managers or a special meeting of the Board of Managers held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum. Each person so elected shall be a member of the Board of Managers until the next annual meeting of the Unit Owners or until a successor is elected.

Section 3.08 Organizational Meeting. The first meeting of each Board newly elected by the Unit Owners shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter at such date, time and place or manner as may be practicable.

Section 3.09 Regular Meetings. Regular meetings of the Board of Managers may be held at such time, and in such place or manner, as shall be determined from time to time by a majority of the members of the Board. Notice of regular meetings of the Board of Managers shall be given to

⁷ The intention is to stagger the terms so that at least two of the five Board positions become open for election each year.

⁸ The words "years" and "year" in this section 3.04 are used for convenience and indicate the *approximate* length of the terms. For example, a term of two years is intended to expire upon the election of a successor or the member's re-election at the second annual meeting after the election, which can be several days after or before the two-year calendar anniversary of the member's start of term.

⁹ For the 76 Units in the Condominium, 39 Units is the majority required to remove a person elected to the Board of Managers.

each member of the Board of Managers personally, by mail, by email, or other electronic means, at least two (2) days prior to the day set for such meeting. Any one or more members of the Board may participate in such regular meetings or special meetings as described below by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at such meeting.

Unit Owners may attend and observe regular meetings of the Board of Managers. Unit Owners shall be notified of each regular Board of Managers meeting by posting on the community bulletin board the draft minutes of a completed meeting that state the meeting date, time, and place or manner; by the posting of a separate notice; or by any other reasonable means accessible by Unit Owners.

Section 3.10 Special Meetings. Special meetings of the Board of Managers may be called by the President on two (2) days' notice to each member of the Board either personally, by mail, by email or by, other electronic means, which notice shall state the time, place or manner, and purpose of the meeting. Special meetings shall be called by the President or Secretary in a like manner and on like notice on the written request of at least two (2) members of the Board of Managers.

Any member of the Board of Managers may at any time waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Managers at any meeting of the Board shall constitute a waiver of notice by such member of the time and place or manner of the meeting and the business to be conducted thereat. If all the members of the Board of Managers are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Unit Owners are permitted to attend and observe special meetings of the Board of Managers. When practical, Unit Owners should be notified of each special meeting of the Board of Managers by posting on the community bulletin board or by other reasonable means. Special meetings may not be used for the purpose of limiting observation by Unit Owners.

Section 3.11 Quorum of Board of Managers. At all meetings of the Board of Managers, a majority of the members thereof shall constitute a quorum for the transaction of business, and, except as may be otherwise specifically provided by statute or by the Declaration or by these By-Laws, the votes of a majority of the members of the Board of Managers present at a meeting at which a quorum is present shall constitute the decision of the Board of Managers. If at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time, with notice to all Unit Owners until a quorum shall be present. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Meetings of the Board of Managers shall be held at a suitable place or manner convenient to its members. A majority may also authorize a Remote Meeting Process to allow participation in meetings from a distance. No meeting should be scheduled at a time or in a manner or place intended to exclude or discourage a member from participating.

Section 3.12 No Compensation. No member of the Board of Managers shall receive any compensation for acting as such.

Section 3.13 Liability of the Board of Managers. The members of the Board of Managers shall not be liable to the Unit Owners for any errors of judgment, negligence, or otherwise in acting as a member of the Board of Managers except for their own individual willful misconduct or bad faith. It is intended that the members of the Board of Managers shall have no personal liability with respect to any contract made by them on behalf of the Condominium. Every agreement made by the Board on behalf of the Condominium shall provide that the members of the Board are acting only as agents for the Condominium and shall have no personal liability thereunder.

No member of the Board of Managers shall engage in any transactions which conflict with such person's duties as a Board member without the prior approval of a disinterested majority of the remaining Board members after full disclosure of all material facts.

Section 3.14 Managing Agent and Manager. The Condominium may employ, or otherwise engage a Managing Agent at a compensation established by the Board of Managers to perform such duties and services as the Board of Managers shall authorize.

ARTICLE IV OFFICERS

Section 4.01 Designation. The principal officers of the Condominium shall be the President, the Secretary and the Treasurer, each of whom shall be elected by the Board of Managers.

Section 4.02 Election of Officers. The officers of the Condominium shall be elected annually by the Board of Managers at the organizational meeting of each new Board and shall hold office at the pleasure of the Board.

Section 4.03 Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Managers, any officer may be removed from their office (i.e., President, Secretary, or Treasurer), either with or without cause, and their successor elected, at any meeting of the Board of Managers.

Section 4.04 President. The President is the chief executive officer of the Condominium and presides at all meetings of Unit Owners and of the Board of Managers. The President executes agreements, contracts and leases on behalf of the Condominium except as the Board of Managers by resolution may otherwise determine. The President has the authority to do any and all acts and things and to direct any officers, employees or agents of the Condominium to do such acts and things not prohibited by applicable law or these By-Laws as are reasonably appropriate for the fulfillment of the purposes of the Condominium and to the execution and enforcement of the Declaration, these By-Laws and any Rules and Regulations established by the Condominium Board of Managers.

Section 4.05 Secretary. The Secretary shall (i) keep the minutes of all meetings of the Unit Owners and of the Board of Managers; (ii) record all votes and the minutes of all proceedings in a book to be kept for that purpose; (iii) have charge of such books and papers as the Board of Managers may direct; (iv) give or cause to be given notice of all meetings of Unit Owners and all special meetings of the Board of Managers; and (v) in general, perform all the duties incident to the office of Secretary of a stock corporation organized under the Business Corporation Law of the State of New York.

Section 4.06 Treasurer. The Treasurer is responsible for (i) Condominium funds, including the collection and handling of Common Charges; (ii) keeping full and accurate financial records and books of account showing all receipts and disbursements, and the preparation of all required financial data; (iii) the deposit of all moneys and other valuable effects in the name of the Condominium in such depositories as may from time to time be designated by the Board of Managers; (iv) signing or endorsing any and all checks, notes or similar instruments in the ordinary course of business, except as the Board may otherwise direct; and (v) in general, performing all the duties incident to the office of Treasurer of a stock corporation organized under the Business Corporation Law of the State of New York. The Treasurer may reasonably rely on the actions of the property manager, or other service provider(s) engaged by the Condominium, in the fulfillment his or her responsibilities.

Section 4.07 Agreements, Contracts Leases, etc. The Board of Managers by resolution may authorize any officers or agents of the Condominium in any specific instance to execute agreements, contracts, leases or related documents on behalf of the Condominium.

Section 4.08 Compensation of Officers. No officer or other member of the Board of Managers shall receive any compensation for acting as such.

Section 4.09 Conflicts of Interest. No member of the Board of Managers shall engage in any transaction which conflicts with such person's Board duties without the prior approval of a majority of the Board of Managers after full disclosure of all material facts.

ARTICLE V COMMON CHARGES AND ASSESSMENTS

Section 5.01 Determination of Common Charges. The Board of Managers shall, from time to time, but at least annually, determine and fix the budget representing the sum or sums necessary and adequate for the continued operation of the Condominium and make available a copy of the proposed budget to all Unit Owners at least fifteen (15) days prior to the adoption thereof, and send a copy without charge to any Unit Owner upon request. The Board shall make available a copy of the budget as adopted and any supplement thereto to every Unit Owner, and send such copies without charge to any Unit Owner upon request. The Board of Managers shall determine the total amount required, including the operational items such as insurance, snow removal, maintenance of the lawns and shrub beds and other operating expenses, as well as required reserves and charges to cover any deficits from prior years. The total annual requirements shall be assessed as a single sum against all Units and prorated against each of said Units in accordance

with the respective common interests appurtenant to such Units¹⁰. Said Annual Charges shall be payable in monthly installments unless the Board of Managers establishes other periods for payment. Installment amounts may be rounded in any reasonable manner, including rounding up. Special Assessments, should such be required, shall be allocated, levied and paid in the same manner as hereinabove provided for Annual Charges, except for assessments levied against particular Unit Owners as provided in Section 7.02 hereof. The Board of Managers shall have the authority to impose any Special Assessments as are provided for or authorized by the provisions of the Declaration.

Section 5.02 Collection of Assessments. If a Common Charge or any installment thereof is not paid within ten (10) days of the due date, the Condominium may impose a late charge in such amount or amounts as the Board of Managers deems reasonable, provided such late charges are equitably and uniformly applied.

If the Common Charge or installment thereof is not paid within thirty (30) days after the due date, the Common Charge shall bear interest from the due date at such rate as may be fixed by the Board of Managers from time to time, such rate not to exceed the maximum rate of interest then permitted by law; and the Condominium, may bring legal action against the Unit Owner personally obligated to pay the same or foreclose the lien on such Unit pursuant to, and in the manner provided by New York State Law. The cost of any such proceedings and other costs and expenses incurred in efforts to collect such past due Common Charges, including reasonable attorney's fees, shall be added to the amount of such Common Charge, accelerated installments, if any, late charges and interest. Any amounts collected on past due Common Charges shall be applied in the following order: attorney's fees, other costs of collection, interest, late charges, and then the Common Charges, beginning with the Common Charge past due for the longest period.

Section 5.03 Rights and Obligations Regarding the Foreclosure of Liens for Unpaid Common Charges. In any action brought by the Condominium to foreclose a lien on a Unit because of unpaid Common Charges, the Unit Owner shall be required to pay a reasonable rental for the use of his Unit, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Condominium shall have power to purchase such Unit at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the Unit. A suit to recover a money judgment for unpaid Common Charges shall be maintainable without foreclosing or waiving the lien securing the same.

Section 5.04 Notice of Default. The Condominium, when giving notice to a Unit Owner of a default in paying Common Charges or other default, shall at the request of any mortgagee, send a copy of such notice to each holder of a mortgage covering such Unit whose name and address has theretofore been furnished to the Condominium. The mortgagee shall have the right to cure the Unit Owner's default with respect to the payment of Common Charges or other default of the Unit Owner which could result in a lien against the Unit of such Unit Owner.

Section 5.05 Statement of Common Charges. Upon the written request of a Unit Owner, lessee or mortgagee with respect to the Unit owned by such Unit Owner, leased by such lessee or

¹⁰ For each of the 76 Units, the Annual Charge is $\frac{1}{76}$ th of the total annual requirements.

upon which such mortgagee holds a mortgage, or any prospective purchaser, lessee, mortgagee or title insurer of such Unit, the Board of Managers, or the Managing Agent shall promptly furnish a certificate in writing setting forth with respect to such Unit as of the date of such certificate (i) whether or not the Common Charges due have been paid; (ii) the amount of such Common Charges, including interest and costs, if any, due and payable; and (iii) whether any other amounts or charges are owing to the Condominium (e.g., for a fine, or for the cost of extinguishing a violation of the Declaration or Rules and Regulations). A reasonable charge, as determined by the Board of Managers, may be made for the issuance of this certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Condominium and any bona fide purchaser or lessee of, or lender on, or title insurer of, the Unit with respect to which the request was made.

Section 5.06 Operating Account. There shall be maintained a cash deposit account to be known as the "Operating Account," into which shall be deposited the operating portion of all Common Charges and Special Assessments as fixed and determined for all Units. Disbursements from said account shall be for the general needs of the operation of the Condominium including, but not limited to, wages, repairs, maintenance and other operating expenses.

Section 5.07 Other Accounts. The Board shall maintain any other accounts it shall deem necessary to carry out its purposes.

ARTICLE VI RECORDS AND AUDITS

Section 6.01 Annual Statement. An annual report (audit or review) of the receipts and expenditures of the Condominium, prepared by an independent public or certified public accountant, shall be made available to all Unit Owners, and a copy shall be provided without charge to any Unit Owner upon request.

The cost of the annual report and other services required by this Section 6.01 shall be paid by the Condominium as a common expense

Section 6.02 Inspection of Records. Every Unit Owner or his representative shall be entitled to examine the books and records of the Condominium on reasonable notice to the Board of Managers but not more often than once a month.

Section 6.03 Availability of Records and Legal Documents. The Board of Managers shall make available for inspection by Unit Owners upon reasonable notice and during normal business hours current copies of the Condominium's Declaration, By-Laws, Rules and Regulations, budget, schedule of assessments and any other books, records and financial statements of the Condominium. The Board may furnish copies of such documents to such parties and may charge a reasonable fee to cover the cost of furnishing such copies.

ARTICLE VII MAINTENANCE OF THE CONDOMINIUM PROPERTY

Section 7.01 Repairs and Maintenance that are the Responsibility of the Condominium. The repair, maintenance and replacement of the Property's private roadways; snow removal from the roadways, driveways, front walkways and sidewalks; the maintenance of the pond, mail kiosk, and all common areas¹¹; Condominium fence repair; tree services¹²; front sidewalk¹³ repair; lawn cutting and care of grass and green areas, flower and shrub beds and front landscaped areas; maintenance, repairs and replacements of pipes, wires, conduits, the irrigation system, water and sewer lines and utility lines which serve two or more Units shall be caused to be made on behalf of the Condominium by the Board of Managers. The cost of all such snow removal and property maintenance shall be a common expense.

Section 7.02 Repairs and Maintenance that are the Responsibility of the Unit Owners. All maintenance (including painting and decorating of the Units), repairs and replacements to the Units, both interior and exterior, including the foundations, walls and roofs, air conditioners, decks, porches, hot tubs, Unit sidewalks other than front sidewalks, and repairs to pipes¹⁴, wires and conduits which service only one Unit, shall be caused to be made by the respective Unit Owner at their own expense.

Any repairs or maintenance to a Unit that may be required due to normal wear and tear, the irrigation system, poor drainage, sewer backups, Condominium contractor activities¹⁵, or the actions of others is the responsibility of the Unit Owners, who retain the right to pursue insurance or other remedies.

The maintenance, care, or removal of any trees, shrubs, flowers, other plantings, lawn ornaments, decorations, or other articles that are provided by the Unit Owners, their tenants, or their agents are the responsibility of the respective Unit Owner.

Driveway replacement for any Unit is the responsibility of the Unit Owner.

Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 7.01 above but which is occasioned by a negligent or willful act or omission of (a) a Unit Owner, or (b) any family member, employee, agent, guest, tenant, or invitee of such Unit Owner, or (c) a family member, employee, agent, guest or invitee of the tenant

¹¹ Common areas are those areas of the Property, including the periphery, that are not on one of the 76 lots.

¹² Trees in the common area are the responsibility of the Condominium. The cost of maintenance of trees on 76 Units may be included as a common expense as determined by the Board of Managers.

¹³ The term "front sidewalks" includes the sidewalks near the street on the side of those Units located on corner lots.

¹⁴ The term "pipes" includes connectors, valves, and other connected equipment for the portions of the irrigation system, water, and sewer lines, that service only that Unit.

¹⁵ Any damage to a Unit Owner's property caused by a contractor hired by the Condominium should first be reported to the property manager, or other authorized representative of the Condominium, who will initiate the contact with the contractor on behalf of the Unit Owner.

of such Unit Owner, or (d) an employee, agent, guest or invitee of (i) any member of such Unit Owner's family or (ii) any family member of the tenant of such Unit Owner; shall be made at the cost and expense of such Unit Owner.

In the event that a Unit Owner fails to make any such maintenance or repair to such Unit Owner's Unit, which maintenance or repair is necessary to protect any of the other Units or Lots, the Condominium shall have the right to make such maintenance or repair (after the failure of the Unit Owner to do so, or commence or be diligently continuing to do so, upon ten (10) days' written notice, or written or oral notice of a shorter duration in the event of an emergency situation) and to charge the Unit Owner for the cost of all such repairs and/or maintenance. In the event that the Condominium charges a Unit Owner for repairs or maintenance to such Unit Owner's Unit or for repairs to any common element restricted in use to such Unit Owner and which the Unit Owner is obligated to maintain pursuant to these By-Laws or the Declaration, and the Unit Owner fails to make prompt payment, the Condominium shall be entitled to bring suit thereon, and, in such event, the Unit Owner failing to make such payment shall be liable for the reasonable attorney's fees and costs of such suit or proceeding together with interest on all sums due.

Section 7.03 Quality of Maintenance and Repairs. All repairs, painting and maintenance, whether made by the Unit Owner or by the Condominium, to the Units, doors, windows, decks, garages or the exterior surface of the Units, including the roof, or to any generally visible portion of the foundation, shall be carried out in such a manner so as to conform to the materials, style and color initially provided by the Sponsor, unless the Board of Managers determines otherwise.

Section 7.04 Restrictions on Use of Units and Common Elements. In order to provide for congenial occupancy of the Property and for the protection of the values of the Units, the use of the Property shall be restricted to and shall be in accordance with the following provisions:

- (a) Each Unit, whether occupied or leased out by the Unit Owner, shall be used for residential purposes only.
- (b) No wholesale or retail business, including any salon, studio, laboratory, home industry or medical or dental office, shall be conducted in or on any Lot or other portion of the Property without the consent of the Board of Managers. This restriction is not intended to preclude the operation of an in-home office for purposes other than those set forth above.
- (c) No nuisances¹⁶ shall be allowed on the Property nor shall any use or practice be allowed which is a source of annoyance to its residents or occupants or which interferes with the peaceful possession or proper use of the Property by its residents or occupants.
- (d) No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental

¹⁶ Nuisances include, but are not limited to, noises, odors, trash, unsightly Units, unhealthy conditions, littering, illegal drug activity, invasions of privacy, threats, intimidation, and dangerous activity or conditions.

bodies having jurisdiction thereof shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof relating to any portion of the Property, shall be cured or corrected by and at the sole expense of the Unit Owners or the Condominium, as the case may be, responsible for such violation, provided that upon failure of a Unit Owner to cure or correct such violation after ten (10) days' written notice, the Condominium may, at such Unit Owner's expense, payable in the same manner as an assessment against such Unit, cure or correct such violation on such Unit Owner's behalf or commence appropriate legal proceedings to enjoin or restrain such violation, as more fully set forth in Section 7.08 hereof.

- (e) No Unit may be leased for a term of less than six (6) months.
- (f) Each Unit Owner shall be permitted to keep common household pets in their Unit. No tenants or lessees shall be permitted to have pets in any Unit without the express written consent of the Unit Owner. The number of pets at each Unit may be limited as determined by the Board of Managers. No pet shall be tethered or chained to a stationary object outdoors on the Property at any time.
- (g) No changes, alterations, additions or modifications to the exterior of the Units or Lots as initially constructed, structural or non-structural, shall be made without the prior written consent of the Board of Managers or any Architectural Committee thereof.
- (h) No fences, walls, swimming pools, storage sheds, playground or swing sets, portable basketball equipment, outbuildings or other structures of any kind whatsoever shall be placed or erected on any Lot or Unit within Hickory Grove Village Condominium without the prior written consent of the Board of Managers, after submission and approval of plans therefor.

Section 7.05 Rules of Conduct. Rules and Regulations concerning the use of the Units and the common elements may be promulgated and amended by the Board of Managers. Copies of such Rules and Regulations shall be announced and made available to each Unit Owner prior to the time when the same shall become effective. Copies of such proposed regulations will be made available to a Unit Owner without charge upon request.

Section 7.06 Abatement of Violations. The violation of any Rule or Regulation adopted by the Board of Managers, or of any By-Law contained herein, or of any provision of the Declaration, shall give the Board of Managers or its designees, the right, in addition to any other rights set forth in these By-Laws, (a) to enter the Unit in which, or as to which, such violation exists and to summarily abate, remove, repair or alter, at the expense of the Unit Owner, any structure, thing or condition that may exist therein contrary to the provisions of the Declaration, these By-Laws or the Condominium's Rules and Regulations, as the case may be, and the Board of Managers or its designees shall not be deemed thereby guilty in any manner of trespass subject to the laws of New York State; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such violation; or (c) to establish a penalty in accordance with Section 7.08 below. No Unit Owner shall have the right to enjoin, abate or remedy the continuance

of a violation by appropriate legal proceedings at law or in equity until a reasonable time after a written request to the Board of Managers to remedy the matter has been delivered and the Board shall have failed or refused to act thereon.

Section 7.07 Obligation and Lien for Cost of Enforcement. If any action is successfully brought to extinguish a violation of any rule or regulation adopted by the Board of Managers or to successfully enforce the provisions of the Declaration or these By-Laws, the cost of such action, including legal fees, shall become a binding personal obligation of the violator. If such violator is (a) the Unit Owner, or (b) any family member, employee, agent, tenant or guest or invitee of such Unit Owner, or (c) a family member or employee, agent, guest or invitee of the tenant of such Unit Owner, or (d) employee, agent, guest or invitee of (i) any member of such Unit Owner's family, or (ii) any family member of the tenant of such Unit Owner; such cost shall also be a lien upon the Unit of such Unit Owner.

Section 7.08 Penalties and Fines. In addition or as an alternative to an action at law or suit in equity, the Board of Managers may, with respect to any violation of the Declaration or of these By-Laws or any Rules and Regulations of the Condominium or of any committee of the Condominium, and after affording the alleged violator a reasonable opportunity to appear and be heard, establish monetary and non-monetary penalties, the amount and severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person. Monetary penalties imposed against a Unit Owner or occupant shall be deemed an assessment against the Unit of such Unit Owner and shall constitute a personal obligation of the Unit Owner and shall be collectible in the same manner as Annual Charges and Special Assessments under Article V of these By-Laws.

Section 7.09 Unit Owner Responsible for Tenants and Other Occupants. Any lease of a Unit shall provide for full compliance by the tenant(s) with the Declaration, By-Laws and Rules and Regulations of the Condominium. Should an occupant of any Unit be in violation thereof at any time, the Board of Managers may notify the Unit Owner. If the violation is not cured or eviction proceedings commenced against the tenant(s) within fourteen (14) days after the Unit Owner has received notice of such violation, or if the eviction proceedings are not reasonably diligently pursued thereafter, the Condominium may pursue any additional remedies which it may be available to it.

ARTICLE VIII INSURANCE

Section 8.01 Insurance. The Condominium shall obtain and maintain, to the extent determined by the Board of Managers in its sole discretion to be reasonably obtainable and appropriate, and in such amounts as the Board of Managers shall determine to be appropriate unless

otherwise required herein (i) general liability insurance, (ii) directors' and officers' liability insurance¹⁷, (iii) a fidelity bond/theft insurance, and (iv) umbrella coverage.

The Board of Managers may also obtain and maintain such other insurance as it shall deem necessary or desirable from time to time including increased "umbrella" catastrophe coverage.

- (a) Liability. The liability insurance shall cover the Board of Managers, the officers of the Condominium and all Unit Owners, for any and all occurrences on the Property owned by the Condominium, being the private roadways, but not the liability of Unit Owners arising from occurrences with such Unit Owner's Unit or within the Lot owned by the Unit Owner of such Unit. The policy shall include the following endorsements: (i) comprehensive general liability, (ii) personal injury, (iii) medical payments, (iv) cross liability, and (v) contractual liability including any liability of the Condominium to indemnify officers and members of the Board of Managers as provided in these By-Laws; and shall include such other provisions as are required pursuant to the Declaration.

This public liability insurance may be changed by the Board of Managers from time to time as in their judgment may be appropriate.

- (b) Directors' and Officers' Liability. The directors' and officers' liability insurance shall cover wrongful acts or omissions of members of the Board of Managers or officers of the Condominium, including cost of defense of suits or proceedings against officers or members of the Board of Managers. The policy shall be on a "claims made" basis.
- (c) Fidelity Bond. The fidelity bond shall name the Condominium as obligee and shall cover all members of the Board of Managers, officers and employees of the Condominium who handle Condominium funds. The bond shall be in an amount not less than the estimated maximum amount of funds, including reserves, in the custody of the Condominium or Managing Agent at any given time. It shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression and shall provide that the bond shall not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to the Board of Managers.
- (d) No Liability for Failure to Obtain Above Coverages. The Board of Managers shall not be liable for failure to obtain any of the coverages required by this Section 8.01 or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at a cost determined by the Board to be excessive or unreasonable.
- (e) Deductible Amounts. The deductible amount, if any, on any insurance policy purchased by the Board of Managers shall be a common expense, provided, however, that the Board of Managers may assess any deductible amount necessitated by the gross negligence or

¹⁷ The term "directors' and officers' liability insurance" is a generic term intended to describe the type of insurance that would cover duly elected or appointed members of the Board of Managers.

wantonly malicious act of a Unit Owner against such Unit Owner. The Condominium may pay the deductible portion for which a Unit Owner is responsible, and the amount so paid, together with interest and costs of collection (including attorney's fees) shall be a charge and continuing lien upon the Unit involved, shall constitute a personal obligation of the Unit Owner, and shall be collectible in the same manner as Annual Charges and assessments as provided in the Declaration.

- (f) Insurance Carried by Unit Owners. Unit Owners shall carry their own fire and casualty insurance, and any other types of coverage as may be determined by the Unit Owners in their own discretion.

ARTICLE IX SELLING, MORTGAGING AND LEASING UNITS

Section 9.01 Selling and Leasing Units. Units can be sold or leased, provided that (i) no Unit Owner shall convey, mortgage, pledge, hypothecate, sell or lease his or her Unit unless and until all unpaid Common Charges and Special Assessments assessed against his or her Unit shall have been paid to the Condominium, and (ii) no Unit may be leased for a term of less than six (6) months. However, such unpaid Common Charges and Special Assessments, along with any late charges, interest, or fines assessed against the Unit, can be paid out of the proceeds of the sale of a Unit or by the Grantee. Any lease of a Unit shall provide for full compliance by the tenants with the Declaration, By-Laws, Rules and Regulations of the Condominium. The Unit Owner shall be responsible for violations by such Unit Owner's tenant and shall be subject to actions by the Condominium in accordance with Section 7.09 of these By-Laws.

Section 9.02 Mortgaging of Units and Notice to Condominium. Each Unit Owner shall have the right to mortgage his Unit without restriction. A Unit Owner who mortgages his Unit shall so notify the Condominium in writing of the name and address of the Mortgagee.

Section 9.03 Gifts and Devises, etc. Any Unit Owner shall be free to convey or transfer his Unit by gift or to devise his Unit by will, or to pass the same by intestacy without restriction.

ARTICLE X AMENDMENT

Section 10.01 Amendments to By-Laws. Except as hereinafter provided otherwise, these By-Laws may be modified, altered or amended at any duly called meeting of Unit Owners provided that:

- (a) A notice of the meeting containing a full statement of the proposed modification, alteration, or amendment has been sent to all Unit Owners as listed on the books and records of the Condominium and to all mortgagees of Units who have requested the same;

- (b) a majority of the Unit Owners in number and in common interest approve the change¹⁸;
- (c) The Condominium obtains the approval¹⁹ of the known mortgage holders who represent more than 50% of the votes of Unit estates that are subject to mortgages held by eligible holders; and
- (d) The change is set forth as an amendment to the Declaration and these By-Laws duly recorded in the Erie County Clerk's Office.

ARTICLE XI MISCELLANEOUS

Section 11.01 Notices. All notices hereunder shall be in writing and sent by mail by depositing same in a post office or letter box in a postpaid sealed wrapper addressed, if to go to the Board of Managers, at the office of the Condominium, and if to go to a Unit Owner or Unit Mortgagee, to the address of such Unit Owner or Mortgagee at such address as appears on the books of the Condominium. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received. Whenever any notice is required to be given under the provisions of the Declaration or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice shall be deemed the equivalent thereof.

Section 11.02 Conflicts: Compliance with Article 9-B. These By-Laws are set forth to comply with the requirements of Article 9-B of the Real Property Law of the State of New York. In case any of these By-Laws conflict with the provisions of said statute or of the Declaration, the provisions of the statute or of the Declaration, whichever the case may be, shall control.

Section 11.03 No Waiver for Failure to Enforce. No restriction, condition, obligation or provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

Section 11.04 Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of these By-Laws or the intent of any provision thereof.

Section 11.05 Severability. Should any part of these By-Laws be deemed void or become unenforceable at law or in equity, the validity, enforceability or effect of the balance of these By-Laws shall not be impaired or affected in any manner.

¹⁸ For the 76 Units in the Condominium, Unit Owners representing 39 Units is the majority required to approve a change in the By-Laws.

¹⁹ Mortgage holders who do not object to the changes in these By-Laws are counted for this purpose to give their approval.

CERTIFICATION OF AMENDMENT

This Amendment to the Hickory Grove Village Condominium Declaration has been adopted in full compliance with Article XI, Section 11.01 of the Declaration, and the consents required thereof have been received and filed with the Board of Managers.

IN WITNESS WHEREOF, the undersigned, being a majority of the Members of the Hickory Grove Village Condominium Board of Managers, cause this Certification of Amendment to be signed this 2nd day of December, 2020.

HICKORY GROVE VILLAGE CONDOMINIUM

By: Constance Grasso
Constance Grasso

By: James Guy
James Guy

By: Richard Jachimiak
Richard Jachimiak

STATE OF NEW YORK)
) SS.
COUNTY OF ERIE)

On the 2nd day of December, 2020, before me, the undersigned, personally appeared Constance Grasso, James Guy, and Richard Jachimiak, each personally known to me or proved to me on the basis of satisfactory evidence to be individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.

Franklin A. Stachowiak
Notary Public

FRANKLIN A. STACHOWIAK, ESQ.
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 8/31/2021
Reg No. 02S13800750