

**Bylaws of
Bonham Trace Owners Association, Inc.**

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**Bylaws of
Bonham Trace Owners Association, Inc.**

ARTICLE 1: INTRODUCTION

1.1. Purpose of Bylaws. These bylaws provide for the administration of Bonham Trace Owners Association, a Texas nonprofit corporation, (the "Association") which association governs Bonham Trace Subdivision (the "Subdivision" of "Property"), established and described in the Declaration of Covenants, Conditions, and Restrictions of Bonham Trace Subdivision recorded under Document No. 1465465 in the Official Records of Brazos County, Texas, as may be amended from time to time (the "Declaration"), being situated upon the real property described in the Declaration.

1.2. Defined Terms. The defined terms in the Declaration apply to these Bylaws. In addition, the definitions in these bylaws, or where terms are referenced by quotes, within a parenthesis, or otherwise stated to reasonably indicate an intention to serve as a defined term, whether or not the terms contain initial-capitalized words, all constitute the definitions of those same terms.

1.3. Other Definitions.

"Bus. Org. Code" means the Texas Business Organizations Code. "Majority" means more than fifty percent (50%).

"Member" means a lot owner as a member of the association.

"Ordinary care" means the care that an ordinarily prudent person in a similar position would exercise under similar circumstances.

"Property Code" means the Texas Property Code.

"Lot owner" or "owner" means a person who holds record title to a lot in the Subdivision and includes the personal representative of a person who holds record title to a lot in the Subdivision but does not include a person having an interest in a lot solely as security for an obligation.

1.4. Nonprofit Purpose. The Association is a nonprofit corporation in which no part of the income of which is distributable to a member, director, or officer of the corporation.

1.5. Association Powers and Duties. The Association, acting through the board, has the powers and duties necessary for the administration of the affairs of the owners relating to the common area and for the operation and maintenance of the Subdivision as may be required or permitted by the dedicatory instruments and applicable law. The Association may do any and all things that are lawful and which are necessary, proper, or desirable in operating for the best interests of its members, subject only to limitations expressly set forth in the dedicatory instruments and applicable law.

ARTICLE 2: BOARD OF DIRECTORS

2.1. Management of the Association. Management of the Association's affairs is vested in the

board of directors. The certificate of formation states the names of the appointed members of the initial board of directors. Except as otherwise required by law or specifically provided herein, the initial directors will continue to be appointed by the declarant during the period of declarant control period.

2.2. Board Membership.

2.2.1. Number and Staggered Terms. The board of directors consists of three persons. Upon election, each director will serve a term of two years. Two directors will be elected in odd- numbered years. One director will be elected in even-numbered years. A director takes office upon the adjournment of the meeting or balloting at which he is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed. The number of directors may be changed by amendment of these bylaws but will not be less than three. A decrease in the number of directors may not shorten the term of an incumbent director.

2.2.2. Qualification as Member. No person is eligible for election or appointment to the board unless such person is a member of the Association.

2.2.3. Entity Member. If a lot is owned by a legal entity, such as a partnership or corporation, any officer, partner, or employee of that entity member is eligible to serve as a director and is deemed to be a member for the purposes of this section. If the relationship between the entity member and the director representing it terminates, that directorship will be deemed vacant.

2.2.4. Co-Owner as Member. Co-owners of a single lot may not serve on the board at the same time. Co-owners of more than one lot may serve on the board at the same time, provided the number of co-owners serving at one time does not exceed the number of lots they co-own.

2.2.5. Board Membership Open.

(1) **Restrictions to Right is Void.** Except as provided by this section, a provision in a dedicatory instrument that restricts a property owner's right to run for a position on the board of the Association is void.

(2) **Ineligible Member.** If a board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a board member has been convicted of a felony or crime involving moral turpitude, the board member is immediately ineligible to serve on the board of the Association, automatically considered removed from the board, and prohibited from future service on the board.

(3) **Declarant Control Limitations.** The declaration may provide for a period of declarant control of the Association during which a declarant, or persons designated by the declarant, may appoint and remove board members and the officers of the Association, other than board members or officers elected by members of the Association. Regardless of the declarant control period provided by the declaration, on or before the 120th day after the date 75 percent of the lots that may be created and made subject to the declaration are conveyed to owners other than a declarant, at least one-third of the board members must be elected by owners other than the declarant. If the declaration does not include the number of lots that may be created and made subject to the declaration, at least one-third of the board members must be elected by owners other than the declarant not later than the 10th anniversary of the date the declaration was recorded.

2.3. Election. Directors will be elected by the members. The election of directors will be conducted at the annual meeting of the Association, at a special meeting called for that purpose, or by mail, facsimile transmission, or a combination of mail and facsimile transmission. Cumulative voting is prohibited.

2.4. Resignation & Vacancy. A director may resign at any time by providing written notice to the Association. Vacancies on the board caused by any reason, except the removal of a director by a vote of the Association, will be filled by a vote of the majority of the remaining directors, even though less than a quorum. Each director so elected will serve out the remaining term of his predecessor, unless the members conduct an early election for a replacement board member. A vacancy in the board occurring because of an increase in the number of directors shall be filled by election at an annual meeting or at a special meeting of members called for that purpose.

2.5. Removal. At any annual meeting or special meeting of the Association, any one or more of the directors may be removed with or without cause by members representing a majority of the votes present in person or by proxy at such meeting, and a successor will then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the members will be given an opportunity to be heard at the meeting.

2.6. Election of Successors to Declarant's Board.

2.6.1. Method for Filling Board Positions. Notwithstanding any provision in a dedicatory instrument, any board member whose term has expired must be elected by owners who are members of the Association. A board member may be appointed by the board to fill a vacancy on the board. A board member appointed to fill a vacant position shall serve for the remainder of the unexpired term of the position. The board may amend the bylaws to provide for elections to be held as required by this section. The appointment of a board member in violation of this section is void

2.6.2. Exceptions When Section Not Applicable. This section does not apply: (a) to the appointment of a board member during the period of declarant control; or (b) to a representative board whose members or delegates are elected or appointed by members of the Association who are elected by owner members of the Association.

2.7. Election of Successors to Declarant's Board.

2.7.1. Method for Filling Board Positions. Notwithstanding any provision in a dedicatory instrument, any board member whose term has expired must be elected by owners who are members of the Association. A board member may be appointed by the board to fill a vacancy on the board. A board member appointed to fill a vacant position shall serve for the remainder of the unexpired term of the position. The board may amend the bylaws to provide for elections to be held as required by this section. The appointment of a board member in violation of this section is void.

2.7.2. Exceptions When Section Not Applicable. This section does not apply: (a) to the appointment of a board member during the period of declarant control; or (b) to a representative board whose members or delegates are elected or appointed by members of the Association who are elected by owner members of the Association.

2.8. Voting.

2.8.1. By Majority. The act of a majority of the directors present in person or by proxy at a

meeting at which a quorum has been established, is the act of the board.

2.8.2. Manner of Voting. A director may vote in person or by proxy executed in writing by the director.

2.8.3. Duration of Proxy. A proxy expires three months after the date the proxy is executed, and is revocable unless otherwise provided by the proxy or made irrevocable by law.

2.9. Meetings.

2.9.1. Notice & Waiver.

- (1) **Regular Meetings.** Regular meetings of the board may be held with or without notice.
- (2) **Special Meetings.** Special meetings of the board require notice to each director.
- (3) **Attendance as Waiver of Notice.** Attendance by a director at a meeting constitutes a waiver of notice, unless the director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.
- (4) **Notice Need Not State Purpose.** The business to be transacted at, or the purpose of, a regular or special meeting of the board is not required to be specified in the notice or waiver of notice of the meeting.
- (5) **Effective Date of Notice.** Notice given by: (1) personal delivery is considered to be given when received; (2) mail is considered to be given on the date notice is deposited in the U.S. mail with postage paid in an envelope addressed to the person at the person's address as it appears on the ownership or membership records of the association; or (3) transmittal by facsimile or electronic message is considered to be given when the facsimile or electronic message is transmitted to a facsimile number or an electronic message address provided by the person, or to which the person consents, for the purpose of receiving notice.

2.9.2. Quorum. A quorum for the transaction of business by the board exists throughout the meeting if the majority of the number of directors set by these bylaws are present at the beginning of the meeting. If a quorum is not established at any meeting of the board, the majority of those present may adjourn the meeting from time to time. At any such reconvened meeting at which a quorum is present at the beginning of the meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice. A director present by proxy at a meeting may not be counted toward a quorum.

2.9.3. Method for Holding Board Meetings. A meeting of the board may be held by a physical meeting of the directors, or by using an “authorized alternate communications system for meetings” as described in the section using that term.

2.9.4. Authorized Alternate Communications System for Meetings. An “authorized alternate communications system for meetings authorizes, for purposes of holding a meeting of the board

as the governing persons of the association, or a board committee, a conference telephone or similar communications equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting. However, if voting is to take place at the meeting, the association must: (1) implement reasonable measures to verify that every person voting at the meeting by means of remote communications is sufficiently identified; and (2) keep a record of any vote or other action taken.

2.9.5. Conduct of Meetings. The president will preside over all meetings of the board and the secretary will keep, or cause to be kept, a record of all resolutions adopted by the board and a record of all transactions and proceedings occurring at such meetings. When not in conflict with law or the dedicatory instruments, the then current edition of Robert's Rules of Order will govern the conduct of the meetings of the board.

2.9.6. Recess Procedures. If the board recesses a regular or special board meeting to continue the following regular business day, the board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. If a regular or special board meeting is continued to the following regular business day, and on that following day the board continues the meeting to another day, the board shall give notice of the continuation by posting the notice in a conspicuous place or on the association's internet website as stated above, within two hours after adjourning the meeting being continued.

2.9.7. Action Without Meeting. The provisions of this section are subject to the limitations under section 2.9. The board may act by unanimous written consent of all the directors, without a meeting. The board may also act by a written consent, stating the action to be taken, signed by the number of directors necessary to take that action at a meeting at which all of the directors are present and voting, and stating the date of each director's signature; furthermore, prompt notice of the taking of an action by directors without a meeting by less than unanimous written consent shall be given to each director who did not consent in writing to the action. Any photographic, photostatic, facsimile, or similarly reliable reproduction of a consent in writing signed by a board member may be substituted or used instead of the original writing for any purpose for which the original writing could be used. Any advance notice required for an action to be taken at a meeting is not required to be given to take the action by written consent.

2.10. Open Board Meeting Rules.

2.10.1. Board Meetings When Open Board Meeting Rules Apply. For purposes of the Open Board Meeting Rules, "Board meeting" means a deliberation between a quorum of the voting board of the Association, or between a quorum of the voting board and another person, during which Association business is considered and the board takes formal action. Such a board meeting does not include the gathering of a quorum of the board at a social function unrelated to the business of the Association or the attendance by a quorum of the board at a regional, state, or national convention, ceremonial event, or press conference, if formal action is not taken and any discussion of Association business is incidental to the social function, convention, ceremonial event, or press conference.

2.10.2. When Board Meetings Must Be Open. Regular and special board meetings must be open to members, subject to the right of the board to adjourn a board meeting and reconvene in closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the Association's attorney, matters involving the invasion of privacy of individual members, or matters that are to remain confidential by

request of the affected parties and agreement of the board. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual members, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.

2.10.3.Location of Open Board Meetings. Except for a meeting held by electronic or telephonic means, a board meeting must be held in a county in which all or part of the property in the subdivision is located or in a county adjacent to that county.

2.10.4.Records of Open Board Meetings. The board shall keep a record of each regular or special board meeting in the form of written minutes of the meeting. The board shall make meeting records, including approved minutes, available to a member for inspection and copying on the member's written request to the Association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the board.

2.10.5.Notice Procedures for Open Board Meetings. Members shall be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be: (1) mailed to each property owner not later than the 10th day or earlier than the 60th day before the date of the meeting; or (2) provided at least 72 hours before the start of the meeting by: (a) posting the notice in a conspicuous manner reasonably designed to provide notice to Association members: (i) in a place located on the Association's common property or, with the property owner's consent, on other conspicuously located privately owned property within the subdivision; or (ii) on any internet website maintained by the Association or other internet media; and (b) sending the notice by e-mail to each member who has registered an e-mail address with the Association. It is a member's duty to keep an updated e-mail address registered with the Association.

2.10.6.Recess Procedures. If the board recesses a regular or special board meeting to continue the following regular business day, the board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. If a regular or special board meeting is continued to the following regular business day, and on that following day the board continues the meeting to another day, the board shall give notice of the continuation by posting the notice in a conspicuous place or on the Association's internet website as stated above, within two hours after adjourning the meeting being continued.

2.10.7.Electronic & Telephonic Board Meeting Procedures. A board may meet by any method of communication, including electronic and telephonic, without prior notice to members under the Notice Procedures for Open Board Meetings, if each director may hear and be heard by every other director, or the board may take action by unanimous written consent to consider routine and administrative matters or a reasonably unforeseen emergency or urgent necessity that requires immediate board action. Any action taken without notice to members under the Notice Procedures for Open Board Meetings, must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special board meeting.

2.10.8.Actions Not Permitted Without Notice Procedures for Open Board Meetings. The board may not, without prior notice to members under the Notice Procedures for Open Board Meetings,

consider or vote on: (a) fines; (b) damage assessments; (c) initiation of foreclosure actions; (d) initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety; (e) increases in assessments; (f) levying of special assessments; (g) appeals from a denial of architectural control approval; or (h) a suspension of a right of a particular member before the member has an opportunity to attend a board meeting to present the member's position, including any defense, on the issue.

2.10.9. Board Meetings During Development Period. "Development period" means a period stated in a Declaration during which a Declarant reserves: (a) a right to facilitate the development, construction, and marketing of the subdivision; and (b) a right to direct the size, shape, and composition of the subdivision. For purposes of these bylaws, the development period constitutes the declarant control period. Generally, the Open Board Meeting Rules do not apply to board meetings during the development period. However, the Open Board Meeting Rules apply to board meetings during the development period if and when the meeting is conducted for the purpose of: (a) adopting or amending the dedicatory instruments, including declarations, bylaws, rules, and regulations of the Association; (b) increasing the amount of regular assessments of the Association or adopting or increasing a special assessment; (c) electing non-developer board members of the Association or establishing a process by which those members are elected; or (d) changing the voting rights of members of the Association.

2.11. Board Power.

2.11.1. Stated Powers. Except as provided by the declaration, the bylaws, or by enacted law, all actions of the association must be through the board, and the board shall act in all instances on behalf of the association if in the good-faith judgment of the board the action is reasonable. Unless otherwise provided by the declaration, the association, acting through its board, may:

- (1) **Bylaws.** Adopt and amend bylaws;
- (2) **Budgets.** Adopt and amend budgets for revenues, expenditures, and reserves, and collect assessments for common expenses from lot owners;
- (3) **Hiring.** Hire and terminate managing agents and other employees, agents, and independent contractors;
- (4) **Litigation.** Institute, defend, intervene in, settle, or compromise litigation or administrative proceedings in its own name on behalf of itself or two or more lot owners on matters affecting the subdivision;
- (5) **Contracts.** Make contracts and incur liabilities relating to the operation of the subdivision;
- (6) **Repair & Maintenance.** Regulate the use, maintenance, repair, replacement, modification, and appearance of the subdivision;
- (7) **Rules.** Adopt and amend rules regulating the use, occupancy, leasing or sale, maintenance, repair, modification, and appearance of lots and common elements, to the extent the regulated actions affect common elements or other lots;
- (8) **Improve Common Elements.** Cause additional improvements to be made as a part of the common elements;

- (9) **Acquire & Convey Property.** Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, except common elements of the subdivision;
- (10) **Interests in Common Elements.** Grant easements, leases, licenses, and concessions through or over the common elements;
- (11) **Charges for Common Elements & Services.** Impose and receive payments, fees, or charges for the use, rental, or operation of the common elements and for services provided to lot owners;
- (12) **Interest & Fines.** Impose interest and late charges for late payments of assessments, returned check charges, and, if notice and an opportunity to be heard are given in accordance herewith, reasonable fines for violations of the declaration, bylaws, and rules of the association;
- (13) **Rules for Collection.** Adopt and amend rules regulating the collection of delinquent assessments and the application of payments;
- (14) **Rules for Utility Services.** Adopt and amend rules regulating the termination of utility service to a lot, the owner of which is delinquent in the payment of an assessment that is used, in whole or in part, to pay the cost of that utility;
- (15) **Charges for Statements & Documents.** Impose reasonable charges for preparing, recording, or copying declaration amendments, resale certificates, or statements of unpaid assessments;
- (16) **Emergency Entry.** Enter a lot for bona fide emergency purposes when conditions present an imminent risk of harm or damage to the common elements, another lot, or the occupants;
- (17) **Suspend Voting Privileges for Delinquency.** Suspend the voting privileges of or the use of certain general common elements by an owner delinquent for more than 30 days in the payment of assessments;
- (18) **Insurance.** Purchase insurance and fidelity bonds as it considers appropriate;
- (19) **Powers Conferred by Declaration.** Exercise any other powers conferred by the declaration or bylaws;
- (20) **Corporate Powers.** Exercise any other powers that may be exercised in this state by a corporation of the same type as the association; and
- (21) **Appointment of Committees.** Appoint standing or ad hoc committees to advise or assist the board with its responsibilities.
- (22) **Necessary & Proper Powers.** Exercise any other powers necessary and proper for the

government and operation of the association.

2.11.2. Suspension of Right to Use Common Area.

(1) **Notice.** Before an association may suspend an owner's right to use a common area, file a suit against an owner other than a suit to collect a regular or special assessment or foreclose under an association's lien, charge an owner for property damage, or levy a fine for a violation of the restrictions or bylaws or rules of the association, the association or its agent must give written notice to the owner by certified mail, return receipt requested.

(2) **Right to Cure & Hearing.** The notice must: (1) describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the association from the owner; and (2) inform the owner that the owner: (a) is entitled to a reasonable period to cure the violation and avoid the fine or suspension unless the owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months; (b) may request a hearing under Property Code §209.007 on or before the 30th day after the date the owner receives the notice; and (c) may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if the owner is serving on active military duty.

2.11.3. Alternative Payment Schedule. The Association will provide delinquent owners an alternative payment schedule by which an owner may make partial payments to the Association for delinquent regular or special assessments or any other amount owed to the Association without accruing additional monetary penalties. For purposes of these guidelines, monetary penalties do not include reasonable costs associated with administering the payment plan or interest. Owners will be provided an alternative payment plan to repay the balance due in at least three equal monthly installments of principal, with interest accruing at the rate charged all delinquent owners, and reasonable costs associated with administering the payment plan.

2.11.4. Hearing Before Board & Alternative Dispute Resolution.

(1) **Right to Hearing.** If the owner is entitled to an opportunity to cure the violation, the owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before a committee appointed by the board of the Association or before the board if the board does not appoint a committee.

(2) **Committee Hearing.** If a hearing is to be held before a committee, the notice prescribed by Property Code §209.006 must state that the owner has the right to appeal the committee's decision to the board by written notice to the board.

(3) **Time for Hearing.** The Association shall hold a hearing under this section not later than the 30th day after the date the board receives the owner's request for a hearing and shall notify the owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. The board or the owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than 10 days. Additional postponements may be granted by agreement of the parties. The owner or the Association may make an audio recording of the meeting.

(4) **Exceptions.** The notice and hearing provisions of Property Code §209.006 and this section do not apply if the Association files a suit seeking a temporary restraining order or temporary injunctive relief or files a suit that includes foreclosure as a cause of action. If a suit is filed relating to a

matter to which those sections apply, a party to the suit may file a motion to compel mediation. The notice and hearing provisions of Property Code §209.006 and this section do not apply to a temporary suspension of a person's right to use common areas if the temporary suspension is the result of a violation that occurred in a common area and involved a significant and immediate risk of harm to others in the subdivision. The temporary suspension is effective until the board makes a final determination on the suspension action after following the procedures prescribed by this section.

(5) **ADR**. An owner or Association may use alternative dispute resolution services.

2.11.5. Borrow & Secure Loans. The association, by resolution of the board of directors may: (1) borrow money; and (2) assign as collateral for the loan authorized by the resolution: (a) the association's right to future income, including the right to receive assessments; and (b) the association's lien rights. The board may borrow money to maintain, repair, or restore the common area without the approval of the members. If approved in advance by the members in the same manner as approving a special assessment, the board may borrow money for any other purpose.

2.12. General Standards for Director

2.12.1. Standard for Discharge of Duties. A director shall discharge the director's duties, including duties as a committee member, in good faith, with ordinary care, and in a manner the director reasonably believes to be in the best interest of the association.

2.12.2. Director Liability. A director is not liable to the association, a member, or another person for an action taken or not taken as a director if the director acted in compliance with this section. A person seeking to establish liability of a director must prove that the director did not act: (1) in good faith; (2) with ordinary care; and (3) in a manner the director reasonably believed to be in the best interest of the association.

2.13. Appointment of Committees

2.13.1. Management Committee

(1) **Authority to Appoint**. The board, by resolution adopted by the majority of the directors in office, may designate one or more committees to have and exercise the authority of the board in the management of the association to the extent provided by board resolution.

(2) **Composition**. A committee designated under this section must consist of at least two persons. The majority of the persons on the committee must be directors. The remaining persons on the committee are not required to be directors.

(3) **Board Not Relieved of Responsibility**. The designation of a committee and the delegation of authority to the committee does not operate to relieve the board, or an individual director, of any responsibility imposed on the board or director by law.

(4) **All Bear Same Responsibility**. A committee member who is not a director has the same responsibility with respect to the committee as a committee member who is a director.

2.13.2. Other Committees

(1) **Authority to Appoint**. The board, by resolution adopted by the majority of the directors at a meeting at which a quorum has been established, or the president, may designate and appoint one or

more committees that do not have the authority of the board in the management of the association.

(2) **Option to Limit Membership to Directors.** The membership on a committee designated under this section may be limited to directors.

2.13.3. Notice & Meetings of Committees. Committees appointed by the board are governed by the same notice and meetings provisions as those governing notices and meetings of the board. Committees appointed by officers are governed by the same notice and meetings provisions as those governing notices and meetings of members.

ARTICLE 3: OFFICERS

3.1. Officer Titles & Qualifications. The officers of the association shall be members and shall include a president, a treasurer, a secretary, and one or more vice presidents and other officers and assistant officers as are considered by the board to be necessary. The board may appoint one or more vice-presidents and such other officers and assistant-officers as it deems necessary. Any two or more offices, other than the offices of president and secretary, may be held by the same person.

3.2. Committees May Function as Officer. A properly designated committee may perform the functions of an officer. A single committee may perform the functions of any two or more officers, including the functions of president and secretary.

3.3. Elections & Terms of Office. The officers of the association shall be elected at a meeting of the board of directors called to order immediately following each annual meeting of the members. Each officer shall hold office for one (1) year, or until their successor is elected at the meeting of the board of directors called to order immediately following the next annual meeting of the members. The term of an officer may not exceed three years.

3.4. Resignation or Removal. Any officer may resign at any time by giving written notice to the board, the president, or the secretary. Such resignation shall take effect at the date of receipt of the notice or at any later time specified in the notice. Any officer may be removed from office by the board whenever, in the board's judgment, the best interests of the association would be served by such removal.

3.5. Standard of Care. In performing their duties, the officers are required to exercise the standards of care provided by applicable law. An officer is not liable to the Association or any other person for an action taken or omission made by the officer in the person's capacity as an officer unless the officer's conduct was not exercised: (1) in good faith; (2) with ordinary care; and (3) in a manner the officer reasonably believes to be in the best interest of the Association.

3.6. Management Certificate. The officers shall maintain a recording of a management certificate signed and acknowledged by an officer or the managing agent of the Association, according to the requirements of Property Code §209.004 or its successor statute.

3.7. Description of Principal Offices.

3.7.1. President. As the chief executive officer of the Association, the president will: (i) preside at all meetings of the Association and of the board; (ii) have all the general powers and duties which are usually vested in the office of president of a corporation organized under the laws of the State of

Texas; (iii) have general supervision, direction, and control of the business of the Association, subject to the control of the board; and (iv) see that all orders and resolutions of the board are carried into effect.

3.7.2. Secretary. The secretary will: (i) keep the minutes of all meetings of the board and of the Association; (ii) have charge of such books, papers, and records as the board may direct; (iii) maintain a record of the names and addresses of the members for the mailing of notices; and (iv) in general, perform all duties incident to the office of secretary.

3.7.3. Treasurer. The treasurer will: (i) be responsible for Association funds; (ii) keep full and accurate financial records and books of account showing all receipts and disbursements; (iii) prepare all required financial data and tax returns; (iv) deposit all monies or other valuable effects in the name of the Association in such depositories as may from time to time be designated by the board; (v) prepare the annual and supplemental budgets of the Association; (vi) review the accounts of the managing agent on a monthly basis in the event such managing agent is responsible for collecting and disbursing Association funds; and (vii) perform all the duties incident to the office of treasurer.

3.8. Authorized Agents. Except when the dedicatory instruments require execution of certain instruments by certain individuals, the board may authorize any person to execute instruments on behalf of the Association. In the absence of board designation, the president, vice-president, and the secretary will be the only persons authorized to execute instruments on behalf of the Association.

ARTICLE 4: MEMBERS

4.1. Membership. Every owner is a member of the association. Membership is appurtenant to and may not be separated from ownership of a lot. The membership of the association at all times consists exclusively of all lot owners.

4.2. Meetings.

4.2.1. Place of Meeting. If the meeting is not held solely by using a conference telephone or other authorized communications system, members' meetings will be held at the association's principal office or at another place designated by the board.

4.2.2. Manner of Meeting. Meetings of the members may be held by a physical meeting of the members, or by an authorized alternate communications system for meetings.

4.2.3. Authorized Alternate Communications System for Meetings. For purposes of holding a meeting of the members, or a committee of the members, an authorized alternate communications system for meetings allows such meetings to be held via a conference telephone or similar communications equipment, or another suitable electronic communications system, including video- conferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting. However, if voting is to take place at the meeting, the association must: (1) implement reasonable measures to verify that every person voting at the meeting by means of remote communications is sufficiently identified; and (2) keep a record of any vote or other action taken.

4.2.4. Conduct of Meetings. The president, or any person designated by the board, will preside over meetings of the association. The secretary will keep, or cause to be kept, the minutes of the meeting which will record all resolutions adopted and all transactions occurring at the meeting, as well as

a record of any votes taken at the meeting. The person presiding over the meeting may appoint a parliamentarian. The then current edition of Robert's Rules of Order will govern the conduct of all meetings of the association when not in conflict with the dedicatory instruments. Votes will be tallied by tellers appointed by the person presiding over the meeting.

4.2.5. Order of Business. Unless the notice of meeting states otherwise, the order of business at meetings of the Association will be as follows:

Determine votes present by roll call or check-in procedure
Announcement of a quorum
Proof of notice of meeting
Reading and approval of minutes of preceding meeting
Reports
Election of directors (when required)
Unfinished or old business
New business

4.2.6. Adjournment of Meeting. At any meeting of the Association, a majority of the members present at that meeting, either in person or by proxy, may adjourn the meeting to another time.

4.3. Notice of Meetings.

4.3.1. Timing of Notice. The notice of meeting must be delivered to each member entitled to vote at the meeting not later than the 10th day, and not earlier than the 60th day, before the date of the meeting.

4.3.2. Manner & Content of Notice. Notice of a meeting of the members must: (1) be given in the manner determined by the board, and in the absence of such determination, notice may be delivered personally, by mail, by facsimile, or by electronic message; and (2) state the date and time of the meeting, and: (A) if the meeting is not held solely by using an authorized alternate communications system for meetings, the location of the meeting; or (B) if the meeting is held solely or in part by using an authorized alternate communications system for meetings, the form of communications system to be used for the meeting and the means of accessing the communications system. In the case of a special meeting of the members, the notice must include the purpose(s) for which such special meeting has been called.

4.3.3. Effective Date of Notice. Notice of a meeting that is: (1) mailed is considered to be given on the date notice is deposited in the U.S. mail with postage paid in an envelope addressed to the person at the person's address as it appears on the ownership or membership records of the association; and (2) transmitted by facsimile or electronic message is considered to be given when the facsimile or electronic message is transmitted to a facsimile number or an electronic message address provided by the person, or to which the person consents, for the purpose of receiving notice.

4.3.4. Notice of Election or Association Vote. Not later than the 10th day or earlier than the 60th day before the date of an election or vote, the Association shall give written notice of the election or vote to each owner of property in the Association, for purposes of an association-wide election or vote. This section supersedes any contrary requirement in a dedicatory instrument.

4.4. Annual Meetings. An annual meeting of the members must be held each year on or before the end of February, with the date, time, and place determined by the board. At annual meetings the members will approve an annual budget if it has not been previously approved, elect directors according to the bylaws, and transact such other business of the Association as may properly come before them. If the board does not call an annual meeting of the Association members, an owner may demand that a meeting of the

Association members be called not later than the 30th day after the date of the owner's demand, and proceed according to Property Code §209.014 to obtain such a meeting.

4.5. Special Meetings.

4.5.1. Call of Special Meeting. A special meeting of the members may be called by: (1) the president; (2) a majority of the board; or (3) members having not less than 20 percent of the votes in the association. It will be the duty of the president to call a special meeting of the Association if directed to do so by a majority of the board or by a petition signed by members representing at least twenty percent (20%) of the votes in the Association. Such meeting will be held within 30 days after the board resolution or receipt of petition.

4.5.2. Notice of Special Meeting Must State Purpose(s). The notice of any special meeting will be the same as for notices of other meetings of the members, except such notice must also state the purpose(s) for which such meeting is called.

4.6. Written Consent Without Meeting.

4.6.1. Unanimous Written Consent. The members may take action without holding a meeting, providing notice, or taking a vote, if each person entitled to vote on the action signs a written consent or consents stating the action taken. A written consent has the same effect as a unanimous vote at a meeting. A filing instrument filed with the filing officer may state that an action approved by written consent or consents has the effect of an approval by a unanimous vote at a meeting. Any photographic, photostatic, facsimile, or similarly reliable reproduction of a consent in writing signed by a member may be substituted or used instead of the original writing for any purpose for which the original writing could be used. Any advance notice required for an action to be taken at a meeting is not required to be given to take the action by written consent.

4.6.2. Action by Less Than Unanimous Written Consent. At any meeting of the members of the association, the members are authorized to take action without holding a meeting, providing notice, or taking a vote if owners or members of the entity having at least the minimum number of votes that would be necessary to take the action that is the subject of the consent at a meeting, in which each owner or member entitled to vote on the action is present and votes, sign a written consent or consents stating the action taken. Each written consent must include the date each owner or member signed the consent and is effective to take the action that is the subject of the consent only if each consent is delivered to the association not later than the 60th day after the date the earliest dated consent is delivered to the association. The association shall promptly notify each member who did not sign a consent of the action that is the subject of the consent.

4.6.3. Delivery of Less Than Unanimous Written Consent. If less than unanimous written consent is obtained, a written consent signed by a member of the association, if the consent is not solicited on behalf of the association or the board, must be delivered by hand or certified or registered mail, return receipt requested, or by other means specified in the governing documents, to: (1) the association's registered office or principal executive office or place of business; or (2) the managerial official or agent of the association having custody of the association's records of meetings of members. A consent delivered to the association's principal executive office or place of business must be addressed to the President of the association.

4.7. Voting.

4.7.1. Voting Rights. The Association has two (2) classes of voting membership:

(1) **Class A.** Class A members are all owners, with the exception of the declarant, and are entitled to one (1) vote for each lot owned. When more than one (1) person holds an interest in any lot, all such persons are members. The vote for such lot will be exercised as they among themselves determine, but in no event may more than one (1) vote be cast with respect to any lot.

(2) **Class B.** The only Class B member is the declarant who is entitled to three (3) votes for each lot owned. The Class B membership automatically ceases and is converted to Class A membership at the end of the declarant control period.

4.7.2. Voting Membership. Members have the assigned votes per lot on each matter submitted to a vote of the members. Cumulative voting is prohibited.

4.7.3. Quorum. Members holding one-tenth of the votes entitled to be cast, in person or by proxy, at the beginning of the meeting, constitutes a quorum throughout the meeting.

4.7.4. Votes Needed for Action. The vote of the majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum has been established, is the act of the members, unless the vote of a greater number is required by law, the declaration, or these bylaws.

4.7.5. Proxy. A member may vote in person or by proxy executed in writing by the member or the member's attorney-in-fact, and filed with the secretary at or prior to the time a quorum is determined to exist. Unless otherwise provided by the proxy, a proxy is revocable and expires 11 months after the date of its execution. A proxy may not be irrevocable for longer than 11 months.

4.7.6. Manner of Conducting Voting. A member vote on any matter may be conducted by mail, by facsimile transmission, by electronic message, or by any combination of those methods.

4.7.7. Multiple Owners of Lot.

(1) **Votes Cast in Person.** If only one of the multiple owners of a lot is present at a meeting of the association, that person may cast the vote or votes allocated to that lot. If more than one of the multiple owners is present, the vote or votes allocated to that lot may be cast only in accordance with the owners' unanimous agreement unless the declaration provides otherwise. Multiple owners are in unanimous agreement if one of the multiple owners casts the votes allocated to a lot and none of the other owners makes prompt protest to the person presiding over the meeting.

(2) **Votes Cast by Proxy.** Votes allocated to a lot may be cast under a written proxy duly executed by a lot owner. If a lot is owned by more than one person, each owner of the lot may vote or register protest to the casting of votes by the other owners of the lot through a proxy duly executed by the lot owner. A lot owner may not revoke a proxy given under this section except by giving actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or if it purports to be revocable without notice. A proxy terminates one year after its date unless it specifies a shorter or longer time.

(3) **No Cumulative Voting.** Cumulative voting is not allowed.

4.8. Record Date. The record date for determining voting members must be not less than 14 days before the meeting, and may not be earlier than the 60th day before the date of the meeting. If the voting members are not otherwise determined, the record date for determining voting members is the date on which notice of the meeting is given to the members entitled to notice of the meeting. The record date for a meeting applies to any adjournment of the meeting.

4.9. List of Voting Members.

4.9.1. Generally. After setting a record date for the notice of a meeting, the association must prepare an alphabetical list of the names of all its voting members, identifying: (1) the members who are entitled to notice and the members who are not entitled to notice of the meeting; (2) the address of each voting member; and (3) the number of votes each voting member is entitled to cast at the meeting.

4.9.2. List Available for Inspection by Members. Not later than the 2nd business day after the date notice is given of a meeting for which a list was prepared, and continuing through the meeting, the list of voting members must be available at the association's principal office or at a reasonable place in the Subdivision as identified in the notice of the meeting, for inspection by members entitled to vote at the meeting for the purpose of communication with other members concerning the meeting.

4.9.3. Rights of Inspection & Copying. A voting member or voting member's agent or attorney is entitled on written demand stating the purpose of the demand, to inspect and, at the member's expense, copy the list at any reasonable time and for a proper purpose, during the period the list is available for inspection.

4.9.4. List Available at Meeting. The list of voting members must be available at the meeting. A voting member or voting member's agent or attorney is entitled to inspect the list at any time during the meeting or an adjournment of the meeting.

4.10. Voting Rights & Quorum.

4.10.1. How Votes Cast. The voting rights of an owner may be cast or given: (1) in person or by proxy at a meeting of the Association; (2) by absentee ballot in accordance with this section; (3) by electronic ballot in accordance with this section; or (4) by any method of representative or delegated voting provided by a dedicatory instrument.

4.10.2. Counting Absentee & Electronic Ballots. An absentee or electronic ballot: (1) may be counted as an owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot; (2) may not be counted, even if properly delivered, if the owner attends any meeting to vote in person, so that any vote cast at a meeting by a property owner supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal; and (3) may not be counted on the final vote of a proposal if the motion was amended at the meeting to be different from the exact language on the absentee or electronic ballot.

4.10.3. Solicitation for Absentee Ballots. A solicitation for votes by absentee ballot must include: (1) an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action; (2) instructions for delivery of the completed absentee ballot, including the delivery location; and (3) the following language: "By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final

vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail.”

4.10.4. Electronic Ballot. For the purposes of this section, “electronic ballot” means a ballot: (1) given by: (A) e-mail; (B) facsimile; or (C) posting on an internet website; (2) for which the identity of the property owner submitting the ballot can be confirmed; and (3) for which the property owner may receive a receipt of the electronic transmission and receipt of the owner's ballot.

4.10.5. Website Posting of Ballot. If an electronic ballot is posted on an internet website, a notice of the posting shall be sent to each owner that contains instructions on obtaining access to the posting on the website.

4.10.6. Controlling Provisions. This section supersedes any contrary provision in dedicatory instrument.

4.11. Recount of Votes.

4.11.1. Requiring Recount. Any owner may, not later than the 15th day after the date of the meeting at which the election was held, require a recount of the votes. A demand for a recount must be submitted in writing either: (1) by certified mail, return receipt requested, or by delivery by the U. S. Postal Service with signature confirmation service to the Association's mailing address as reflected on the latest filed management certificate; or (2) in person to the Association's managing agent as reflected on the latest filed management certificate filed, or to the address to which absentee and proxy ballots are mailed.

4.11.2. Retaining Recount Assistance. The Association shall, at the expense of the owner requesting the recount, retain for the purpose of performing the recount, the services of a person qualified to tabulate votes under this subsection. The Association shall enter into a contract for the services of a person who: (1) is not a member of the Association or related to a member of the Association board within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code; and (2) is: (A) a current or former: (i) county judge; (ii) county elections administrator; (iii) justice of the peace; or (iv) county voter registrar; or (B) a person agreed on by the Association and the persons requesting the recount.

4.11.3. Deadline for Recount. Any recount must be performed on or before the 30th day after the date of receipt of a request and payment for a recount. If the recount changes the results of the election, the Association shall reimburse the requesting owner for the cost of the recount. The Association shall provide the results of the recount to each owner who requested the recount. Any action taken by the board in the period between the initial election vote tally and the completion of the recount is not affected by any recount.

4.12. Special Voting Provisions.

4.12.1. Ballot Requirements. Any vote cast in an election or vote by a member of a Association must be in writing and signed by the member. Electronic votes cast under Section 4.10. [“Voting Rights & Quorum”] constitute written and signed ballots. In an association-wide election, written and signed ballots are not required for uncontested races.

4.12.2. Absolute Right to Vote for Board. A provision in a dedicatory instrument that

would disqualify a property owner from voting in an association election of board members or on any matter concerning the rights or responsibilities of the owner is void.

4.12.3. Tabulation and Access to Ballots.

(1) **Persons Barred from Access to Ballots.** Notwithstanding any other provision of this chapter or any other law, a person who is a candidate in an association election or who is otherwise the subject of an association vote, or a person related to that person within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, may not tabulate or otherwise be given access to the ballots cast in that election or vote except as provided by this section.

(2) **Nondisclosure.** A person other than a person described by subsection (a) may tabulate votes in an association election or vote but may not disclose to any other person how an individual voted.

(3) **Access to Ballots - Exception.** Notwithstanding any other provision of this chapter or any other law, a person other than a person who tabulates votes under subsection (2), including a person described by subsection (1), may be given access to the ballots cast in the election or vote only as part of a recount process authorized by law.

4.13. Co-Owned Lots.

4.13.1. Present at Meeting. If only one of the multiple owners of a lot is present at a meeting, that person may cast the vote or votes allocated to that lot. If more than one of the multiple owners is present, the vote or votes allocated to that lot may be cast only in accordance with the owners' unanimous agreement unless the declaration provides otherwise. Multiple owners are in unanimous agreement if one of the multiple owners casts the votes allocated to a lot and none of the other owners makes prompt protest to the person presiding over the meeting.

4.13.2. By Proxy. Votes allocated to a lot may be cast under a written proxy duly executed by a lot owner. If a lot is owned by more than one person, each owner of the lot may vote or register protest to the casting of votes by the other owners of the lot through a proxy duly executed by the lot owner. A lot owner may not revoke a proxy except by giving actual notice of revocation to the person presiding over the meeting of the Association.

4.14. Entity-Owned Lots. If a lot is owned by a legal entity such as a corporation, the vote appurtenant to that lot may be cast by any governing representative, such as an officer of the corporation or any general partner of a partnership, in the absence of express notice of the designation of a specific person by the board of directors or bylaws of the owning entity. The person presiding over a meeting or vote may require reasonable evidence that a person voting on behalf of an entity is qualified to vote.

ARTICLE 5: ASSOCIATION RECORDS

5.1. Records Retention Policy. The Association will retain the following records for the below-stated periods of time, being the stated minimum requirements of Property Code §209.005(m): (a) certificates of formation, bylaws, restrictive covenants, and all amendments shall be retained permanently; (b) financial books and records shall be retained for at least seven years; (c) account records of current owners shall be retained for at least five years; (d) contracts with a term of one year or more shall be retained for at least four years after the expiration of the contract term; (e) minutes of meetings of the owners and the board shall be retained for at least seven years; and (f) tax returns and audit records shall be retained for at least seven years.

5.2. Inspection and Production of Books and Records. A member, on written demand stating the purpose of the demand, is entitled to examine and copy at the member's expense, in person or by agent, accountant, or attorney, at any reasonable time and for a proper purpose, the books and records of the Association relevant to that purpose.

5.2.1. Purpose of Policy. The purpose of this policy is to comply with the requirement of Property Code §209.005(i).

5.2.2. Authority to Recover Costs. If an open records request is made to the Association, the Association may charge the requestor all reasonable costs of materials, labor, and overhead for compiling, producing, and reproducing the requested information.

5.2.3. Charges. The rates which the Association may charge an owner are the same as the maximum permitted rates published in Section 70.3 of the Texas Administrative Code ("T.A.C.") (Title 1, Part 3, Chapter 70). The charges shown on Prescribed Costs to Owners are some of the T.A.C. rates in effect on the date this policy is adopted and will be deemed to change automatically with changes in the State's maximum permitted rates for public information requests.

5.2.4. Prescribed Costs to Owners. The member will be charged the following:

(1) **Copy Charges.** (a) Electronic image transmitted by email - no copy charge; (b) Electronic image downloaded to USB drive - actual cost of drive; (c) Standard paper copy or scan (letter or legal size) - \$0.10 per page (double sided is 2 pages); (d) Oversize paper copy or scan (such as 11x17) - \$0.50 per page; (e) Diskette or CD - \$1.00; (f) DVD - \$3.00

(2) **Labor Charge.** (a) No labor charge if the request is for 50 or fewer pages of information, unless the records must be retrieved from a storage facility that is remote from the processor's office; (b) \$15.00 per hour, in 1/4 hour increments, for actual time to locate, compile, manipulate data, reproduce information, and (if necessary) redact confidential information, for requests of more than 50 pages and for records in remote storage; (c) No labor charge for time spent to review the requested information to determine if the information qualifies for an exemption from open records

(3) **Overhead Charge.** No overhead charge if the request is for 50 or fewer pages of information. Otherwise, the overhead charge is 20 percent of the labor charge.

(4) **Remote Document Retrieval Charge.** If the requested information is stored with a commercial records storage company that charges a fee to deliver and return stored records, the Association may seek reimbursement of the third-party fee from the owner if the request otherwise qualifies for a labor charge.

(5) **Other Charges.** Actual postage and shipping charges if necessary to transmit the reproduced information to the owner. Actual cost of miscellaneous supplies, such as boxes, if used to produce the requested information. If the Association accepts payment by credit card, the Association may recoup the amount of any actual transaction fee charged by the credit card company for the privilege. No sales tax.

(6) **Savings Clause.** Notwithstanding anything to the contrary in any writing or communication made by the Association, the Association will not in any event be entitled to receive or collect open records charges from an owner in amounts greater than the maximum amounts permitted by

applicable law. If from any circumstances whatsoever the Association charges or receives an amount in excess of the maximum charges permitted by law, the excess amount will be reimbursed to the owner.

(7) **Waiver**. The Association may reduce or waive some or all of the charges addressed by this Policy on a request-by-request basis, without waiving the right to charge such fees on future requests.

(8) **Payment**. The Association may require advance payment of the estimated charges addressed by this policy. Within 30 business days after delivering the requested information, the Association will provide the owner with an invoice of the actual costs. If the actual costs are less than the prepaid estimated charges, the Association will refund the difference to the owner within 30 business days after sending the invoice. If the actual costs are greater than the prepaid estimated charges, the difference is due and payable to the Association by the owner within 30 business days after the invoice is sent to the owner, after which time the Association may add the unpaid amount to the owner's assessment account.

5.3. Resale Certificates. Any officer may prepare or cause to be prepared, certify, and execute resale certificates in accordance with Chapter 207 of the Property Code. The Association may charge a reasonable fee for preparing resale certificates. The Association may refuse to furnish resale certificates until the fee is paid. Any unpaid fees may be assessed against the lot for which the certificate is furnished.

5.4. Any Website to Contain Dedicatory Instruments. The Association shall make dedicatory instruments relating to the Association or subdivision and filed in the county deed records available on a website if the Association has, or a management company on behalf of the Association maintains, a publicly accessible website.

ARTICLE 6: RULES

6.1. Rules. The board has the right to establish and amend, from time to time, reasonable rules and regulations for: (i) the administration of the Association and the dedicatory instruments; (ii) the maintenance, management, operation, use, conservation, and beautification of the subdivision; and (iii) the health, comfort, and general welfare of the residents; provided, however, that such rules may not be in conflict with law or the dedicatory instruments. The board will, at all times, maintain the then current and complete rules in the public records as part of the dedicatory instruments.

6.2. Adoption and Amendment. Any rule may be adopted, amended, or terminated by the board, provided that the rule and the requisite board approval are properly recorded as a resolution in the minutes of the meeting of the board.

6.3. Notice and Comment. The board will give written notice to an owner of each lot of any amendment, termination, or adoption of a rule, or will publish same in a newsletter or similar publication which is circulated to the members, at least 10 days before the rule's effective date. Any member so notified has the right to comment orally or in writing to the board.

6.4. Distribution. Any rules will be published and recorded in the same manner as the other dedicatory instruments.

ARTICLE 7: ENFORCEMENT

7.1. Enforcement.

7.1.1. Discretionary Authority. An exercise of discretionary authority by the association concerning a restrictive covenant is presumed reasonable unless the court determines by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory.

7.1.2. Standing. The association may initiate, defend, or intervene in litigation or an administrative proceeding affecting the enforcement of a restrictive covenant or the protection, preservation, or operation of the property covered by the dedicatory instrument.

7.2. Penalties. A court may assess civil damages for the violation of a restrictive covenant in an amount not to exceed \$200 for each day of the violation. The association does not interpret this remedy to be limited to actual compensatory damages, but instead interprets this remedy to permit punitive damages up to \$200 for each day of the violation.

7.3. Attorney Fees & Costs.

7.3.1. Generally. The prevailing party in an action to enforce the declaration, bylaws, or rules is entitled to reasonable attorney fees and costs of litigation from the non-prevailing party.

7.3.2. Relating to Collecting Amounts Due. The association may collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the association relating to collecting amounts, including damages, due the association for enforcing restrictions or the bylaws or rules of the association only if the owner is provided a written notice that attorney fees and costs will be charged to the owner if the delinquency or violation continues after a date certain. The foregoing notice provisions do not apply to a counterclaim of an association in a lawsuit brought against the association by a property owner.

7.3.3. Relating to Restrictions. An owner is not liable for attorney fees incurred by the association relating to a matter described by the notice under Property Code §209.006 if the attorney fees are incurred before the conclusion of the hearing under Property Code §209.007 or, if the owner does not request a hearing under that section, before the date by which the owner must request a hearing. The owner's presence is not required to hold a hearing under Property Code §209.007.

7.3.4. Fees Paid to Association Account. All attorney fees, costs, and other amounts collected from an owner shall be deposited into an account maintained at a financial institution in the name of the association or its managing agent. Only members of the board or its managing agent or employees of its managing agent may be signatories on the account.

7.3.5. Providing Copies of Invoices. On written request from the owner, the association shall provide copies of invoices for attorney's fees and other costs relating only to the matter for which the association seeks reimbursement of fees and costs.

7.3.6. Relating to Foreclosure. The dedicatory instruments of the association allow for nonjudicial foreclosure; therefore, the amount of attorney's fees that the association may include in a nonjudicial foreclosure sale for an indebtedness covered by a association's assessment lien is limited to the greater of: (a) one-third of the amount of all actual costs and assessments, excluding attorney's fees, plus interest and court costs, if those amounts are permitted to be included by law or by the restrictive covenants

governing the property; or (2) \$2,500. However, the foregoing does not prevent the association from recovering or collecting attorney fees in excess of such amounts by other means provided by law.

ARTICLE 8: OBLIGATIONS OF THE OWNERS

8.1. Notice of Sale. Any owner intending to sell his lot or any interest therein will give written notice to the board of such intention, together with (i) the address or legal description of the lot or interest being conveyed, (ii) the name and address of the intended purchaser, (iii) the name, address, and phone number of the title company or attorney designated to close such transaction, (iv) names and phone numbers of real estate agents, if any, representing seller or purchaser, and (v) scheduled date of closing. An owner will furnish this information to the board no less than 10 working days before the date of conveyance of the lot or any interest therein.

8.2. Proof of Ownership. Any person, on becoming an owner of a lot, will furnish to the board evidence of ownership in the lot, which copy will remain in the files of the Association. A member is not deemed to be in good standing with the Association unless this requirement is first met. This requirement may be satisfied by receipt of a board-approved form that is completed and acknowledged at time of conveyance of the lot or any interest therein.

8.3. Owners' Addresses. The owner or the several co-owners of a lot will register and maintain one mailing address to be used by the Association for mailing of monthly statements, notices, demands, and all other communications. The owner will keep the Association informed of the member's current mailing address. If an owner fails to maintain a current mailing address with the Association, the address of that owner's lot will be deemed to be the owner's mailing address.

8.4. Registration of Mortgagees. An owner who mortgages his lot will furnish the board with the name and mailing address of his mortgagee.

8.5. Assessments. All owners will be obligated to pay assessments imposed by the Association to meet the common expenses as defined in the declaration. A member will be deemed to be in good standing if he is current in the assessments made or levied against him and his lot.

8.5.1. Priority of Payments.

(1) **Priority of Payments.** A payment received by the Association from the owner shall be applied to the owner's debt in the following order of priority: (a) any delinquent assessment; (b) any current assessment; (c) any attorney fees or third party collection costs incurred by the Association associated solely with assessments or any other charge that could provide the basis for foreclosure; (d) any other attorney fees incurred by the Association; (e) any fines assessed by the Association; and (f) any other amount owed to the Association.

(2) **Priority Not Applicable If Default Exists.** If, at the time the Association receives a payment from an owner, the owner is in default under a payment plan entered into with the Association: (a) the Association is not required to apply the payment in the order of priority specified by the above subsection (1); and (b) in applying the payment, a fine assessed by the Association may not be given priority over any other amount owed to the Association.

8.5.2. Third Party Collections.

(1) **Collection Agent.** In this section, "collection agent" means a debt collector, as defined

by Section 803 of the Federal Fair Debt Collection Practices Act (15 U.S.C. Section 1692a).

(2) **Notice Concerning Fees.** The Association may not hold an owner liable for fees of a collection agent retained by the Association unless the Association first provides written notice to the owner by certified mail, return receipt requested, that: (a) specifies each delinquent amount and the total amount of the payment required to make the account current; (b) describes the options the owner has to avoid having the account turned over to a collection agent, including information regarding availability of a payment plan through the Association; and (c) provides a period of at least 30 days for the owner to cure the delinquency before further collection action is taken.

(3) **Contingent Fees.** An owner is not liable for fees of a collection agent retained by the Association if: (a) the obligation for payment by the Association to the Association's collection agent for fees or costs associated with a collection action is in any way dependent or contingent on amounts recovered; or (b) the payment agreement between the Association and the Association's collection agent does not require payment by the Association of all fees to a collection agent for the action undertaken by the collection agent.

(4) **Owner May Contact Managing Agent.** The agreement between the Association and the Association's collection agent may not prohibit the owner from contacting the Association board or the Association's managing agent regarding the owner's delinquency.

(5) **Restrictions on Transfer of Receivables.** The Association may not sell or otherwise transfer any interest in the Association's accounts receivables for a purpose other than as collateral for a loan.

8.6. Compliance With Documents. Each owner will comply with the provisions and terms of the dedicatory instruments, and each owner agrees to always endeavor to observe and promote the cooperative purposes for which the planned community has been established.

ARTICLE 9: NOTICES

9.1. Co-Owners & Entities. All owners agree that the association is not obligated to send more than one notice per lot. If a lot is owned by more than one person, or is owned by an entity, the owners or entity, as the case may be, are obligated to provide to, and maintain with, the association a current written designation of one person to whom all association notices can be sent relating to the subject lot owned; otherwise, the association's notice to one co-owner or to any representative of the entity, will be deemed notice to all co-owners or entity representatives, as the case may be.

9.2. Notice Delivery. Notice that is: (1) mailed is considered to be given on the date notice is deposited in the U. S. mail with postage paid in an envelope addressed to the person at the person's address as it appears on the ownership or membership records of the entity; and (2) transmitted by facsimile or electronic message is considered to be given when the facsimile or electronic message is transmitted to a facsimile number or an electronic message address provided by the person, or to which the person consents, for the purpose of receiving notice.

9.3. Waiver of Notice. Whenever any notice is required to be given to an owner, member, or director, a written waiver of the notice, signed by the person entitled to such notice, whether before or after the time stated in the notice, will be equivalent to the giving of such notice. Attendance by a member or

director at any meeting of the Association or board, respectively, will constitute a waiver of notice by such member or director of the time, place, and purpose of such meeting. If all members or directors are present at any meeting of the Association or board, respectively, no notice will be required and any business may be transacted at such meeting.

ARTICLE 10: DECLARANT PROVISIONS

10.1. Conflict. The provisions of this article will control over any provision to the contrary elsewhere in these bylaws.

10.2. Board of Directors. During the declarant control period, the declarant will govern the number, qualification, and appointment of directors. The initial directors will be appointed by declarant and need not be owners or residents. Directors appointed by declarant may not be removed by the owners and may be removed by declarant only. Declarant has the right to fill vacancies in any directorship vacated by a declarant appointee.

10.3. First Meeting of Members. A first meeting of the members may be held at the call of the majority of the directors on notice provided not later than the third day before the date of the meeting. The notice must state the purposes of the meeting.

10.4. Organizational Meeting After Declarant Control Period. Within sixty (60) days before the end of the declarant control period, declarant will call an organizational meeting of the members for the purpose of electing directors, by ballot of members. Notice of the organizational meeting will be given as if it were notice of an annual meeting.

ARTICLE 11: AMENDMENTS TO BYLAWS

11.1. Amendment. These bylaws may be amended by a majority of the full board or by a majority of members entitled to vote at a meeting. The Association will make a reasonable effort to provide all owners with a detailed description, if not exact wording, of any amendment. If the members are to vote on the amendment, such description will be included in the notice of any annual or special meeting of the association if such proposed amendment is to be considered at said meeting.

11.2. Adoption by Board of Directors. The initial bylaws have been adopted by the board of directors.

11.3. Inconsistency Between Certificate of Formation and Bylaw. A provision of a certificate of formation that is inconsistent with a bylaw controls over the bylaw, except that a change in the number of directors by amendment to the bylaws controls over the number stated in the certificate of formation.

11.4. Consents. If the members are to vote on an amendment, the amendment may be adopted by the vote, in person or by proxy, or written consents of members representing at least a majority of the votes cast or present at a meeting for which a quorum is obtained.

11.5. Effective. To be effective, each amendment must be in writing, reference the names of the subdivision and the Association, be signed by the president and secretary of the association, and acknowledge the requisite approval of members or directors, as the case may be. The amendment must recite the recording data for the bylaws, be in a form suitable for recording as a real property record, and

be delivered to the county clerk for recording. A copy of the amendment will be delivered to each owner at the time of the notice of the next members' meeting following the recording of the amendment.

11.6. Declarant Protection. As long as the declarant owns a lot in the subdivision, no amendment of these bylaws may affect the declarant's rights herein without the declarant's written and acknowledged consent. During the period of declarant control, the declarant's written consent must be part of the amendment instrument.

ARTICLE 12: GENERAL PROVISIONS

12.1. Compensation. A director, officer, member, or resident will not be entitled to receive any pecuniary profit from the operation of the Association, and no funds or assets of the Association may be paid as a salary or as compensation to, or be distributed to, or inure to the benefit of a director, officer, member, or resident; provided: (a) that reasonable compensation may be paid to a director, officer, member, or resident for other services rendered to the Association; and (b) that a director, officer, member, or resident may, from time to time, be reimbursed for his actual and reasonable expenses incurred on behalf of the Association in connection with the administration of the affairs of the Association, provided such expense has been approved by the board.

12.2. Association Delivery of Notice. Notices delivered by the association will be given in the manner determined by the board or its officers as its governing authority. Notice that is: (1) mailed is considered to be given on the date notice is deposited in the U.S. mail with postage paid in an envelope addressed to the person at the person's address as it appears on the ownership or membership records of the association; and (2) transmitted by facsimile or electronic message is considered to be given when the facsimile or electronic message is transmitted to a facsimile number or an electronic message address provided by the person, or to which the person consents, for the purpose of receiving notice. The notice must be sent to the party's last known address as it appears on the records of the association at the time of transmission. If an owner fails to give the association an effective address, the association's notice may be sent (1) to the address of the owner's lot and/or (2) to the owner's address shown on the then-current property tax rolls for the lot. If the association properly delivers the notice, the owner is deemed to have been given notice, whether or not he actually receives it.

12.3. Waiver of Notice.

12.3.1. Written Waiver. Notice of a meeting is not required to be given to an owner, member, or governing person of a domestic entity, or a member of a committee of the owners, members, or governing persons, entitled to notice under the Business Organizations Code or the governing documents of the Association if the person entitled to notice signs a written waiver of notice of the meeting, regardless of whether the waiver is signed before or after the time of the meeting.

12.3.2. Waiver by Participation. If a person entitled to notice of a meeting participates in or attends the meeting, the person's participation or attendance constitutes a waiver of notice of the meeting unless the person participates in or attends the meeting solely to object to the transaction of business at the meeting on the ground that the meeting was not lawfully called or convened.

12.4. Exceptions - Not Requiring Notice. Notice of a meeting is not required to be given to an owner or member of a filing entity entitled to notice if notice of two consecutive annual meetings and notice of any meeting held during the period between the two annual meetings, is mailed to the person entitled to notice of the meeting to the person's address as it appears on the ownership or membership transfer records

of the association and is returned undeliverable. However, notice of a meeting must be given to a person not entitled to notice of the meeting under this paragraph if the person delivers to the filing entity a written notice of the person's address.

12.5. Conflicting Provisions. If any provision of these bylaws conflicts with any law, such conflicting bylaws provision will be null and void, but all other provisions of these bylaws will remain in full force and effect. In the case of any conflict between the articles of incorporation of the Association and these bylaws, the articles will control. In the case of any conflict between the declaration and these bylaws, the declaration will control.

12.6. Severability. Whenever possible, each provision of these Bylaws will be interpreted in a manner as to be effective and valid. Invalidation of any provision of these Bylaws, by judgment or court order, does not affect any other provision which remains in full force and effect.

12.7. Construction. The effect of a general statement is not limited by the enumerations of specific matters similar to the general. The captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. The singular is construed to mean the plural, when applicable, and the use of masculine or neuter pronouns includes the feminine.

12.8. Fiscal Year. The fiscal year of the Association will be set by resolution of the board, and is subject to change from time to time as the board determines. In the absence of a resolution by the board, the calendar year is the fiscal year.

12.9. Waiver. No restriction, condition, obligation, or covenant contained in these bylaws may be deemed to have been waived by reason of failure to enforce the same, irrespective of the number of violations or breaches which may occur.

