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*Laura Richard*

Laura Richard, County Clerk

Fort Bend County Texas

Pages: 28 Fee: \$ 124.00

**NOTICE OF FILING – DEDICATORY INSTRUMENTS**

**MANDOLA FARMS HOMEOWNERS ASSOCIATION, INC.**

**DECLARANT:** MERITAGE HOMES OF TEXAS, LLC, an Arizona limited liability company.

**ASSOCIATION:** Mandola Farms Homeowners Association, Inc., a Texas non-profit corporation.

**DECLARATION:** Instrument entitled "Declaration of Covenants, Conditions and Restrictions for Mandola Farms", recorded as Document No. 2020090280 in the Official Public Records of Fort Bend County, Texas.

The Community is subject to the Declaration and the Association is the homeowners association established by the terms of the Declaration. Declarant desires to record the attached dedicatory instruments in the real property records of Fort Bend County, Texas, pursuant to and in accordance with Section 202.006 of the Texas Property Code.

Executed by Declarant on July 23, 2020.

MERITAGE HOMES OF TEXAS, LLC,  
an Arizona limited liability company

By: David J.

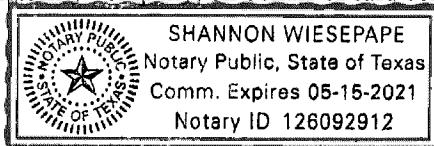
Printed Name: David Jordan

Sr. Vice President of Land

Title: \_\_\_\_\_

STATE OF TEXAS §  
CITY OF Harris §  
§

The foregoing instrument was acknowledged before me on this the 23 day of July, 2020, by David Jordan, the SV.P of Land of Meritage Homes of Texas, LLC, an Arizona limited liability company, on behalf of said company.



Shannon Wiesepape  
Notary Public, State of Texas

**AFTER RECORDING RETURN TO:**

William Scheihing  
5501 LBJ Freeway, Suite 220  
Dallas, Texas 75240

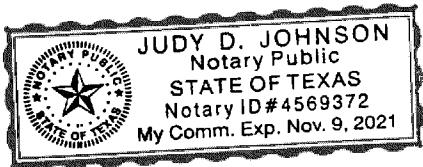
MHI PARTNERSHIP, LTD.,  
a Texas limited partnership

By

Printed Name: GARY R TESCH  
Title: PRESIDENT

STATE OF TEXAS §  
COUNTY OF Harris §

The foregoing instrument was acknowledged before me on this the 29 day of July, 2020, by  
Frank J. Schieck, the President of MHI Partnership, Ltd., a Texas limited  
partnership, on behalf of said limited partnership.



Judy A. Johnson  
Notary Public, State of Texas

AFTER RECORDING RETURN TO:

William Scheihing  
5501 LBJ Freeway, Suite 220  
Dallas, Texas 75240

LIST OF ATTACHMENTS

Certificate of Formation

Bylaws

Records Production and Copying Policy

Records Retention Policy

Certificate of Formation

Follows this cover page

F I L E D  
In the Office of the  
Secretary of State of Texas

JUN 17 2020

Corporations Section

**CERTIFICATE OF FORMATION OF  
MANDOLA FARMS HOMEOWNERS ASSOCIATION, INC.**

The undersigned natural person, being of the age of eighteen (18) years or more, a citizen of the State of Texas, acting as incorporator of a nonprofit corporation under the Texas Business Organizations Code, does hereby adopt the following Certificate of Formation for such corporation:

**ARTICLE I- NAME**

The name of the corporation is Mandola Farms Homeowners Association, Inc. (the "Association").

**ARTICLE II- NONPROFIT CORPORATION**

The Association is a nonprofit corporation.

**ARTICLE III- DURATION**

The Association shall exist perpetually.

**ARTICLE IV- PURPOSE AND POWERS OF THE ASSOCIATION**

The Association is organized in accordance with, and shall operate for nonprofit purposes pursuant to, the Texas Business Organizations Code, and does not contemplate pecuniary gain or profit to its members. The Association is formed for the general purposes of exercising the rights and powers and to perform the duties and obligations of a Texas property owners association, in accordance with applicable State law, including, without limitation, all of the powers and privileges, and performing all of the duties and obligations, of the Association as set forth in that certain Declaration of Covenants, Conditions and Restrictions for Mandola Farms that is to be recorded in the Official Public Records of Harris County, Texas, as the same may be amended from time to time (the "Declaration"). Without limiting the generality of the foregoing, the Association is organized for the following general purposes:

- (a) to fix, levy, collect, and enforce payment by any lawful means all charges or assessments arising pursuant to the terms of the Declaration;
- (b) to pay all expenses incident to the conduct of the business of the Association, including all licenses, taxes, or governmental charges levied or imposed against the Association's property; and
- (c) to have and to exercise any and all powers, rights, and privileges which a nonprofit entity organized under the Texas Business Organizations Code may now, or later, have or exercise.

The above statement of purposes shall be construed as a statement of both purposes and powers. The purposes and powers stated in each of the clauses above shall not be limited or restricted by reference to, or inference from, the terms and provisions of any other such clause, but shall be broadly construed as independent purposes and powers.

## ARTICLE V- REGISTERED OFFICE; REGISTERED AGENT

The street address of the initial registered office of the Association is 3250 Briarpark, Ste. 100, Houston, TX 77042. The name of its initial registered agent at such address is Carlos Vicira.

## ARTICLE VI- MEMBERSHIP

The Association is a nonstock membership organization. Membership in the Association shall be as defined and set forth in the Declaration, and is dependent upon ownership of a property interest. Any person or entity acquiring a property interest as set forth in the Declaration shall automatically become a member of the Association. Membership in the Association shall be appurtenant to, and shall run with, the property interest. The foregoing shall not be deemed or construed to include persons or entities holding a property interest merely as security for performance of an obligation. Membership may not be severed from or in any way transferred, pledged, mortgaged, or alienated except together with the title to the qualifying property interest, and then only to the transferee of title to such property interest.

## ARTICLE VII- VOTING RIGHTS

Voting rights of the members of the Association shall be determined as set forth in the Declaration. No owner, other than the Declarant (as defined in the Declaration) under the Declaration, shall be entitled to vote at any meeting of the Association until such owner has presented to the Association evidence of ownership of a qualifying property interest in the Property (as defined in the Declaration).

## ARTICLE VIII- BOARD OF DIRECTORS

The affairs of the Association shall be managed by an initial Board of Directors consisting of three (3) individuals, who need not be members of the Association. The Board shall fulfill all of the functions of, and possess all powers granted to, Boards of Directors of nonprofit corporations pursuant to the Texas Business Organizations Code. The number of Directors of the Association may be changed by amendment of the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of initial Directors until the selection of their successors are:

<u>NAME</u>	<u>ADDRESS</u>
Shannon Wiesepape	3250 Briarpark, Ste. 100, Houston, TX 77042
Trey Thompson	3250 Briarpark, Ste. 100, Houston, TX 77042
Joshua Penton	3250 Briarpark, Ste. 100, Houston, TX 77042

As set forth in the Declaration, the initial directors serve at the pleasure of the Declarant, and who will serve until the earlier of the appointment of a successor by Declarant or their successor is elected by the members of the Association as set forth in the Declaration. All of the powers and

prerogatives of the Association shall be exercised by the initial Board of Directors named above until the first annual meeting of the Association.

#### **ARTICLE IX- LIMITATION OF DIRECTOR LIABILITY**

A director of the Association shall not be personally liable to the Association or its members for monetary damages for any act or omission in his capacity as a director, except to the extent otherwise expressly provided by a statute of the State of Texas. Any repeal or modification of this Article shall be prospective only, and shall not adversely affect any limitation of the personal liability of a director of the Association existing at the time of the repeal or modification.

#### **ARTICLE X- INDEMNIFICATION**

Each person who acts as a director, officer or committee member of the Association shall be indemnified by the Association against any costs, expenses and liabilities which may be imposed upon or reasonably incurred by him in connection with any civil or criminal action, suit or proceeding in which he may be named as a party defendant or in which he may be a witness by reason of his being or having been such director or officer or by reason of any action alleged to have been taken or omitted by him in either such capacity. Such indemnification shall be provided in the manner and under the terms, conditions and limitations set forth in the Bylaws of the Association. The Association may also indemnify a person who is or was an employee, agent, trustee, attorney or other representative of the Association, against any liability asserted against or incurred by such person acting in that capacity.

#### **ARTICLE XI- DISSOLUTION**

The Association may be dissolved with the written and signed assent of not less than ninety percent (90%) of the total number of votes of the Association, as determined under the Declaration. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed, and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such similar purposes.

#### **ARTICLE XII- ACTION WITHOUT MEETING**

Any action required by law to be taken at any annual or special meeting of the members of the Association, or any action that may be taken at any annual or special meeting of the members of the Association, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the number of members having the total number of votes of the Association necessary to enact the action taken, as determined under the Declaration or this Certificate of Formation.

### ARTICLE XIII- AMENDMENT

This Certificate of Formation may be unilaterally amended without notice to or a vote of the Members to the extent set forth in the Declaration by the Board of Directors or by the Declarant. For all other purposes, an amendment of this Certificate of Formation shall be by proposal submitted to the membership of the Association. Any such proposed amendment submitted to the membership shall be adopted only upon an affirmative vote by the holders of a minimum of two-thirds (2/3) of the total number of votes of the Association, as determined under the Declaration. In the case of any conflict between the Declaration and this Certificate of Formation, the Declaration shall control; and in the case of any conflict between this Certificate of Formation and the Bylaws of the Association, this Certificate of Formation shall control..

### ARTICLE XIV- ORGANIZER

The name of the organizer is W. Charles Scheihing whose address is 5501 LBJ Fwy, Suite 220, Dallas, TX 75240.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand, on June 16, 2020.



W. Charles Scheihing, Organizer

**Bylaws**

Follows this cover page

**BYLAWS  
OF  
MANDOLA FARMS HOMEOWNERS ASSOCIATION, INC.**

**Article I**

Name. Membership. and Definitions

Section 1. Name. The name of the Association is Mandola Farms Homeowners Association, Inc. (hereinafter referred to as the "Association").

Section 2. Membership. The Association shall have members as more fully set forth in that recorded instrument titled "Declaration of Covenants, Conditions and Restrictions for Mandola Farms" (said instrument, as amended and supplemented, hereinafter referred to as the "Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein.

Section 3. Definitions/Gender. All other capitalized terms used in these Bylaws shall have the same meanings as that set forth in the Declaration, unless otherwise provided. Pronouns, wherever used in these Bylaws, shall include all persons regardless of gender.

**Article II**

Association: Meetings. Quorum. Voting. Proxies

Section 1. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Board of Directors either in the community of Mandola Farms or as convenient to the Members as possible and practical.

Section 2. Annual Meetings. The annual meeting of the Association shall be held on a date and at a time designated each year by the Board of Directors.

Section 3. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by Members representing at least twenty (20%) percent of the total votes of the Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to send to the Owner of each Lot written notice of each annual or special meeting of the Association stating the purpose of the meeting, as well as the time and place where it is to be held. Such notice may be delivered personally, by mail, by facsimile, and to the extent expressly authorized by statute, by electronic message. If a Member desires that notice be given at an address other than the Lot, the Member shall provide the alternative address for the purpose of receiving notice in writing to the Secretary. Notice by facsimile must be sent to the facsimile number provided to the Association in writing by that Member. Notice shall be served not less than ten (10) nor more than sixty (60) days before a meeting. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail, first class postage pre-paid, addressed to the Member. If faxed, the notice shall be deemed to be delivered as of the date and time shown on a written confirmation that the facsimile was successfully transmitted. If sent by electronic message, the notice shall be deemed to be delivered as provided by applicable statute. The Board of Directors may use any other means to deliver a notice of a meeting that may become available with advancements in technology, provided that notice by such means is authorized by statute.

Section 5. Waiver of Notice. Waiver of notice of meeting of the Members shall be deemed the equivalent of

proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member, whether in person or by proxy, shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to the calling or convening of the meeting is raised before the business (of which proper notice was not given) is put to a vote.

Section 6. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, either in person or by proxy, the presiding officer may adjourn the meeting and reconvene at a time not less than five (5) days and not more than thirty (30) days from the time the original meeting was called. If a time and place for reconvening the meeting is not fixed by those in attendance at such an adjourned meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed herein for a first called meeting. At such reconvened meeting, whether or not a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice provided that (a) at least five percent (5%) of the total votes of the Members as of the date of the meeting is present in person and/or by proxy; and, (b) any action taken shall be approved by at least a majority of all of the Members present, in person and/or by proxy, at such reconvened meeting.

Section 7. Voting. The voting rights of the Members shall be as set forth in the Declaration; provided that, all Members shall have the right to vote in the election of Directors and on any matter concerning the rights or responsibilities of Members. Members may vote in person, by proxy, by absentee ballot, or by electronic ballot.

Section 8. Proxies. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon (a) conveyance by the Member of the Member's interest in a Lot; (b) receipt of notice by the Secretary of the death or judicially declared incompetence of a Member; (c) receipt of written revocation; or, (d) expiration of eleven (11) months from the day of the proxy. In the event a Member executes more than one (1) proxy, the proxy with the most current date shall be valid. Proxies not delivered prior to the start of any meeting shall not be valid.

Section 9. Majority of Members. As used in these Bylaws, the term "majority of Members" shall mean those votes, Members, or any other group, as the context may indicate, totaling more than fifty percent (50%) of the total number.

Section 10. Quorum. Except as otherwise provided in these Bylaws or in the Declaration, the presence in person or by proxy of more than five percent (5%) of the total votes of the Members as of the time of the meeting shall constitute a quorum at all meetings of the Association.

Section 11. Conduct of Meetings. The President shall preside over all meetings of the Association and the Secretary, or another person designated by the Secretary, shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

Section 12. Action Without a Meeting. To the extent allowed by applicable law, any action which may be taken or is required to be taken at a meeting of the Association may be taken without a meeting if written consent is signed by Members holding the number of votes necessary to approve the action at a meeting. The written consent must (a) set forth the action to be taken and (b) be executed by the required number of Members as of the effective date set forth in the written consent. Any written consent adopted in accordance with this section shall have the same force and effect as a unanimous vote of the Members.

## Article III

### Board of Directors: Number, Powers, Meetings

Section 1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 2 of this Article, each Director shall be a Member. With the exception of Declarant, not more than one (1) representative of a particular corporation or other entity that is a Member may serve on the Board at any given time. A Member is not eligible to serve on the Board of Directors if the Member has been convicted of a felony or crime involving moral turpitude and there is written, documented evidence of such a conviction from a database or other record maintained by a governmental law enforcement authority.

Section 2. Directors During Development Period. Except as provided in Section 5 of this Article, the Directors shall be selected by the Declarant, acting in its sole discretion, and shall serve at the pleasure of the Declarant during the Development Period, as defined in the Declaration, unless the Declarant shall earlier surrender its right to select Directors. The Directors selected by the Declarant need not be Owners or residents in Mandola Farms. Following the termination of the Development Period or the earlier surrender of Declarant's right to select Directors, all Directors must be Members of the Association.

Section 3. Number of Directors. During the Development Period, the Association shall be governed by a Board of Directors consisting of three (3) persons. Upon the expiration of the Development Period, the Association shall continue to be governed by a Board of Directors consisting of three (3) persons unless, at the first meeting of the Members held after the expiration of the Development Period, a majority of the Members present at such meeting vote to increase the number of positions on the Board to five (5).

Section 4. Candidates for Election to the Board. All Members have the right to run for a position on the Board of Directors. Each year, at least sixty (60) days prior to the date of the annual meeting of the Members, the Association shall send notice to all Members of the number of positions on the Board to be filled by election at the upcoming annual meeting and the right of all Members to run for a position on the Board. The notice shall specify a date by which a Member must submit his/her name as a candidate for election to the Board, together with biographical information. The Association must be notified by the Member who desires to run for a position on the Board, not another Member, to confirm the Member's desire to run for election and to serve on the Board. All Members who notify the Association by the stipulated deadline shall be candidates whose names and biographical information shall be included in the notice of annual meeting sent to all Members. A Member who does not submit his/her name by the deadline set forth in the Association's notice may thereafter notify the Association of his/her desire to run for election to the Board and, in that event, the Member shall be a candidate for election to the Board. However, the Association shall not be obligated to send a supplemental notice to all Members advising of the names and biographical information of any candidates who submit their names and biographical information after the deadline in the Association's notice. Provided that, if any notice is thereafter sent or published by the Association which includes a list of candidates for election to the Board, the list shall include the names of all candidates. Nominations for election to the Board shall not be made by a nominating or other committee of the Association. A Member may notify the Association of the Member's desire to run for election to the Board of Directors at any time prior to the date that voting in the election ceases. Nomination for election to the Board shall not be permitted from the floor at the annual meeting.

Section 5. Election and Term of Office. Notwithstanding any other provision set forth herein, not later than one hundred twenty (120) days after seventy-five percent (75%) of the Lots in Mandola Farms have been conveyed to Owners other than Declarant, one-third (1/3) of the Board must be elected by Members other than Declarant. The term of the person elected to the Board by Owners other than Declarant shall continue in effect until the first meeting of the Members held after the expiration of the Development Period. If, at the first meeting of the Members held after the expiration of the Development Period, the Members do not vote to increase the number of positions on the Board to five (5), one (1) Director shall be elected for a term of one (1) year and two (2) Directors shall be elected for a term of two (2) years each. If, at the First Meeting of the Members held after the expiration of the Development Period, the Members vote to increase the number of positions on the Board to five

(5), two (2) Directors shall be elected for a term of one (1) year each and three (3) Directors shall be elected for a term of two (2) years each. At each annual meeting thereafter, the Members shall elect the number of Directors necessary to fill the positions on the Board whose terms expire as of such annual meeting, each to serve a term of two (2) years. With respect to all positions on the Board of Directors to be filled by the vote of the Members other than Declarant, the candidates receiving the highest number of votes shall be elected to fill such positions.

Section 6. Removal of Directors. Any Director elected by the Members or appointed to serve on the Board (except a person appointed by Declarant) may be removed from the Board, with cause, by the affirmative vote of a majority of the total number of votes of the Members present and voting at a special meeting called for that purpose or at an annual meeting at which a quorum is present. The provisions of Article II, Section 6, which reduce the quorum requirement for an adjourned meeting, shall not be applicable to an adjourned meeting originally called for the purpose of considering the removal of a Director. “Cause”, as it relates to a basis for the removal of a Director, means a failure to comply with a material provision in the governing documents of the Association after notice and a demand for compliance from the Association; the determination of non-compliance with a material provision in the governing documents of the Association and the decision to send a notice and demand for compliance must be approved by not less than a majority of the remaining Directors. In the event of the removal of a Director, a successor for the removed Director shall be elected by a majority vote of the Members voting at the meeting at which the Director was removed. A Director whose removal is proposed shall be given at least ten (10) days written notice of the call of the meeting and the purpose of the meeting; the Director whose removal is proposed shall be given the opportunity to be heard at the meeting. Provided that, if the 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 and shall, therefore, be immediately removed. Any Director may be removed by a vote of a majority of the remaining Directors as the result of the Director’s failure, without just cause, to attend three (3) consecutive, regularly scheduled meetings of the Board of Directors. “Just cause” means any event that, in the reasonable, good faith judgment of the Board, prevents a Director from attending a meeting and includes, without limitation, death or serious injury to a member of the Director’s family or other person with whom the Director has a long-term relationship, a mental or physical ailment or impairment that prevents the Director from attending a meeting, and any mandatory business engagement related to the Director’s livelihood and/or employment. Vacancies on the Board caused by reasons other than removal by a vote of the Members shall be filled by the remaining Directors. A Director elected or appointed to fill a vacancy on the Board shall serve the unexpired term of his predecessor.

Section 7. Voting Procedure for Directors. The election of the Board of Directors shall be conducted at the annual meeting of the Association. At such election, the Members or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. Voting for Directors shall be by written ballot unless there is only one (1) candidate for a position on the Board, in which event the candidate may be elected by acclamation.

Section 8. Recount of Votes. Any Member may request a recount of the votes of an election. A request for a recount must be submitted not later than the 15<sup>th</sup> day after the date of the meeting at which the election was held. A demand for a recount must be submitted in writing either:

- a. 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 last recorded management certificate; or
- b. in person to the Association’s managing agent as reflected on the last recorded management certificate or to the address to which absentee ballots and proxy ballots were mailed.

Upon the receipt of a timely request for a recount, the Association shall, at the expense of the Member requesting the recount, retain the services of a qualified person to perform the recount. The Association shall enter into a contract for the services of a person who is not a Member of the Association or related to a member of the

Board of Directors of the Association within the third degree by blood or marriage and is a:

- i. current or former county judge;
- ii. current or former county elections administrator;
- iii. current or former justice of the peace;
- iv. current or former county voter registrar; or
- v. person agreed on by the Association and the Member requesting the recount.

A recount must be performed on or before the 30<sup>th</sup> day after the date of receipt of the request and payment for the recount. If the recount changes the results of the election, the Association shall reimburse the Member for the cost of 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 the recount.

Section 9. Regular Meeting. Regular meetings of the Board of Directors may be held at such time, date, and place as shall be determined from time to time by a majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of each regular meeting shall be given to all Members as required by law. The Board of Directors may participate in and hold a regular or special meeting by means of:

- a. conference telephone or similar communication equipment by which all persons participating in the meeting can hear each other; or
- b. another suitable electronic communications system, including video conferencing technology or the Internet, only if:
  - i. each Director entitled to participate in the meeting consents to the meeting being held by means of that system; and
  - ii. the system provides access to the meeting in a manner or using a method by which each Director participating in the meeting can communicate concurrently with each other participant.

Participation in a meeting by conference telephone or similar communication or video conferencing technology or the Internet shall constitute presence in person at such meeting except where a Director participates in the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened. Provided that, without prior notice to the Members, the Board may take action only on routine and administrative matters or a reasonably unforeseen emergency or urgent necessity that required immediate Board action. Any action taken without notice to the Members 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. Provided further that, the Board may not take action without prior notice to the Members on any matter prohibited by law to be taken without prior notice to the Members.

Section 10. Special Meeting. Special meetings of the Board of Directors shall be held when called by the President of the Association or by any two (2) Directors. The notice shall specify the date, time, and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by anyone of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by facsimile, or (d) if authorized by statute, by email. All such notices shall be given or sent to the Director's address, email, or facsimile number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox, at least four (4) days before the time set for the meeting. Notices

given by personal delivery, email, or facsimile shall be delivered or given at least four (4) days before the time set for the meeting. The provisions in Article III, Section 11, relating to notice to the Members shall be applicable to a special meeting of the Board of Directors.

**Section 11. Notice of Board Meetings.** The Board of Directors shall give Members notice of Board meetings (regular and special), including the date, hour, place, and general subject of the Board meeting, including a general description of any matter to be brought up for deliberation in closed executive session. A notice of meeting shall be:

- a. mailed to all Members at least ten (10) days before the date of the meeting; or;
- b. provided at least 72 hours before meeting by:
  - i. being posted notice in a conspicuous location, either in a Common Area or on the Association's website; and
  - ii. being emailed to all Members who have registered their email addresses with the Association.

It is a Member's duty to register and keep an updated email address with the Association.

**Section 12. Waiver of Notice.** The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice thereof.

**Section 13. Quorum of Board of Directors.** At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the vote of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue and business may be transacted, notwithstanding the withdrawal of Directors during the meeting, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, either in person or by proxy, the President may adjourn the meeting and reconvene at a time not less than five (5) days and not more than thirty (30) days from the time the original meeting was called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to the Directors in the manner prescribed for the original meeting. At such reconvened meeting, whether or not a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice, provided that any action taken shall be approved, in writing, by at least a majority of the Directors required to constitute a quorum at the original meeting.

**Section 14. Compensation.** No Director shall receive any compensation from the Association for acting in such capacity. However, Directors may be reimbursed for out-of-pocket expenses incurred on Association business. Directors may receive compensation from the Association when taking action at the request of the Association other than in the capacity of Director.

**Section 15. Conduct of Meetings.** A chairperson shall preside over all meetings of the Board of Directors and the Secretary shall keep a minute book of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings.

**Section 16. Open Meetings.** All meetings of the Board of Directors shall be open to all Members, but

Members other than Directors may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board of Directors. Provided that, if a Member unreasonably disrupts a meeting of the Board of Directors or repeatedly interrupts the discussion between Directors, the Board of Directors shall have the authority, after an initial warning, to cause that Member to be removed from the meeting.

Section 17. Executive Session. The Board of Directors may adjourn a regular or special meeting and reconvene in a 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, and 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 executive session shall be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual Members, violating any privilege, or disclosing any 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.

Section 18. Action Without a Formal Meeting. Any routine or administrative matter or matter involving a reasonably unforeseen emergency may be taken without a meeting if a written consent, stating the action to be taken, is signed by the number of Directors necessary to take that action at a meeting at which all of the Directors are present and voting. The consent must state the date of each Director's signature. Any such action must be summarized orally including an explanation of any known actual or estimated expenditures approved, and documented in the minutes of the next regular or special Board meeting.

Section 19. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Certificate of Formation of the Association, or these Bylaws directed to be done and exercised exclusively by the Members.

The President shall have the authority to act on behalf of the Board of Directors on all matters relating to the duties of any managing agent or manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to, and shall be responsible for, the following (by way of explanation, but not limitation):

- (a) Preparing and adopting an annual budget, in which there shall be established the contribution of each Member to the common expenses;
- (b) Levying assessments to defray the common expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments, if any, of the annual assessment. Unless otherwise determined by the Board of Directors, the annual assessment shall be collected annually in advance.
- (c) Providing for the operation, care, upkeep, and maintenance of all of the Common Areas.
- (d) Designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Areas and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties.
- (e) Collecting the assessments, depositing the proceeds thereof in a bank depository, which it shall approve, and using the proceeds to administer the Association.
- (f) Making and amending rules and regulations for the Association.

- (g) Opening bank accounts on behalf of the Association and designating the signatories required.
- (h) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of the Common Area in accordance with the other provisions of the Declaration and these Bylaws, after damage or destruction by fire or other casualty.
- (i) Enforcing, by legal means, the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings, which may be instituted on behalf of or against the Members concerning the Association.
- (j) Obtaining and carrying insurance against casualties and liabilities, including directors' and officers' liability insurance, as provided in the Declaration, and paying the premium cost thereof.
- (k) Paying the cost of all services rendered to the Association or its Members and not directly chargeable to Members.
- (l) Keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. All books and records shall be kept in accordance with generally accepted accounting practices, and shall be available as required by Texas law.
- (m) Providing, upon request, information to Members, mortgagees and prospective purchasers of Lots concerning, by way of example and not in limitation, the status of the Association, the status of payment of assessments and related charges on a Lot and the status of compliance with the provisions of the Declaration, and charging a reasonable fee sufficient to cover the expense associated with providing such information.
- (n) Charging a reasonable fee sufficient to cover the expense associated with changing the records of the Association upon the transfer of title to a Lot.
- (o) Adopting policies and procedures deemed necessary and appropriate for the administration of the Association and the conduct of the Directors and officers of the Association, the employees of the Association, if any, and persons serving on behalf of the Association in volunteer capacities.

## Section 20. Management Agent.

- (a) The Board of Directors may employ for the Association a professional management agent or agents, or manager, at a compensation rate established by the Board of Directors, to perform such duties and services, as the Board of Directors shall authorize. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.
- (b) If a managing agent or manager is hired, the following management standards of performance will be followed, unless the Board, by resolution, determines otherwise:
  - (i) Two (2) or more persons shall be responsible for handling cash, or its equivalent, in order to maintain adequate financial control procedures;
  - (ii) Cash accounts of the Association shall not be commingled with any other accounts;
  - (iii) No remuneration shall be accepted by the manager or managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise;

- (iv) Any financial or other interest which the managing agent or manager may have in any firm providing foods or services to the Association shall be disclosed promptly to the Board of Directors; and
- (v) A quarterly or more frequent financial report, as may be determined by the Board, shall be prepared for the Association containing:
  - (1) an income statement reflecting all income and expense activity for the preceding three (3) months;
  - (2) an account activity statement reflecting all receipt and disbursement activity for the preceding three (3) months;
  - (3) a budget comparison report reflecting the status of all income and expense accounts in an “actual” versus “projected” budget format;
  - (4) a balance sheet reflecting account balances as of the end of the previous three (3) months (this balance sheet shall include an aged receivables report or other report deemed appropriate by the Treasurer);
  - (5) a balance sheet as of the last day of the Association's fiscal year and an operating statement for said fiscal year which shall be distributed within ninety (90) days after the close of any fiscal year to the Board;
  - (6) a budget report reflecting any actual or pending obligations which are in excess of budgeted amounts by an amount exceeding the operating reserves of ten percent (10%) of a major budget category (as distinct from a specific line item in an expanded chart of accounts); and
  - (7) a delinquency report listing all Members who have been delinquent during the preceding three (3) month period in paying the assessments and who remain delinquent at the time of report, and describing the status of any action to collect such assessments which remain delinquent.

## **Article IV**

### Officers

Section 1. Officers. The officers of the Association shall be the President, Vice-President, Secretary and Treasurer. The Board of Directors may select, appoint and/or remove such other officers, as it shall deem appropriate, such officers to have the authority and to perform the duties prescribed from time to time by the Board of Directors.

Section 2. Election Term of Office and Vacancies. The officers of the Association shall be elected annually from within and by the Board of Directors at the first meeting of the Board of Directors held after the annual meeting of the Members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by a majority vote of the Board of Directors, at a duly called meeting of the Board, at which a quorum is present, whenever in its judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board of Directors. The Chief Executive Officer of the Association shall be the President. The Treasurer shall have primary responsibility for the preparation of the budget, as provided for in the Declaration, and, with the approval of the Board of Directors, may delegate all or part of the preparation and notification duties to a finance committee, or a management agent.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Etc. All agreements, contracts, deeds, leases, and other instruments of the Association shall be executed by at least one (1) officer or by such other person or persons as may be designated by resolution of the Board of Directors.

Section 7. Checks. All checks shall be signed by at least two (2) officers or Directors or by such other person or persons as to be designated by the Board of Directors. The Board of Directors may authorize that checks for less than \$1,000.00 may only require the signature of one (1) officer or director.

Section 8. Compensation. No officer shall receive any compensation from the Association for acting in such capacity.

## **Article V** Committees

Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Such committees shall perform such duties and have such powers as may be provided in the resolution creating same. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

## **Article VI**

### Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board of Directors.

Section 2. Parliamentary Rules. Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Texas law, the Certificate of Formation, the Declaration, or these Bylaws.

Section 3. Conflicts. If there are conflicts or inconsistencies among the provisions of Texas law, the Declaration, the Certificate of Formation, these Bylaws, and/or any rules and regulations of the Association, the provisions of Texas law, the Declaration, the Certificate of Formation, the Bylaws, and the rules and regulations of the Association (in that order) shall prevail.

Section 4. Books and Records. Books and records of the Association shall be retained by the Association in accordance with the Association's Document Retention Policy. Each Member or Member's designated representative shall have a right to either inspect the requested books and records before obtaining copies or to have the Association forward copies of the requested books and records in accordance with the Association's recorded Records Production and Copying Policy. Provided that, this provision shall not require the Association

to release or allow inspection of books and records that are not required by law to be released or inspected, as set forth in the Association's recorded Records Production and Copying Policy. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association. The right of inspection by a Director includes the right to make extra copies of documents at the reasonable expense of the Association; provided that, the Association shall not be obligated to bear the expense of providing more than one (1) copy of any document to a Director.

Section 5. **Audit.** An audit of the accounts of the Association shall be performed annually by a qualified, independent certified public accountant. Each annual audit shall be in accordance with generally accepted auditing standards to obtain reasonable assurance that the Association's financial statements are free of material misstatements, to assess accounting principles used, and to evaluate the overall financial statement presentation. A more comprehensive audit may be performed in any given year as deemed necessary or appropriate by the Board.

Section 6. **Indemnification.** The Association shall indemnify every Director and Officer of the Association and members of any committee established by the Board of Directors against, and reimburse and advance to every Director, Officer and committee member for, all liabilities, costs and expenses' incurred in connection with such directorship or office and any actions taken or omitted in such capacity to the greatest extent permitted under the of the Texas Business Organizations Code and all other applicable laws at the time of such indemnification, reimbursement or advance payment; provided, however, no Director, Officer or committee member shall be indemnified for: (a) a breach of duty of loyalty to the Association or its Members; (b) an act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law; (c) a transaction from which such Director, Officer or committee member received an improper benefit, whether or not the benefit resulted from an action taken within the scope of directorship or office; or (d) an act or omission for which the liability of such Director, Officer or committee member is expressly provided for by statute.

Section 7. **Amendment.** During the Development Period and subject to any applicable provisions in the Declaration, the Declarant may amend these Bylaws without approval of the Board or any Members. These Bylaws may also be amended by the affirmative vote of a majority of the Members present, in person or by proxy, and voting at a meeting duly called for that purpose at which a quorum is present. Notwithstanding the foregoing, these Bylaws may be amended by the affirmative vote of a majority of the Board of Directors at a meeting of the Board of Directors duly called for that purpose if the amendment does not adversely affect any substantive rights of the Members. Provided further that, so long as Development Period exists, no amendment to the Bylaws approved by the Board or the Members shall become effective until approved and acknowledged in writing by Declarant.

Records Production and Copying Policy

Follows this cover page

## **POLICY:**

It is the policy of the Association to make the books and records of the Association, including financial records, open to and reasonably available for examination by an Owner, or a person designated in a writing signed by the Owner as the Owner's agent, attorney, or certified public accountant (the "Owner's Representative") in accordance with the following provisions:

1. **Request.** An Owner or the Owner's Representative must submit a written request for access or information. The written request must:

- a. be sent by certified mail to the mailing address of the Association or to the authorized representative of the Association as reflected on the most current Management Certificate of the Association filed of record in accordance with Section 209.004 of the Texas Property Code;
- b. describe with sufficient detail the books and records of the Association that are requested; and
- c. state whether the Owner or the Owner's Representative elects to inspect the requested books and records before obtaining copies or have the Association forward copies of the requested books and records.

2. **Election to Inspect.** If an inspection is requested, the Association shall send written notice to the Owner or the Owner's Representative of dates during normal business hours that the Owner or the Owner's Representative may inspect the requested books and records. Such written notice shall be sent on or before the tenth (10<sup>th</sup>) business day after the date the Association receives the request, unless the Association sends a notice to the Owner or Owner's Representative in accordance with Section 4 below.

3. **Election to Obtain Copies.** If copies of the identified books and records are requested, the Association shall produce copies of the requested books and records on or before the tenth (10<sup>th</sup>) business day after the date the Association receives the request, unless the Association sends a notice to the Owner or Owner's Representative in accordance with Section 4.

4. **Inability to Produce Records Within 10 Days.** If the Association is unable to produce requested books and records on or before the tenth (10<sup>th</sup>) business day after the date the Association receives the request, the Association shall provide written notice to the Owner or the Owner's Representative that:

- a. informs the Owner or the Owner's Representative that the Association is unable to produce the requested books and records on or before the tenth (10<sup>th</sup>) business day after the date the Association received the request; and
- b. states a date by which the requested books and records will be sent or made available for inspection, which date shall not be later than the fifteenth (15<sup>th</sup>) business day after the date such notice is given.

5. **Extent of Books and Records.** The Association shall produce books and records requested by an Owner or an Owner's Representative to the extent those books and records are in the possession, custody or control of the Association.

6. **Time of Inspection: Copies.** If an inspection of books and records is requested or required, the inspection shall take place at a mutually agreed upon time during normal business hours. At the inspection, the Owner or the Owner's Representative shall identify the books and records to be copied and forwarded. The Association shall thereafter make copies of such books and records at the cost of the Owner and forward them to the Owner or the Owner's Representative.

7. **Format.** The Association may produce books and records requested by an Owner or an Owner's Representative in hard copy, electronic or other format reasonably available to the Association.

8. **Costs.** The Association may charge an Owner for the compilation, production or reproduction of books and records requested by the Owner or the Owner's Representative, which costs may include all reasonable costs of materials, labor, and overhead. Costs will be billed at the rates established by Section 70.3 of the Texas Administrative Code, as same may be amended from time-to-time. As of the date of this Policy, the rates set forth below are established by Section 70.3 of the Texas Administrative Code. Should the rates set forth in Section 70.3 of the Texas Administrative Code ever be different than in this policy (either through amendment or error by this policy) the then current rates set forth in Section 70.3 of the Texas Administrative Code shall control.

Labor for locating, compiling and reproducing records*	\$15.00 per hour
Copies (8½ x 11 and 8½ x 14)	\$0.10 per page
Oversize paper copies (11 x 17, greenbar and bluebar)	\$0.50 per page
Specialty papers (blue print and maps)	actual cost
Diskette	\$1.00
Magnetic tape or data or tape cartridge	actual cost
CD	\$1.00

DVD	\$3.00
VHS video cassette	\$2.50
Audio cassette	\$1.00
Other	At the rate provided for in Section 70.3 of the Texas Administrative Code

\* No labor will be charged if there are 50 or fewer pages unless the documents are in 2 or more separate buildings not physically connected to each other or in a remote storage facility.

9. **Advance Payment of Estimated Costs.** The Association shall estimate the costs of compiling, producing and reproducing books and records requested by an Owner or an Owner's Representative on the basis of the rates set forth in Section 8 above. The Association may require advance payment of the estimated costs of compiling, producing and reproducing the requested books and records.

10. **Actual Costs.**

- 10.1. If the actual costs of compiling, producing and reproducing requested books and records are less than or greater than the estimated costs, the Association shall submit a final invoice to the Owner on or before the thirtieth (30<sup>th</sup>) business day after the date the requested books and records are delivered.
- 10.2. If the final invoice includes additional amounts due from the Owner, the Owner shall be required to pay the additional amount to the Association before the thirtieth (30<sup>th</sup>) business day after the date the invoice is sent to the Owner.
- 10.3. If the final invoice indicates that the actual costs are less than the estimated costs, the Association shall refund the excess amount paid by the Owner not later than the thirtieth (30<sup>th</sup>) business day after the date the invoice is sent to the Owner.
- 10.4. If the Owner fails to pay to the Association the additional amounts shown in the final invoice in accordance with Subsection 10.1 above, the Association may add the additional amount to the Owner's assessment account as an assessment.

11. **Books and Records Not Required to be Produced.**

- 11.1. Unless an Owner whose records are the subject of a request provides express written approval to the Association or unless a court order is issued directing either the release of books and records or that books and records be made available for inspection, the Association is not required to release or allow inspection of books and records that:
  - a. identify the history of violations of dedicatory instruments of an individual Owner;
  - b. disclose an Owner's personal financial information, including records of payment or nonpayment of amounts due the Association;
  - c. disclose an Owner's contact information, other than the Owner's address; or
  - d. disclose information related to an employee of the Association, including personnel files.
- 11.2. The Association is not required to release or allow inspection of ballots cast in an election or removal of Directors, except as required by a recount procedure in accordance with Section 209.0057 of the Texas Property Code.
- 11.3. In addition, information may be released in an aggregate or summary manner that will not identify an individual property Owner.

12. **Business Day.** As used in this policy, “**business day**” means a day other than a Saturday, Sunday or state or federal holiday.

Records Retention Policy

Follows this cover page

## RECORDS RETENTION POLICY

It is the policy of the Association to retain the records of the Association listed below for the periods of time set forth below. The Association is not required to retain any other records. As used herein, "records" means documents originated or obtained by the Association in connection with its operations, whether a paper document or a document in electronic form.

### 1. Retention Periods.

Record Description	Record Retention Period
a) Financial records (including budgets, financial reports, bank records, and paid invoices)	Seven (7) years
b) Account records (including records relating to assessments and other sums owed and paid to the Association and records relating to violations of any dedicatory instrument of the Association) of current owners	Five (5) years
c) Account records (including records relating to assessments and other sums owed and paid to the Association and records relating to violations of any dedicatory instrument of the Association) of former owners	One (1) year after the former owner ceases to own a lot in the subdivision
d) Contracts	Four (4) years after expiration or termination of the contract
e) Minutes of meetings of the Board of Directors	Seven (7) years
f) Minutes of meetings of the members	Seven (7) years
g) Federal tax returns	Seven (7) years
h) State tax returns, if any	Seven (7) years
i) Audit reports	Seven (7) years
j) Certificate of Formation and Bylaws of the Association and all amendments thereto; Declaration of Covenants, Conditions and Restrictions; and all amendments and supplements to the Declaration of Covenants, Conditions and Restrictions; annexation documents; and deeds conveying real property to the Association	Permanently

k) Other dedicatory instruments of the Association not listed in (j), above, including, without limitation, Architectural Guidelines, Rules and Regulations and Policies	One (1) year after the date the document is rescinded or superseded by another document
l) Minutes and reports of committees	Seven (7) years
m) Insurance policies	Four (4) years after expiration or termination of the policy
n) Insurance claims and related documents	Four (4) years after the claim is resolved
o) Personnel records, excluding payroll records	Permanently
p) Payroll records	Five (5) years after the date of termination of employment
q) Reserve study	For the period of time covered by the study, plus two (2) years
r) Legal opinions issued by counsel for the Association	Permanently
s) Suit files	Seven (7) years after the date the suit is resolved

## 2. **Destruction of Documents.**

The documents listed in Section 1 above, will be destroyed as soon as practicable when the applicable retention period expires. Other documents of the Association not listed in Section 1 above, will be destroyed when deemed appropriate by the Board of Directors of the Association. Destruction of paper documents shall be by shredding, bagging and trash pick-up, unless another method of destroying the documents is approved by the Board of Directors of the Association. Destruction of electronic documents shall be by deletion from hard disks and reformatting of removable disks.

Provided, however, immediately upon learning of an investigation or court proceeding involving an Association matter, all documents and records (both hard copy and electronic, including e-mail) related to the investigation or proceeding must be preserved; this exception supersedes any established destruction schedule for the records in question to the contrary.