

# CALDWELL'S CREEK



*Homeowners Association*

## BYLAWS

### OF

## CALDWELL'S CREEK HOMEOWNERS ASSOCIATION

### Article I

#### **Name, Principal Office and Definitions**

Section 1.01. **Name.** The name of the Association shall be **Caldwell's Creek Homeowners Association** (here in after sometimes referred to as the "Association").

Section 1.02. **Principal Office.** The principal office of the Association in the State of Texas shall be located in Tarrant County. The Association may have such other offices, either within or outside the State of Texas, as the Board of Directors may determine or as the affairs of the Association may require.

Section 1.03. **Definitions.** The words used in these Bylaws shall be given their normal commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain Dedication and Restrictions [for] Caldwell's Creek (said Declaration, as amended, renewed or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), unless the context shall otherwise require.

Section 1.04. **Other Offices.** The Association may also have offices at such other places both within and without the State of Texas as the Board of Directors may from time to time determine or as the business of the Association may require.

### Article II

#### **Association Responsibilities and Meetings of Members**

Section 2.01. **Association Responsibilities.** The Association, through its Board of Directors, shall be responsible for administering and enforcing the covenants, conditions and restrictions contained in the Declaration, including with respect to the collection and disbursement of charges and assessments as provided therein; and coordinating with other homeowner associations in the adjacent subdivision in administering and enforcing such covenants, conditions and restrictions through their respective boards of directors. In the event of any dispute or disagreement between any Members relating to the Properties or any questions of interpretation or application of the provisions of the Declaration or

related documents, Articles of Incorporation or these Bylaws, such dispute or disagreement shall be submitted to the Board of Directors of the Association. The resolution of such dispute or disagreement by such Board of Directors shall be binding on each and all such Members, subject to the right of Members to seek other remedies provided by law after such determination by such Board of Directors.

Section 2.02. Place of Meeting. Meetings of the Association shall be held at such suitable place, within or without the State of Texas, as the Board of Directors may determine.

Section 2.03. Annual Meetings. Annual meetings of the Association shall be held in the fourth quarter of the Association's fiscal year on a date and time set by the Board. At such meetings, there shall be elected a Board of Directors by ballot of the Members in accordance with the requirements of Article III of these Bylaws. The members may also transact such other business of the Association as may properly come before them at such meeting.

Section 2.04. Special Meetings. It shall be the duty of the President of the Association to call a special meeting of the Members as directed by resolution of the Board of Directors or upon receipt of a written request of Members entitled to vote at least one-fourth (1/4) of all of the votes of the Association. No business except as stated in the notice shall be transacted at a special meeting of the Members. Any such meetings shall be called within forty-five (45) days after receipt by the President of such request or petition.

Section 2.05. Notice of Meetings. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered by the Secretary or Assistant Secretary of the Association not less than ten (10) days nor more than sixty (60) days before the date of the meeting, either personally or by mail to each Member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the books of the Association, with postage thereon prepaid. Business transacted at any special meeting shall be confined to the purposes stated in the notice or waiver thereof.

Section 2.06. Waiver of Notice. Waiver of notice of a 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 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 also shall be deemed waiver of notice of all business transacted unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

Section 2.07. Quorum. The holders of at least thirty (30%) of the votes of the Association, represented in person or by proxy, shall constitute a quorum for any meetings of Members except as otherwise provided in the Articles of Incorporation, the Declaration or the Bylaws. The members present at a duly called and held meeting at which a quorum is present may continue to

transact business even if enough Members leave the meeting so that less than a quorum remains. If however such quorum shall not be presented or represented at the first meeting of the Members, a majority of the Members present, or represented by proxy, shall have the power to adjourn and reconvene the meeting from time to time, without notice other than announcement at the meeting; provided that the reconvened meeting is not held less than three (3) days nor more than twenty (20) days after the date of the first meeting. At such reconvened meeting, the required quorum shall be one-half(½) of the required quorum of the first meeting and any business may be transacted at the reconvened meeting at which a quorum is present or represented which may have been transacted at the meeting as originally notified.

Section 2.08. Proxies. At all meetings of Members, each Member may vote in person or by proxy, All proxies shall be in writing and shall be filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of such Member's Lot, or, upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

Section 2.09. Membership. Each Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in these Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Members' spouse. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

Section 2.10. Assignment to Tenant. Any Member may assign any or all of his or her rights as a Member, except for voting rights in the Association and any rights held as a director of the Association, to a tenant who leases the Residence owned by the Member by executing a written assignment in favor of the tenant and delivering a copy of the executed assignment to the Association. A Member may not assign his or her voting rights in the Association; additionally, if the Member is a director of the Association, he or she may not assign any rights or authority held as such director. So long as a tenant holds assigned rights, the tenant may exercise the assigned rights and the Member may not. Any Member assigning rights to a tenant hereunder shall be responsible for the consequences of the tenant's exercise of such rights as fully as if exercised by the Member. Each Member shall remain responsible for paying assessments levied by the Association regardless of whether any of the Owner's rights have been assigned to a tenant.

Section 2.11 Voting. Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 2.09 of this Article; there shall be only one vote per Lot. In any situation where a Member is entitled personally to exercise the vote for his Lot and there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such co- Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

The Association shall have the right to suspend a Member's right to use the Common Amenities (i) for any period for which any assessment or fee owed by the Member remains delinquent and (ii) for a reasonable period, not to exceed thirty (30) days, in response to any infraction of the Association's rules and regulations.

Section 2.12. Conduct of Meetings. The President shall preside over all meetings of the Association, and 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 2.13. Order of Business. The order of business at all meetings of the Members shall be as follows:

- (a) roll call and certifying proxies;
- (b) proof of notice of meeting or waiver of notice;
- (c) reading and disposal of unapproved minutes of prior meetings;
- (d) reports of officers;
- (e) reports of committees;
- (f) election of directors, if applicable;
- (g) unfinished business;
- (h) new business; and
- (i) adjournment.

Section 2.14. Membership List. The officer or agent having charge of the membership books shall make, at least five (5) days before each meeting of Members, a complete list of the Members entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and number of votes held by each., which list, for a period of five (5) days prior to such meeting, shall be kept on file at the principal office of the Association and shall be subject to inspection by any Member at any time during usual business hours.

Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any Member during the whole time of the meeting. The original Member books shall be prima facie evidence as to who are the Members entitled to examine such list or to vote at any such meeting of Members.

Section 2.15. Action Taken Without a Meeting. Any action required by statute to be taken at an annual or special meeting of the Members, or any action which is otherwise permitted by law or by these Bylaws, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by a sufficient number of Members as would be necessary to take that action at a meeting at which all of the Members were present and voted, and such consent shall have the same force and effect as a unanimous vote of Members. Prompt notice of the taking of any action by Members without a meeting by less than unanimous written consent shall be given to all Members who did not consent in writing to the action. Subject to the provisions required or permitted by statute for notice of meetings, unless otherwise restricted by the Articles of Incorporation or these Bylaws, the Members may participate in and hold a meeting by means of telephone conference or similar communications equipment by which all persons participating in the meeting can hear each other.

### **Article III**

#### **Board of Directors**

Section 3.01. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one vote. The directors shall be Members or spouses of Members; provided, however, no person and his or her spouse shall serve on the Board at the same time. The number of directors in the Association shall be no less than three (3) and not more than seven (7).

Section J.02. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of the Properties in keeping with the character and quality of the area in which they are located. The business and affairs of the Association shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Association and do all such lawful acts and things as are not by statute, the Articles of Incorporation, these Bylaws or the Declaration directed or required to be exercised or done by the Members. The duties of the Board shall include, without limitation, the following:

- (a) preparation and adoption, in accordance with these Bylaws, of annual budgets in which there shall be established the contribution of each Owner to the Common Expenses;
- (b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board, the annual assessment for each Lot's proportionate share

of the Common Expenses shall be payable on January 1 of each year;

- (c) providing for the operation, care, upkeep and maintenance of all of the Common Open Space, Common Amenities and the Common Entry Area (collectively, the "Common Area");
- (d) designating, hiring and dismissing the personnel necessary for the operation of the Association and the maintenance, operation, repair and replacement of its property and the Common Area and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and materials 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 operate the Association; provided any reserve fund may be deposited in the directors' best business judgment, in depositories other than banks;
- (f) making and amending rules and regulations; opening of bank accounts on behalf of the Association and designating the signatories required;
- (g) 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;
- (h) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the owners concerning the Association;
- (i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
- (j) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;
- (k) 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;
- (l) making available to any prospective purchaser of a Lot, any Owner of a Lot, any first mortgagee, and the holders, insurers and guarantors of a first mortgage on any Lot, current copies of the Governing Documents and all other books, records and financial statements of the Association; and permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties.

Section 3.03. No Waiver of Rights. The omission or failure of the Association or any Member to enforce the covenants, conditions, restrictions, easements, uses, liens, limitations, obligations or other provisions of the Declaration, these Bylaws of the rules and regulations adopted pursuant thereto, shall not constitute or be deemed a waiver, modification,

or release thereof, and the Board of Directors shall have the right to enforce the same at any time thereafter.

- (a) Notice. Prior to imposition of any sanction under the Governing Documents, the Board or its delegate. shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator. may present a written request to the Covenants Committee, if any, or Board, for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice shall be imposed; provided that the Board or the Covenants Committee, if any, may suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.
  
- (b) Hearing. If a hearing is requested within the allotted ten (10) day period, the hearing shall be held before the Covenants Committee, if any, or the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the Person who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.
  
- (c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To perfect this. right, a written notice of appeal must be received by the manager, President or Secretary of the Association within thirty (30) days after the hearing date.
  
- (d) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking restrictions or rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the notice and hearing procedure set forth herein. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Lot for purposes of exercising this power of self help shall not be deemed a trespass.

Section 3.04. Nomination and Election of Directors. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members or representatives of a Member of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members to serve until the close of such annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. The appropriate number of members of the Board of Directors shall be elected at the annual meeting of Members of the Association. Each Member may cast all votes attributed to the Lots which such Member represents for each vacancy to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled and who receive the greatest number of votes shall be elected. The directors elected by the Members shall hold office until their respective successors have been elected and qualified. Directors may be elected to serve any number of consecutive terms.

Section 3.05. Election and Term of Office. At the first meeting of the Association following adoption of these Bylaws, three (3) directors shall be elected for a term of two (2) years and two (2) directors shall be elected for a term of one (1) year. At the expiration of the initial term of office of -each respective director, his successor shall be elected to serve a term of two (2) years. The directors shall hold office until their successors have been elected and hold their first meeting, except as is otherwise provided herein.

Section 3.06. Vacancies. Vacancies in the Board of Directors caused by death, resignation (including, without limitation, as required by the Articles of Incorporation) or disqualification (i.e., by any reason other than the removal of a director by a vote of the Members as set forth in Section 3.07 hereof) shall be filled within a reasonable time by vote of the majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall be a director until his successor is elected at the next annual meeting of the Association to serve out the unexpired term (if any) of his predecessor in office.

Section 3.07. Removal of Directors. At any annual or special meeting of the Association, any one or more of the directors may be removed with or without cause by the affirmative vote of a majority of Members entitled to vote who are present at a meeting at which a quorum is present, and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting.

Any director elected who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment or other charge due the Association for more than thirty (30) days, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may



be appointed by the Board to fill the vacancy for the remainder of the term.

Section 3.08. Organizational Meeting. The first meeting of each newly-elected Board of Directors shall be held within ten (10) days after the annual meeting of the Members at such place as shall be fixed by the directors at the meeting at which such directors were elected, and no notice shall be necessary to the newly-elected directors in order to legally constitute such meeting, provided a quorum of the Board of Directors shall be present.

Section 3.09. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors, but at least one (1) such meeting shall be held during each calendar quarter. Notice of regular meetings of the Board of Directors shall be given to each director, personally or by mail (electronic or regular), telephone or facsimile, at least five (5) days prior to the day named for such meeting.

Section 3.10. Special Meetings. Special meetings of the Board of Directors may be called by the President upon twenty-four (24) hours notice to each director, given personally or by mail (electronic or regular), telephone or facsimile, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President, Secretary or Assistant Secretary of the Association in like manner on like notice on the written request of one (1) or more directors

Section 3.11. Meeting by Telephonic Means. Members of the Board of Directors may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 3.11 shall constitute presence in person at the meeting.

Section 3.12. Waiver of Notice. Before or after any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board of Directors shall be a waiver of notice by him of the time and place thereof. If all of the directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 3.13. Board of Directors' Quorum. At all meetings of the Board of Directors, a majority of the directors in office shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. Directors present by proxy may not be counted toward a quorum. If, at any meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 3.14. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total votes of the Association at a regular or special meeting of the Association; provided any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors.

Section 3.15. Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of meetings of the Board, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.

Section 3.16. Open Meetings. All meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, excluding Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc., or matters that are to remain confidential by request of the affected parties and agreement of the Board. The general nature of any business to be considered in executive session must first be announced at the open meeting.

Section 3.17. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at any meeting by obtaining the written approval of a sufficient number of directors as would be necessary to take that action at a meeting at which all of the directors were present and voted. Any action so approved shall have the same effect as though taken at a meeting of the directors. Prompt notice of the taking of any action by directors without a meeting by less than unanimous written consent shall be given to all directors who did not consent in writing to the action.

Section 3.18. Management. The Board may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize. The Board may delegate to its managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board by these Bylaws, other than the powers set forth in Subsections 3.02(a), 3.02(£), 3.02(g) and 3.02(i).

Section 3.19. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

- (a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;

- (d) no remuneration shall be accepted by the 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; anything of value received shall benefit the Association;
- (e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;
- (f) an annual report consisting of at least the following shall be made available to all Members within one hundred twenty (120) days after the close of the fiscal year:
  - (i) a balance sheet;
  - (g) an operating (income statement); and (iii) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited, reviewed or compiled basis, as determined by the Board, by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any first mortgage on a Lot, the Association shall provide an audited financial statement.

Section 3.20. Borrowing. The Association shall have the power to borrow money for any legal purposes; provided the Board shall obtain the affirmative vote or written consent, or any combination thereof, of Members representing at least fifty-one percent (51%) of the total votes of the Association in the event that the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year. No mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Members representing at least fifty-one percent (51%) of the total votes of the Association.

## **Article IV**

### **Officers**

Section 4.01. Designation. The officers of the Association shall be a President, one (1) or more Vice Presidents, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors, and such assistant officers as the Board of Directors shall, from time to time, appoint. Such officers need not be members of the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 4.02. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the annual meeting of the Board of Directors, and such new officers shall hold office subject to the continuing approval of the Board of Directors.

Section 4.03. Resignation and Removal of Officers. Upon an affirmative vote of a majority of the member of the Board of Directors, any officer may be removed, either with or without cause, and his successor appointed at any regular or special meeting of the Board of Directors called for such purpose. An 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 such notice is received, or at any later time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.04. Vacancies. A vacancy in any office due to the death, resignation, removal or other disqualification of the officer previously filling such office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 4.05. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of president of an association including, but not limited to, the power to appoint committees from the Members from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Association, or as may be established by the Board of Directors or by the Members of the Association at any annual or special meetings.

Section 4.06. Vice President. The Vice President shall have all the powers and authority and perform all the functions and duties of the President in the absence of the President or his inability for any reason to exercise such powers and functions or perform such duties, and shall also perform any duties he is directed to perform by the President.

Section 4.07. Secretary.

- (a) The Secretary shall keep all of the minutes of the meetings of the Board of Directors and the Association. The Secretary shall have charge of such books and papers as the Board of Directors may direct and shall, in general, perform all the duties incident to the office of Secretary as provided in the Declaration, Bylaws and Articles of incorporation.
- (b) The Secretary shall compile and keep up to date at the principal office of the Association a complete list of the Members and their last known addresses as shown on the records of the Association. Such list shall be open to inspection by Members and other persons lawfully entitled to inspect the same at reasonable times during regular business hours.

Section 4.08. Assistant Secretary. The Assistant Secretary, if any, shall have all the powers and authority to perform all the functions and duties of the Secretary in the absence of the Secretary or in the event of the Secretary's inability for any reason to exercise such

powers and functions or to perform such duties and also to perform any duties as directed by the Secretary.

Section 4.09. Treasurer.

- (a) The Treasurer shall have custody of and be responsible for Association funds and for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall deposit all monies and other valuable effects in the name and to the credit of the Association. in such depositories as may from time to time be designated by the Board of Directors.
- (b) The Treasurer shall disburse the funds of the Association as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as Treasurer, and of the financial condition of the Association.

**Article V**

**Committees**

Section 5.01. General. 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. Each committee shall cooperate in accordance, with the terms of the resolution of the Board designating the committee or with rules adopted by the Board of Directors.

Section 5.02. Covenants. Committee. In addition to any other committees which may be established by the Board pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three (3) and no more than five (5) members. Acting in accordance with the provisions of the Declaration, these Bylaws and resolutions the Board may adopt, the Covenants Committee, if established, may be the hearing tribunal of the Association and may conduct hearings held pursuant to Section 3.03 of these Bylaws.

**Article VI**

**Indemnification of Officers and Directors**

Section 6.01. Indemnification. The Association shall indemnify any person who is or was a director, officer, agent or employee of the Association to the full extent allowed by Article 1396-2.22.A of the Act, as amended from time to time.

Section 6.02. Other. The Board of Directors, officers or representatives of the Association shall enter into contracts or other commitments as agents for the Association, and they shall have no personal liability for such contract or commitment (except such liability as

may be ascribed to them in their capacity as Owners).

Section 6.03. Interested Directors and Officers.

- (a) If paragraph (b) below is satisfied, no contract or transaction between the Association and any of its directors or officers (or any other corporation, partnership, association or other organization in which any of them directly or indirectly have a financial interest) shall be void or voidable solely because of this relationship or because of the presence or participation of such director or officer at the meeting of the Board of Directors or committee thereof which authorizes such contract or transaction, or solely because such person's votes are counted for such purpose.
- (b) The contract or transaction referred to in paragraph (a) above will be void or voidable if
- (i) the contract or transaction is fair to the Association and not improper as to the party in question as of the time it is authorized, approved or ratified by the Board of Directors, a committee of the Board of Directors, or the members; or
  - (ii) the material facts as to the relationship or interest of each such director or officer as to the contract or transaction are known or disclosed (a) to the Members entitled to vote thereon and they nevertheless in good faith authorize or ratify the contract or transaction by a majority of the Members present, each such interested person to be counted for quorum and voting purposes, or (b) to the Board of Directors or a committee of the Board of Directors and the Board of Directors or committee nevertheless in good faith authorizes or ratifies the contract or transaction by a majority of the disinterested directors present, each such interested director to be counted in determining whether a quorum is present but not in calculating the majority necessary to carry the vote.
  - (iii) The provisions contained in paragraphs (a) and (b) above may not be construed to invalidate a contract or transaction which would be valid in the absence of such provisions.

**Article VII**

**Association Finances**

Section 7.01 Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners of Lots, including the maintenance and insurance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 7.02 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments; and (c) specific assessments, as applicable, including, but not limited to, reasonable fines imposed in accordance with the terms of this Declaration and the Bylaws. Such assessments shall be established and collected as hereinafter provided.

All such assessments, together with late charges, interest (not to exceed the lesser of the maximum rate permitted by law or twelve percent (12%) per annum on the principal amount due), and costs of collection (including, without limitation, reasonable attorney's fees), shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made until paid, as more particularly provided in the Declaration and Section 7.07 hereof. Each such assessment, together with late charges, interest and costs of collection, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. Upon transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges against the Lot due at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any First Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

No Owner may exempt himself from liability for assessments, by non-use of Common Area, abandonment of his Lot, or for any other reason.. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Section 7.03 Resale Certificates. The Association shall, within ten (10) days after receiving a written request therefor and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid and all other information required to be provided pursuant to Section 207 of the Texas Property Code as amended from time to time. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

Section 7.04 Computation of Annual Assessments. It shall be the duty of the Board annually to prepare a budget covering the estimated costs of operating the Association during the coming fiscal year which shall include a contribution to a capital reserve for repair and replacement of capital items, if any, in accordance with a capital budget Separately prepared. The annual assessment to be levied against each Lot shall be set at a level which is reasonably expected to produce total income to the Association at least equal to the total budgeted expenses, including reserves. The Board shall cause a copy of the budget and notice of the annual assessment to be levied against each Lot for the following year to be delivered to each Owner at least thirty (30) days prior to the end of the current fiscal

year.

The budget and the assessment shall automatically be effective upon adoption by the Board. In the event the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the immediately preceding year shall continue in effect for the current year.

Annual assessments shall be levied equally on all Lots and shall be paid in such manner and on such dates as may be fixed by the Board of Directors. If the Board so provides by resolution, the annual assessment may be paid in two or more installments. If any Owner is delinquent in paying any assessment or installment thereof, the Board may, upon ten (10) days' prior written notice, accelerate the annual assessment and require all unpaid installments to be paid in full immediately. Unless otherwise determined by the Board of Directors, the annual assessment shall be due and payable in full on the first day of January of the then current year and shall be considered delinquent if not paid by January 31 of the same year.

Section 7.05 Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments from time to time to cover unanticipated or unbudgeted expenses. Any special assessment shall require approval by the affirmative vote or written consent, or any combination thereof, of Members representing at least fifty-one percent (51%) of the total eligible votes in the Association. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 7.06 Specific Assessments. The Board shall have the power to levy specific assessments against a particular Lot or Lots constituting less than all Lots within the Properties as follows:

- (a) to cover the costs, including overhead and administrative costs, of providing benefits, items or services to any Lot or the Occupants thereof upon request of the Owner or Occupants, which benefits, items or services the Board may (but shall not be obligated to) offer from time to time; such assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred;
- (b) to cover costs incurred in bringing the Lot into compliance with the terms of this Declaration, the Bylaws or rules of the Association, or costs incurred as a consequence of the conduct of the Owner or Occupants of the Lot, their licensees, invitees or guests;
- (c) for fines levied pursuant to this Declaration and the Bylaws; and
- (d) for any other costs or expenses specifically authorized by this Declaration to be levied against a particular Lot or Lots.

Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not



constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section.

Section 7.07 Lien for Assessments. Effective as of and from and after the filing and recording of the Declaration, there has existed and shall continue to exist a perfected contractual lien in favor of the Association on each Lot to secure payment of all sums assessed against each such Lot pursuant to these Bylaws and the Declaration, together with late charges, interest and costs of collection as set forth therein. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes, or (b) liens for all sums unpaid on a First Mortgage duly recorded in the land records of the County (and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument).

All other Persons acquiring liens or encumbrances on any Lot after the recording of the Declaration shall be deemed to consent that such liens or encumbrances are inferior to the lien provided herein to secure the payment of future assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Lot the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability or priority of the lien.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the First Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the First Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be common expenses collectible from Owners of all Lots subject to assessment under the Declaration, including such acquirer, its successors and assigns.

Section 7.08 Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. Any assessment or installment thereof delinquent for a period of more than thirty (30) days shall incur a late charge in such amount as the Board may from time to time determine. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt.

All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

Section 7.09 Failure to Assess. Failure of the Board to fix the assessment amount or rate or to deliver or mail each Owner a notice of assessment notice shall not be deemed a waiver, modification or a release of any Owner from the obligation to pay such assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may, without limitation, retroactively assess any shortfalls in collections or reimburse any excess in collections.

Section 7.10 Capitalization of the Association. Upon the Board's adoption and levying of the first annual assessment, a contribution shall be made by or on behalf of each Owner to the working capital of the Association in an amount equal to one-sixth (1/6th) of the annual assessment per Lot for that year. This amount shall be in addition to, not in lieu of, the annual assessment levied on the Lot and shall not be considered an advance payment of any portion thereof. This amount shall be deposited into a reserve account and disbursed therefrom to the Association for use in covering expenses incurred by the Association pursuant to the terms of the Declaration and these Bylaws.

Section 7.11 Exempt Property. The following property shall be exempt from payment of assessments:

- (a) any Lot or property owned in fee simple by the Association as Common Area; and
- (b) any property dedicated to and accepted by any governmental authority or public utility.

## **Article VIII**

### **Amendments to Bylaws**

Section 8.01. Amendment to Bylaws. These Bylaws may be amended by a vote or written consent, or any combination thereof, of Members representing a majority of the total votes in the Association.

## **Article IX**

### **Evidence of Ownership. Registration of Mailing Address**

Section 9.01. Proof of Ownership. Any person, on becoming an Owner of a Lot, shall furnish to the Board of Directors a true and correct copy of the original or a certified copy of the recorded instrument vesting that person with an interest or ownership in the Lot, which copy shall remain in the files of the Association. A Member shall not be deemed to be in good standing nor shall he be entitled to vote at any annual or special meeting of Members unless this requirement is first met.

Section 9.02. Registration of Mailing Address. The Owner or several Owners of a Lot shall have the same registered mailing address to be used by the Association for mailing of monthly statements, notices, demands and all other communications, and such registered address shall be the only mailing address of a person or persons to be used by the Association. Such registered address of an Owner or Owners shall be deemed to be the mailing address of the Lot owned by said Owner or Owners unless a different registered address is furnished by such Owner(s) to the Board of Directors within fifteen (15) days after transfer of title, or after a change of address. Such registration shall be in written form and signed by all of the Owners of the Lot or by such person(s) as are authorized by law to represent the interest of all of the Owner(s) thereof.

## **Article X**

### **General**

Section 10.1 Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board. In the absence of a resolution, the fiscal year shall be the calendar year.

Section 10.2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Texas law, the Articles of Incorporation, the Declaration or these Bylaws.

Section 10.3. Conflicts. If there are conflicts between the provisions of Texas law, the Articles of Incorporation, the Declaration and these Bylaws, the provisions of Texas law, the Declaration, the Articles of Incorporation and the Bylaws (in that order) shall prevail.

Section 10.4. Books and Records.

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- (a) Inspection by Members and Mortgagees. The Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board and Committees, shall be made available for inspection and copying by any holder, insurer or guarantor of First Mortgage on a Lot, a Member, or by the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in the Lot. Such inspection shall take place at the office of the Association or at such other place within the Properties as the Board shall prescribe.
  - (b) Rules for Inspection. The Board shall establish reasonable rules with respect to:
    - (i) notice to be given to the custodian of the records;
    - (ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents requested.

- (c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical Properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

Section 10.5. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first-class postage prepaid:

(a) If to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 10.06. Abatement and Enjoinment. The violation of any rule or regulation, or the breach of any Bylaw or any provision of the Declaration, shall give the Board of Directors the right, in addition to any other rights set forth in the Declaration or herein, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of such violation or breach.

Section 10.07. Non-Profit Association. This Association is not organized for profit. No Member of the Association, member of the Board of Directors, officer or person from whom the Association may receive any property or funds shall receive or shall be lawfully entitled to receive any pecuniary profit from the operation thereof, and in no event shall any part of the funds or assets of the Association be paid as salary or compensation to, or distributed to, or inure to the benefit of, any member of the Board of Directors, officer or Member; provided, however, that (i) reasonable compensation may be paid to any Member, director or officer while acting as an agent or employee of a third party for services rendered to the Association, and (ii) any Member, director or officer may, from time to time, be reimbursed for his actual and reasonable expenses incurred in connection with the administration of the affairs of the Association.

Section 10.08. Execution of Documents. The persons who shall be authorized to execute any and all contracts, documents, instruments of conveyance or encumbrances, including promissory notes, shall be the President or any Vice President and the Secretary or any Assistant Secretary of the Association.

Section 10.09. Proxy for Beneficiary or Mortgagee Under Deed of Trust. Owners shall have the right to irrevocably constitute and appoint their Mortgagees their true and lawful

attorney to vote their Lot membership in this Association at any and all meetings of the Association and to vest in such beneficiary or his nominees any and all rights, privileges and powers that they have as Owners under the Bylaws of this Association or by virtue of the Declaration. Such proxy shall become effective upon the filing of a notice by the beneficiary with the Secretary or Assistant Secretary of the Association at such time or times as the beneficiary shall deem its security in jeopardy by reason of the failure, neglect or refusal of the Association or the Owners to carry out their duties as set forth in the Declaration. Such proxy shall be valid until such time as a release of the beneficiary's deed of trust is executed and a copy thereof delivered to the Secretary or Assistant Secretary of the Association, which shall operate to revoke such proxy. Such proxy may be terminated prior to such revocation by the beneficiary's delivery written notice of such termination to the Secretary or Assistant Secretary of the Association. Nothing herein contained shall be construed to relieve Owners of, or to impose upon the beneficiary of the Deed of Trust, the duties and obligation of an Owner.

Section 10.10. Conflicting or invalid Provisions. Notwithstanding anything contained herein to the contrary, should all or part of any Article or Section of these Bylaws be in conflict with the provisions of the Act or any other Texas law, such Act or law shall control, and should any part of these Bylaws be invalid or inoperative for any reason, the remaining parts, so far as is possible and reasonable, shall be valid and operative.

I, the undersigned, the duly elected and acting Secretary of Caldwell's Creek Homeowners Association, a Texas non-profit corporation, do hereby certify:

That the within and foregoing Bylaws were adopted by the initial Board of Directors of said Corporation on October 13, 1999, and that same do now constitute the Bylaws of said Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of said Corporation on October 23, 1999.

By:  \_\_\_\_\_  
Its: Secretary

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