

## **CERTIFICATE OF FORMATION**

### **OF THE**

### **CROWN POINT HOME OWNERS ASSOCIATION, INC.**

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

#### **ARTICLE I**

The name of the corporation is Crown Point Home Owners Association, Inc. (hereinafter the "Association").

#### **ARTICLE II**

The Association is a Texas nonprofit corporation and shall have all the powers and duties specified in and allowable under the Business Organizations Code and the Texas Real Property Code ("Code"). No part of the assets or net earnings of the Association shall inure to the benefit of, or be distributable to, its members, directors, trustees, officers, or other private persons, except that the Association shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distribution in furtherance of the purposes set forth herein. No substantial part of the activities of the Association shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Association shall not participate in or intervene in (including publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these articles, the Association shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(4) of the Internal Revenue Code or corresponding section of any future federal tax code.

#### **ARTICLE III**

The period of the Association's duration is perpetual.

#### **ARTICLE IV**

The purposes for which the Association is formed are:

- (a) The enforcement of the Declaration of Restrictions for the Crown Point Home Owners Association, Inc. (hereinafter the "Declaration"), a community located in Walker County, Texas, that has been or will be recorded in the Real Property Records of Walker County, Texas, and/or any subsequent amendments thereto filed of record affecting such Subdivision.

Association shall have the powers set forth in the Texas Property Code, and by way of illustration and not limitation, shall have the power to;

(1) Fix assessments (or charges) to be levied against Lots and establish services, without the obligation to so provide, for the benefit of the Members;

Fix assessments (or charges) to be levied against Lots in an amount sufficient to satisfy the Association's pro-rata share of expenses for the administration of the development by the Crown Point Home Owners Association, Inc. (the "Association");

(2) Enforce any and all covenants, conditions, restrictions and agreements applicable to the Property;

(3) Insofar as permitted by law, this Certificate of Formation, the Bylaws, the Declaration or any other dedicatory instruments, to do any other thing of a similar nature that will promote the common benefit and enjoyment of the Owners of the Property, as authorized by this Certificate of Formation, the Bylaws, the Declaration, and/or any other dedicatory instrument or permitted by law.

(4) Cause to be kept a complete record of all its receipts and disbursements and maintain a statement thereof and a summary of the major activities on an annual basis;

(5) Monitor all agents and employees of the Association and to see that their duties are properly performed;

(6) Fix, levy and collect the amount of the assessments and other charges to be levied against each Lot;

(7) Send written notice of each assessment to every Lot Owner subject thereto at least thirty (30) days in advance of each annual assessment;

(8) Buy or otherwise acquire, sell, or otherwise dispose of mortgage, or otherwise encumber, exchange, lease, hold, use, operate, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the corporation, which shall include the power to foreclose its lien on any Property subject to the Declaration by judicial or nonjudicial means;

(9) Procure and maintain liability insurance upon the Board of Directors, its agents and employees, and insurance as deemed appropriate by the Board of Directors on Association assets or any other proper purpose;

(10) Exercise all powers reasonably necessary to effectuate the purposes of the Association;

- (11) Manage, control, operate, maintain, preserve, repair and improve the Common Areas and any Property subsequently acquired by the Association., or any other property owned by another for which the Association, by rule, regulation, Declaration, or contract, has a right or duty to provide such services;
- (12) The Board shall have the power to borrow money for the purpose of maintenance, repair or restoration of the Common Areas or for any other proper purpose without the approval of the Members of the Association. The Board, on behalf of the Association, may pledge the Association's assessments and assign the Association's lien rights as collateral for any loan obtained by the Board on behalf of the Association;
- (13) Enter into, make, perform and enforce contracts of every kind and description, and to do all other acts necessary, appropriate or advisable in carrying out any purpose of the Association, including enforcement of the provisions contained in the Declaration;
- (14) Provide or contract for services benefiting the Property including, without limitation or obligation, garbage removal and any and all supplemental municipal services as may be necessary or desirable;
- (15) Contract with other associations, organizations, or groups to provide for the maintenance of the Property, or property adjacent or adjoining the Property;
- (16) Spend money for the improvement or maintenance of property in the vicinity of, the Property subject to the Declaration, or adjacent or adjoining such property;
- (17) Suspend the rights of any Lot Owner to vote or use the Common Areas pursuant to the Declaration and serve notice of such suspension that may be required by law;
- (18) Implement a document retention policy as to the books and records of the Association;
- (19) Promulgate reasonable rules and regulations, adopt Board policies, and implement fines for violation of said rules and regulations;
- (20) Spend money on things in the vicinity of the Association Property that affect the Association Property;
- (21) Enforce any and all covenants, conditions, restrictions and agreements applicable to the Property and/or the Lots and Homes;
- (22) Compromise, participate in mediation, submit to arbitration, release with or without consideration, extend time for payment, and otherwise adjust any claims in favor of or against the Association;

(23) Commence or defend any litigation in the Association's name with respect to the Association or any Association property; and

(24) Control the appearance of the Association Property.

The foregoing enumeration of powers shall, except where otherwise expressed, be in no way limited or restricted by any reference to or inference from the terms or provisions of any other clause but shall be regarded as independent powers.

The Association shall not engage in any activities or exercise any powers that are not in furtherance of the purposes of the Association. The Association is organized pursuant to the Business Organizations Code and does not contemplate pecuniary gain or profit to the Members thereof and is organized for non-profit purposes and nothing contained herein shall be construed to authorize the Association to carry on any activity for the profit of its Members, or to distribute any gains, profits or dividends to its Members as such.

#### **ARTICLE V.**

The Association shall be a membership corporation without certificates or shares of stock. All Lot Owners, by virtue of their ownership of a Lot subject to the Declaration, are Members of the Association. The Members shall be divided into two (2) classes and shall be entitled to vote in accordance with the provisions contained in the Bylaws and the Declaration. Every person or entity who is a record owner of any Lot is entitled to membership and voting rights in the Association and shall be a Class "A" Member with the exception of the Declarant. The Declarant and its designees shall be the Class "B" Member. Membership is appurtenant to and inseparable from, ownership of a Lot.

#### **ARTICLE VI**

The mailing address of the initial registered office of the corporation is 185 Cedar Point Drive, Livingston Texas 77351, and the name of its initial registered agent at such address is Charles Von Schmidt

#### **ARTICLE VII**

The business and affairs of the Association shall be conducted, managed and controlled by a Board of Directors. The Board may delegate such operating authority to such companies, individuals or committees as it, in its discretion, may determine. The initial Board of Directors shall consist of the following three (3) members and shall serve an initial term until the election of the Fully Elected Board pursuant to the Declaration and pursuant to the Bylaws of the Association:

Name	Address
1. Charles Von Schmidt	185 Cedar Point Drive Livingston, Texas 77351
2. Amy Von Schmidt	185 Cedar Point Drive Livingston, Texas 77351

3. Bobbie Christiansen

185 Cedar Point Drive  
Livingston, Texas 77351

The number of directors may be changed by the Association or the Board of Directors as set forth in the Bylaws.

#### **ARTICLE VIII**

This Certificate of Formation may be amended at a meeting of the Members by the affirmative vote of at least two-thirds (2/3) of the votes which Members present at such meeting in person or by proxy are entitled to cast, provided however so long as Class B membership exists, the joinder of the Declarant will also be required.

#### **ARTICLE IX.**

To the fullest extent permitted by Texas statutes, as the same exist or as they may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits broader limitation than permitted prior to such amendment), a director of the Association shall not be liable to the Association for monetary damages for an act or omission in the director's capacity as a director. Any amendment of this Certificate of Formation shall be prospective only and shall not adversely affect any limitation on the personal liability of a director of the Association existing at the time of such repeal or amendment.

(a) Subject to the exceptions and limitations contained herein:

(1) Every person who is or has been a director, officer, or managing agent of the Association shall be indemnified by the Association to the fullest extent permitted by law against liability and against all expenses reasonably incurred or paid by said person in connection with any demand, claim, action, suit (or threat thereof) or proceeding in which said person becomes involved as a party or otherwise by virtue of being or having been a director or officer and against amounts paid or incurred by said person in the settlement thereof;

(2) The words "claim," "action," "suit," or "proceeding" shall apply to all claims, actions, suits, or proceedings (civil, criminal, or other, including appeals), actual or threatened, made or commenced subsequent to the adoption of these Certificate of Formation; and the words "liability" and "expenses" shall include, without limitation, attorneys' fees, costs, judgments, amounts paid in settlement, fines, penalties, and other liabilities.

(b) No indemnification shall be provided hereunder to a director or officer or any other individual:

(1) Against any liability to the Association by reason of willful misfeasance, bad faith, gross negligence, breach of fiduciary duty, criminal misconduct or reckless disregard of the duties involved in the conduct of his/her office;

(2) With respect to any matter as to which s/he shall have been final adjudicated not to have acted in good faith in the reasonable belief that his/her action, was in the best interest of the Association;

(c) The rights of indemnification herein provided may be insured against by policies maintained by the Association, shall be severable, shall not affect any other rights to which any director or officer now or hereafter may be entitled, shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors, successors, assigns, and administrators of such a person.

(d) Expenses in connection with the preparation and presentation of a defense to any claim, action, suit, or proceeding of the character described herein may be advanced by the Association before final disposition thereof upon receipt of an undertaking by or on behalf of the director or officers, secured by a surety bond or other suitable insurance issued by a company authorized to conduct such business in the State of Texas, to repay such amount if it is ultimately determined that s/he is not entitled to indemnification hereunder.

#### ARTICLE X.

THE ASSOCIATION, ITS BOARD OF DIRECTORS AND OFFICERS, ITS MANAGER(S), EMPLOYEES, AGENTS AND/OR ITS ATTORNEYS (COLLECTIVELY THE "ASSOCIATION AND RELATED PARTIES") SHALL NOT IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROPERTY. NEITHER SHALL THE ASSOCIATION AND RELATED PARTIES BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY OMISSION OR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, LOT OWNERS AND TENANTS ON BEHALF OF THEMSELVES, ALL OCCUPANTS OF THE LOT BEING LEASED, GUESTS AND INVITEES OF ANY LOT OWNER OR RESIDENT, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND RELATED PARTIES DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES, OR SECURITY SYSTEMS (IF ANY ARE PRESENT) WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE, NOR THAT FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. LOT OWNERS AND THEIR TENANTS, ON BEHALF OF THEMSELVES, ALL OCCUPANTS OF THE LOT BEING LEASED, GUESTS AND INVITEES OF A LOT OWNER OR TENANT, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTAND THAT THE ASSOCIATION AND RELATED PARTIES ARE NOT AN INSURER AND THAT EACH LOT OWNER, LESSEE AND OCCUPANT OF ANY LOT ON BEHALF OF THEMSELVES AND THEIR GUESTS AND INVITEES ASSUMES THE RISKS FOR LOSS OR DAMAGE TO PERSONS, THEIR PERSONAL PROPERTY, TO LOTS AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION AND RELATED PARTIES HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY LOT OWNER OR TENANT ON BEHALF OF THEMSELVES AND THEIR GUESTS OR INVITEES RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

#### ARTICLE XI

The association may only be dissolved as provided by the state of Texas and the By Laws. If dissolved the assets shall be distributed based on the equity percentage of each Lot and the ground under the Lot, garage, driveway, and yard of each Lot.

ARTICLE XII

The name and street address of the Organizer is:

Charles Von Schmidt  
185 Cedar Point Drive  
Livingston, Texas 77351

The 6<sup>th</sup> day of December, 2020.

IN WITNESS WHEREOF, I have hereunto subscribed my name on this the \_\_ day of  
\_\_\_\_\_, 2020.

\_\_\_\_\_  
Charles Von Schmidt

STATE OF TEXAS  
COUNTY OF POLK

BEFORE ME, the undersigned authority, on this day personally Charles Von Schmidt, known to me to be the person whose name is subscribed to the foregoing instrument, acknowledged to me that he executed the same for the purposes and consideration therein expresses,

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Texas

Return upon recordation return to:

Waterstone Development Group, LLC

185 Cedar Point Drive

Livingston, Texas 77351

# EXHIBIT C

## Bylaws

Draft Only



**BYLAWS**

**OF**

**CROWN POINT HOME OWNERS ASSOCIATION, INC.**

Draft Only

After Recording Return To:

Charles Von Schmidt

Waterstone Development Group, LLC

185 Cedar Point Drive

Livingston, Texas 77351

TABLE OF CONTENTS

<b>ARTICLE I.</b>	<b>NAME AND ADDRESS</b> .....	1
SECTION 1.1	NAME .....	1
SECTION 1.2	DEFINITIONS/GENDER .....	1
SECTION 1.3	REGISTERED AGENT .....	1
<b>ARTICLE II.</b>	<b>APPLICABILITY</b> .....	1
<b>ARTICLE III.</b>	<b>PURPOSE</b> .....	1
<b>ARTICLE IV.</b>	<b>INTERPRETATION</b> .....	1
<b>ARTICLE V.</b>	<b>MEMBER</b> .....	2
SECTION 5.1	MEMBERSHIP .....	2
SECTION 5.2	AFFIRMATIVE VOTE .....	4
SECTION 5.3	MEMBERSHIP LIST .....	4
SECTION 5.4	PROXIES AND ABSENTEE BALLOT .....	4
<b>ARTICLE VI.</b>	<b>MEETINGS OF THE ASSOCIATION</b> .....	5
SECTION 6.1	PLACE OF ANNUAL AND SPECIAL MEETINGS.....	5
SECTION 6.2	DATE OF ANNUAL MEETINGS.....	5
SECTION 6.3	NOTICE OF ANNUAL MEETINGS.....	5
SECTION 6.4	SPECIAL MEETING .....	6
SECTION 6.5	NOTICE OF SPECIAL MEETINGS.....	6
SECTION 6.6	WAIVER OF NOTICE .....	6
SECTION 6.7	MEMBER QUORUM .....	6
SECTION 6.8	CONDUCT OF MEETINGS .....	6
SECTION 6.9	ACTION WITHOUT MEETING BY WRITTEN BALLOT .....	7
SECTION 6.10	ADMINISTRATION OF AFFAIRS.....	7
<b>ARTICLE VII.</b>	<b>BOARD OF DIRECTORS</b> .....	7
SECTION 7.1	AUTHORITY; NUMBER OF DIRECTORS .....	7
SECTION 7.2	TERM OF DIRECTORS AND COMPENSATION .....	9
SECTION 7.3	VACANCIES ON BOARD OF DIRECTORS .....	9
SECTION 7.4	REMOVAL OF DIRECTORS .....	10
SECTION 7.5	ORGANIZATIONAL MEETING OF THE BOARD OF DIRECTORS.....	10
SECTION 7.6	PLACE OF MEETINGS.....	10
SECTION 7.7	REGULAR BOARD OF DIRECTORS MEETINGS.....	11

SECTION 7.8	SPECIAL BOARD OF DIRECTORS MEETINGS .....	11
SECTION 7.9	WAIVER OF NOTICE .....	11
SECTION 7.10	DIRECTORS QUORUM .....	11
SECTION 7.11	CONSENT IN WRITING .....	11
SECTION 7.12	RECORDS.....	12
SECTION 7.13	POWERS.....	12
SECTION 7.14	ANNUAL BUDGET AND ASSESSMENTS .....	15
SECTION 7.15	MANAGEMENT CERTIFICATE .....	15
SECTION 7.16	OPEN MEETING AND EXECUTIVE SESSION .....	15
SECTION 7.17	CONDUCT OF MEETINGS .....	16
<b>ARTICLE VIII.</b>	<b>OFFICERS .....</b>	<b>16</b>

Draft Only

OFFICERS .....	16
ELECTION, TERM OF OFFICE AND VACANCIES .....	16
REMOVAL .....	17
POWERS AND DUTIES.....	17
RESIGNATION .....	17
<b>AGREEMENTS, CONTRACTS, DEEDS, LEASES, CHECKS, ETC.....</b>	<b>17</b>
<b>COMPENSATION .....</b>	<b>17</b>
<b>INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHER</b>	
<b>AUTHORIZED REPRESENTATIVES.....</b>	<b>17</b>
ASSOCIATION BOOKS AND RECORDS.....	18
INSURANCE.....	18
<b>TYPES OF INSURANCE .....</b>	<b>18</b>
NAMED INSURED.....	18
WAIVER OF SUBROGATION .....	19
MISCELLANEOUS .....	19
FISCAL YEAR.....	19
AMENDMENTS TO BYLAWS.....	19

Draft Only

**BYLAWS OF  
CROWN POINT HOME OWNERS ASSOCIATION, INC.**

**ARTICLE I. NAME AND ADDRESS**

**Section 1.1 Name**

The name of the association is Crown Point Home Owners Association, Inc. (the "Association").  
The address is 185 Cedar Point Drive Livingston, Texas 77351

**Section 1.2 Definitions/Gender**

Capitalized and terms used in these Bylaws of the Crown Point Home Owners Association, Inc. (the "Bylaws") shall have the same meaning as that ascribed to them in the Declaration of Restriction for Crown Point Home Owners Association (the "**Declaration**").  
Pronouns, wherever used in these Bylaws, shall include all persons regardless of gender.

**Section 1.3 Registered Agent**

The Association shall have and continuously maintain in the State of Texas a registered agent whose office is identical with such registered office, as required by the Texas Organizations Code. The registered office may be, but need not be, identical to the principal office in the State of Texas, and the registered office may be changed from time to time by the Board of Directors.

**ARTICLE II. APPLICABILITY**

These Bylaws shall be applicable to the Association. In accordance with the terms of the Declaration, Declarant (for such time as Declarant is the owner of any portion of the Property), and all present and future Owners shall be Members of the Association and all Owners and any other persons permitted to use the Common Elements shall be subject to these Bylaws and to any Rules and Regulations adopted from time to time by the Board of Directors. Ownership, rental or occupancy of any Lot in the Property shall be conclusively deemed to mean that the Owner, tenant or occupant has accepted, ratified and will comply with these Bylaws, the Declaration and the Rules and Regulations.

**ARTICLE III. PURPOSE**

The purpose of the Association is to administer the Crown Point Community and Association, including, without limitation, providing for the management, maintenance, repair and replacement of the Common Elements, as provided in the Declaration. The Association does not contemplate pecuniary gain or profit to its Members as a result of membership in the Association.

**ARTICLE IV. INTERPRETATION**

In the event that a conflict exists between the provisions of the Declaration, the Bylaws, the Certificate of Formation of the Association (the "Certificate of Formation"), the Guidelines, and/or the Rules and Regulations, the documents shall control in the following order:

1. The Declaration (DCCR)
2. The Certificate of Formation
3. The Bylaws
4. The Guidelines Not Yet Published
5. The Rules and Regulations Not Yet Published

In the event that the Internal Revenue Code of 1986, as amended, (the "Code") is hereafter amended or changed, both the Declaration and these Bylaws shall be interpreted in a manner which conforms to the provisions of the Code with respect to nonprofit entities, it being the intention to preserve the status of the Association as a bona fide nonprofit entity.

**ARTICLE V. MEMBER**

**Section 5.1 Membership**

(a) Each Owner shall automatically be a member of the Association and shall continue to be a Member until such person no longer owns a Lot, at which time membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to the ownership of a Lot. Members in Good Standing shall be entitled to one (1) vote for each Lot in which they hold an ownership interest of record, on all issues to be voted upon by the members.

(b) A member shall be considered to be a "Member in Good Standing" and eligible to vote if such member:

- (i) Is not delinquent for more than thirty (30) days in the payment of Common Expense Charges or other charges levied by the Association, as provided for under the Declaration;
- (ii) Does not have anything filed of record in the County by the Association showing unpaid Assessments against the Lot owned by such Owner;
- (iii) Is, at least five (5) days prior to the taking of any vote by the Association, not in default under the Declaration or these Bylaws (after the expiration of all cure periods granted hereunder or under the Declaration); and
- (iv) Has discharged all other obligations to the Association as may be required of Members under the Declaration.

At least thirty (30) days prior to any member meeting, the Board shall determine whether a member is a Member in Good Standing. If the Board determines that a member is not a Member in Good Standing, the Board shall promptly notify that member. Upon receipt of such notification, the member has the right to cure the default that has resulted in the loss of good standing. If a member disputes the Board's determination that such member is not a Member in Good Standing, the member may mediate that issue pursuant to the mediation provision in the Declaration provided the member initiates the mediation procedure within three (3) business days after the member receives notice of the Board's determination. If mediation fails, a member has the right to pursue any and all legal rights. Any member not conforming with the

provisions of this paragraph (b) shall not be a Member in Good Standing and shall not be entitled to vote on matters before the Association until such time as Member in Good Standing status is attained and so declared by the Board. Notwithstanding the preceding, so long as Declarant owns any portion of the Property, the Lot Owners may not make any Major Decision, without the Declarant's consent. As used herein, "Major Decision" shall mean any decision which has the effect of directly or indirectly doing any of the following:

- a. Adopt and amend budgets for revenues, expenditures, reserves or incur any expenses in variance thereof;
- b. Institute, defend, intervene, settle or compromise litigation or administrative proceedings;
- c. Make contracts and incur liabilities relating to the operation of the Association which are not provided for in any approved budget;
- d. Change or adopt Rules and Regulations, concerning the use, maintenance, repair, replacement, modification, and appearance of the Community, or amend the DCCR and Restrictions;
- e. Cause additional improvements to be made;
- f. Impose and receive payments, fees, or charges for the use, rental or operation of the Common Elements, except as otherwise provided for in the budget or customary charges under leases;
- g. Adopt and amend rules regulating the collection of the delinquent Common Expense Charge and the application of payments other than as set forth in an approved budget;
- h. Change any policy or policies of insurance and fidelity bonds as are required by the Declaration;
- i. Transfer or convey any property interests in the Common Elements other than in connection with a transfer of an entire Lot;
- j. Change or employ a manager or contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association; and
- k. Waive compliance by any Lot Owner with the terms of the Declaration, the Rules and Regulations, the Certificate of Formation and/or the Bylaws.

(c) In cases where more than one Person owns an interest in a Lot, (i) such persons shall collectively be deemed one member and (ii) such persons shall arrange among themselves for one of their number to exercise their member voting rights. If only one of the multiple Owners of a Lot is present at a meeting of the Association, that person may cast the vote or votes allocated to that Lot. If more than one of the multiple Owners is present, the vote or votes allocated to that Lot may be cast only in accordance with the Owners' unanimous agreement. Multiple Owners are

in unanimous agreement if one of the multiple Owners casts the votes allocated to a Lot and none of the other Owners makes prompt protest to the person presiding over the meeting.

Votes allocated to a Lot may be cast under a written proxy duly executed by a Lot Owner. If a Lot is owned by more than one person, each of the Owners of the Lot may vote or register protest to the casting of votes by the other Owners of the Lot through a proxy duly executed by the Lot Owner. A Lot Owner may not revoke a proxy given under this Section except by giving actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or if it purports to be revocable without notice. A proxy terminates one year after its date unless it specifies a shorter or longer time. Proxies may be submitted via facsimile or in any other electronic form allowed by law.

For example, if three persons jointly own a Lot, as the Owner of such Lot the three persons are collectively entitled to a one (1) vote. The person acting on behalf of the three Owners as one member shall have the right to cast, in the aggregate, one (1) vote on behalf of all three Owners of the Lot.

### **Section 5.2 Affirmative Vote**

Except as otherwise provided herein or in the Declaration, the Members shall be entitled to vote upon any decision or resolution and those votes from Members totaling more than fifty percent (50%) of the total votes cast based on the Allocated Interest shall determine the passage of any decision or resolution. A vote may be cast either in person or by written proxy. Cumulative voting shall not be permitted. Any member whose voting rights have been suspended under any provision of the Declaration or these Bylaws shall not be entitled to vote. In the case of multiple Owners of the same Lot, all Owners must be Members in Good Standing to be entitled to vote the vote allocated to that Lot.

### **Section 5.3 Membership List**

The Secretary shall be responsible for maintaining, at the principal office of the Association, an updated list of Members and their last known addresses as provided by each member. The list shall also show opposite each member's name the address of the Lot(s) owned. The list shall be revised by the Secretary to reflect changes in the ownership of Lots occurring prior to the date of any annual or special meeting. The list shall be open to inspection by all Members and other persons lawfully entitled to inspect the list during regular business hours up to the date of the annual or special meeting. The Secretary shall also keep current and retain custody of the minute book of the Association, which shall contain the minutes of all annual and special meetings of the Association and the Board of Directors and all resolutions of the Board of Directors (the "Minute Book").

### **Section 5.4 Proxies and Absentee Ballot**

At all meetings of Members where a vote is taken, each Member may vote in person or by proxy appointed by instrument in writing and subscribed by the Member or by the duly authorized attorney of such Member. The Association is not required to provide a Member with more than one voting method. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting or by any earlier date or time specified in the notice of



meeting. Every proxy shall be revocable and shall automatically cease upon (i) conveyance by the Member of the Member's interest in the property; (ii) receipt of notice by the Secretary of the death or judicially declared incompetence of a Member; (iii) receipt of written revocation; or, (iv) expiration of eleven (11) months from the date of the proxy. In the case of a Member's execution of more than one proxy, the proxy with the latest date shall be valid. Proxies not delivered prior to the start of any meeting or by any earlier date or time if specified in the notice of meeting, shall not be valid.

Members may vote by any one, or more, of the following methods as may be established by the Board: (1) in person, (2) by absentee ballot, (3) by proxy, (4) by any electronic means, or (5) other process approved by the Board of the Association. Facsimile proxies shall be valid. Electronic voting and/or voting by secret ballot shall be valid pursuant to rules and regulations promulgated by the Board.

The Board is vested with the authority to determine, in its sole discretion, if Members may vote on any issue to be voted upon by the Members under these Bylaws by absentee ballot that is delivered or mailed to the Association or transmitted to the Association by facsimile or by electronic communication over the Internet or the Association network. At any election where there are an equal number of nominees as there are positions to be filled, the Board may determine that election by ballot or vote is not required and may declare that the nominees are elected by unanimous consent or acclamation. Notwithstanding anything contained in these Bylaws to the contrary, a proxy may only be issued by a Member to another Member.

## **ARTICLE VI. MEETINGS OF THE ASSOCIATION**

### **Section 6.1 Place of Annual and Special Meetings**

All annual and special meetings of the Association shall be held at the principal office of the Association or at another suitable and convenient place permitted by law and fixed by the Board of Directors from time to time and designated in the notices of the meetings.

### **Section 6.2 Date of Annual Meetings**

Annual meetings of the Association shall be held each year on a date as shall be fixed by the Board of Directors by written notice to the Members. The Members may transact any business which may properly come before the meeting.

### **Section 6.3 Notice of Annual Meetings**

The Secretary shall mail or deliver notices of annual meetings to each member directed to the most recent post office address provided to the Association by such member, as shown on the records of the Association, by regular mail, postage prepaid, and/or via facsimile, email, or other electronic means. This notice shall be mailed or delivered not less than ten (10) or more than sixty (60) days before the date of the meeting and shall state the date, time and place of the meeting, the purpose or purposes thereof and the items on the agenda. If the purpose of the meeting is to adopt an amendment or other change to the Declaration, Certificate of Formation, or Bylaws of the Association, that information must be given to each Owner not less than ten (10) or more than twenty (20) days before the date of the meeting, including the specific nature

of any proposed amendment or change to the Declaration, the Certificate of Formation or these Bylaws.

#### **Section 6.4 Special Meeting**

A special meeting of the Association may be called by the President, a majority of the Directors, or upon presentation to the Secretary of a petition stating the specific purpose of the special meeting, which petition has been signed by Members in Good Standing having not less than fifty percent (50%) of the total votes of the Association or the Declarant action alone.

#### **Section 6.5 Notice of Special Meetings**

The Secretary shall mail or deliver notices of special meetings to each member directed to the most recent post office address provided to the Association by such member, as shown on the records of the Association, by regular mail, postage prepaid, and/or via facsimile, email, or other electronic means. The notice shall state the same items required by Section 6.3 of these Bylaws for notices of annual meetings. No business shall be transacted at any special meeting except as stated in the notice thereof.

#### **Section 6.6 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 6.7 Member Quorum**

At any duly convened meeting of the Association, a quorum shall be present if Members owning, in the aggregate, at least twenty percent (20%) of the votes entitled to be cast are present in person or by proxy at the beginning of the meeting.

#### **Section 6.8 Conduct of Meetings**

The President, or his/her designee, 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 6.9 Action Without Meeting by Written Ballot**

Any action which may be taken by the vote of the Members at a regular or special meeting, may be taken without a meeting if done in compliance with relevant provisions of the Texas Business Organizations Codes. If an action is taken without a meeting, the Board of Directors shall distribute a written ballot to every member entitled to vote on the matter. The ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the Association. Approval by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the votes that would be required to approve the proposal at a regular or special meeting authorizing the action.

## **Section 6.10 Administration of Affairs**

Subject to the provisions of the Texas Real Property Code, the Texas Business Organizations Code, the Declaration, the Rules and Regulations and these Bylaws, the Association shall be governed by the Board of Directors.

### **ARTICLE VII.**

### **BOARD OF DIRECTORS**

## **Section 7.1 Authority; Number of Directors**

(a) Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) vote. After the Appointed Board ceases to exist, all directors must be Members. However, so long as the Appointed Board exists, Board members are not required to be Members. In the case of a member that is a corporation or partnership, the person designated in writing by either proxy or a resolution to the Secretary of the Association as the representative of such corporation or partnership shall be eligible to serve as a director. 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.

(b) Directors During Appointed Board Existence.

(0) During the existence of the Appointed Board, directors shall be selected pursuant to the Declaration.

(ii) Except for directors selected by the Declarant, Directors shall be Owners, and shall be elected by a majority of the votes cast by the Members.

(iii) Election of directors by the membership may be by any mail ballot, by vote of a majority of the votes cast by the Members in person or by proxy at a properly called meeting at which a quorum is present, or by any combination of the same.

Notwithstanding anything contained herein to the contrary, in an election of directors other than the Appointed Board, in which election there are more candidates than vacant positions and where two or more candidates receive the same number of votes resulting in a tie, the winner of the election shall be chosen by lot (i.e., the names of the candidates who are

running for a director position and have received the same number of votes shall be written on separate pieces of paper by the presiding officer of the meeting, the pieces of paper shall be folded by the presiding officer and placed in a container provided by the then-serving Board of Directors; the presiding officer shall ask for a volunteer Member from the audience of Owners to pick any one piece of paper from the container and the person whose name is picked shall be declared the winner of such election).

(c) Right to Disapprove Actions. This Section (c) may not be amended without the express, written consent of the Declarant prior to the end of the Declarant Control Period, as same is defined in the Declaration.

Until the termination of the Declarant Control Period, the Declarant shall have a right to disapprove actions of the Board and any committee, as is more fully provided in this Section. This right shall be exercisable only by the Declarant, its successors, and assigns who specifically take this power in a recorded instrument. The right to disapprove shall be as follows:

Until the termination of the Declarant Control Period, no action authorized by the Board of Directors, or any committee shall become effective, nor shall any action, policy, or program be implemented until and unless:

The Declarant shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or any committee thereof by certified mail, return receipt requested, or by personal delivery at the address the Declarant has registered with the Secretary of the Association, as it may change from time to time; and

The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board or the Association. The Declarant, its representative or agents shall make its concerns, thoughts, and suggestions known to the members of the Board. The Declarant shall have and is hereby granted a right to disapprove any such action, policy, or program authorized by the Board of Directors and to be taken by the Board, the Association, or any individual member of the Association, if Board, or Association approval is necessary for such action. This right may be exercised by the Declarant, its representatives, or agents at any time within ten (10) days following the meeting held pursuant to the terms and provisions hereof. The Declarant shall not use its right to disapprove to reduce the level of services that the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

(d) Number of Directors. The number of directors in the Association shall be not less than three (3) nor more than five (5), provided that the number of directors shall always be an odd number; and as further provided in Section 6 below. The initial Board shall consist of three (3) Members as identified in the Certificate of Formation, who shall be appointed by the Declarant. The number of directors may be increased by majority vote of the Board members.

(e) Term of Office of Directors. After the election of the Fully Elected Board, the term of office of each elected Director shall be for the number of years necessary to establish staggered three-year terms. The Declarant may relinquish its right to appoint Directors at any time.

The Declarant shall retain the unilateral right to appoint all Directors until (1) not later than the 120<sup>th</sup> day after conveyance of Seventy-Five percent (75%) of the Lots that may be created to Lot Owners other than declarant or a builder, at which time not less than one-third (1/3) of the members of the Board must be elected by Lot Owners [the "First Lot Owner Director(s)"]. The First Lot Owner Director(s) shall serve one-year terms, or until their replacements are elected at the time of the election of the Fully Elected Board.

The Declarant Control Period shall terminate not later than the 120<sup>th</sup> day after conveyance of Eighty-Five percent (85%) of the Lots that may be created to Lot Owners other than declarant or a Builder. From and after the termination of the Declarant Control Period, the Appointed Board and the First Lot Owner Director(s) shall serve until an election can be conducted to elect the Fully Elected Board, pursuant to these Bylaws. At the first election to elect the Fully Elected Board, the Members shall elect one (1) director for a term of one (1) year (the Director receiving the least amount of votes), one (1) director for a term of two (2) years (the Director receiving the second most amount of votes); and one (1) director for a term of three (3) years (the Director receiving the most votes) and at annual meetings thereafter, the Members shall elect directors for three-year terms.

In the event the number of directors increases as provided for in Section 4, at no time shall more than one-third (1/3) of the total number of Directors be added to the same elected term.

(f) Nomination of Directors. Except for directors appointed by the Declarant, the Board of Directors may establish a nominating committee consisting of a chairperson, who shall be a member of the Board, and three (3) or more Members or representatives of Members. Prior to the Fully Elected Board the candidate(s) for the First Lot Owner Director(s) may be nominated by the Board, by any Lot Owner, and from the floor at an Owners' meeting called for the purpose of electing the First Lot Owner Director(s). If established, the nominating committee shall be a Chairman, who shall be a member of the Board of Directors, and three (3) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Members to serve a term of one (1) year or until their successors are appointed, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it receives.

## **Section 7.2 Term of Directors and Compensation**

Except as otherwise set forth herein, each Director elected by the Members shall serve for a term of three (3) years, with the understanding that a Director may be reelected for additional three-year terms. Each Director shall continue to hold office until his/her successor is appointed and qualified. The Directors shall serve without compensation for such service. However, Directors may be reimbursed for out-of-pocket expenses incurred on Association business.

## **Section 7.3 Vacancies on Board of Directors**

Any vacancy created during the initial term of the Fully Elected Board may be filled by the remaining directors.

Any director elected by the Members 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 or not in compliance with the recorded restrictions 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. In the event of the death, disability, or resignation of a director, a vacancy may be declared by the Board, and it may appoint a successor.

#### **Section 7.4 Removal of Directors**

Any director elected by the Members may be removed, with or without cause, by the vote of Members holding a majority of the votes entitled to be cast for the election of such director. 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. Notwithstanding the foregoing, with the exception of Directors appointed by Declarant, 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. Upon removal of a director, a successor shall then and there be elected by the Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

#### **Section 7.5 Organizational Meeting of the Board of Directors**

The first meeting of the Appointed Board of Directors shall be held within sixty (60) days of incorporation at such time and place as shall be fixed by the Board.

No later than thirty (30) days following each of (a) the establishment of the Association and (b) each annual meeting of the Members of the Association, the Board of Directors shall hold a regular meeting for the purposes of organization, election of officers and transaction of other business. Notice of this meeting shall be given to all Directors in accordance with these Bylaws, except for the initial meeting, which shall be called by Declarant.

#### **Section 7.6 Place of Meetings**

All meetings of the Board of Directors shall be held at the principal office of the Association or at any other place or places designated at any time by resolution of a majority of the Board of Directors or by written consent of a majority of the Directors. A special meeting of the Board of Directors may be held by any method of communication, including electronic and telephonic, by which each Director may hear and be heard by every other Director, and any such meeting may involve consideration of any action, including any action involving a vote on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a

right of a particular member before the member has an opportunity to attend a meeting of the Board of Directors to present the member's position on the issue.

### **Section 7.7 Regular Board of Directors Meetings**

Regular meetings of the Board of Directors may be held at any time and place permitted by law as from time to time may be determined by the Board of Directors. Notice of regular meetings of the Board of Directors shall be given to each Director personally, by telegram, telephone, facsimile, e-mail or by mail, with postage prepaid, directed to Director at his/her last known post office address, as the same appears on the records of the Association, at least three (3) but not more than twenty (20) days before the date of the meeting. This notice shall state the date, time, place and purpose of the meeting.

### **Section 7.8 Special Board of Directors Meetings**

Special meetings of the Board of Directors may be called by the President on his/her own accord or by the President or the Secretary upon the written request of any two (2) Directors, on three (3) days' prior notice to each Director. Special meetings of the Board of Directors may be held by conference telephone.

### **Section 7.9 Waiver of Notice**

Before any meeting of the Board of Directors, whether regular or special, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to giving the required notice. All written waivers shall be filed in the minute book of the Association or made a part of the minutes of the meeting. Attendance by a Director at any meeting of the Board of Directors shall likewise constitute a waiver by him/her of the required notice. If all Directors are present at any meeting of the Board of Directors, no notice of the meeting shall be required, and any business may be transacted at the meeting except as prohibited by law or these Bylaws.

### **Section 7.10 Directors Quorum**

At all duly convened meetings of the Board of Directors, Directors present (in person) at the meeting of at least fifty-one percent (51%) of the votes on the Board are present at the beginning of the meeting shall constitute a quorum for the transaction of business, except as otherwise expressly provided in these Bylaws. The acts of a majority of the Directors present at the meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, the Directors present may adjourn the meeting from time to time and, at the adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice to any Director.

### **Section 7.11 Consent in Writing**

Any action by the Board of Directors, including any action involving a vote on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular member before the member has an opportunity to attend a meeting of the Board of Directors to present the member's position on the issue, may be taken without a

meeting if all of the Directors shall unanimously consent in writing to the action. Such written consent shall be filed in the minute book. Any action taken by such written consent shall have the same force and effect as a unanimous vote of the Directors.

### **Section 7.12 Records**

The Board of Directors shall cause a complete record of all of its acts and the corporate affairs of the Association to be kept and to present a general report thereof to the Members at each annual meeting of the Association or at any special meeting where a general report is requested in writing by twenty percent (20%) of the Members entitled to vote.

### **Section 7.13 Powers**

Subject to the Texas Real Property Code (the "Code"), the Board of Directors shall have and exercise all powers necessary for the proper administration of the affairs of the Association. In the performance as the governing body of the Association, the Board shall have all powers enumerated in the Code, and in addition to those powers set forth in the Act the Board of Directors shall have the powers including, but not limited to, the following:

The Board may delegate to one (1) or more of its directors the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, that might arise between meetings of the Board.

In addition to the authority created in these Bylaws, Texas law or by any resolution of the Board that may hereafter be adopted, the Board shall have the power to establish policies relating to, and for performing or causing to be performed, the following, in way of explanation, but not limitation:

- (a) provide for the operation, maintenance, management, insurance, cleaning, sanitation, renewal, replacement, care and upkeep of the Common Elements and all property, real or personal, of the Association;
- (b) determine the Common Expense Charge and any other charges comprising the operating expenses of the Association, establish the amount of monthly assessments, as the same may increase or decrease, and assess the same against the Owners in accordance with the provisions of the Declaration;
- (c) levy and collect, in addition to the Common Expense Charge, Climate Controlled Storage Space Fee, Special Assessments whenever the Board of Directors is of the opinion it is necessary to do so in order to meet increased operating or maintenance costs or additional capital expenses or because of emergencies subject to the requirements contained in the Declaration;
- (d) use and expend any sums collected from Common Expense Charge, and Special Assessments for the operation, maintenance, renewal, care, repair and upkeep of the Common Elements;
- (e) maintain the Common Elements;



(o) maintain a reserve fund out of the Common Expense Charge for Common Elements adequate for the periodic maintenance, repair and replacement of the Common Elements;

(g) pay all taxes and assessments levied or assessed against any property that may be owned by the Association, exclusive of any taxes or assessments levied against any Owner or otherwise properly chargeable to the Owner;

(h) collect delinquent Assessments against any Owner's Lot and the Owner thereof, whether by suit or otherwise and to abate any nuisance and enforce the terms of the Declaration and the observance of the Rules and Regulations by injunction or other legal action or means which the Board of Directors may deem necessary or appropriate;

(i) establish operating, escrow and other accounts in the name of the Association as the Board of Directors may deem appropriate from time to time and as may be consistent with generally accepted accounting principles;

(j) prepare and adopt a budget for each fiscal year which shall contain estimates of the costs and expenses of the Association and the proposed Common Expense Charge;

(k) cause a complete review of the books and accounts of the Association to be made by a competent independent public accountant at the end of each fiscal year and at any other time or times deemed necessary;

(l) maintain accounting records in accordance with generally accepted accounting principles;

(m) provide, 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; and

(n) make and enforce compliance with the Rules and Regulations relative to the operation, use and occupancy of the Common Elements. A copy of the Rules and Regulations and copies of any amendments thereto shall be delivered or mailed to each Owner and any tenant or occupant of an Owner's Lot promptly upon the adoption thereof.

(o) employ and dismiss personnel of the Association, and purchase or arrange for those services, machinery, equipment, tools, materials and supplies as, in the opinion of the Board of Directors, may from time to time be necessary for the proper operation and maintenance of the Common Elements;

(p) employ or retain and receive advice from professional counsel and consultants, including, but not limited to, landscape architects, architects, engineers, planners, biologists, lawyers and accountants, which the Board of Directors may deem necessary for any proper purposes of the Association, and fix the compensation for professional advice or services, including, but not limited to, those hereinbefore or hereinafter referred to in these Bylaws. The

Board of Directors shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following: (A) one or more officers or employees of the Association whom the Board of Directors reasonably believes to be reliable and competent in the matter presented; (B) counsel, public accountants or other persons as to the matters which the Board of Directors reasonably believes to be within the professional or expert competence of this person; and (C) a committee of the Board of Directors duly designated in accordance with law, as to matters within its designated authority, which committee the Board of Directors reasonably believes to merit confidence;

(q) name as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with which the Association may enter into any insurance trust agreement or any successor to this trustee (each of which shall be referred to herein as the "Insurance Trustee"), to be given exclusive authority to negotiate losses under any policy providing property or liability insurance coverage maintained by the Association. The Association or any Insurance Trustee or substitute Insurance Trustee designated by the Association shall have the exclusive power to act as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof as provided in the Declaration, the negotiation of losses, execution of releases of liability and the execution of all documents and the performance of all other acts necessary to accomplish these purposes;

(r) establish depositories for the funds of the Association with the bank or banks as shall be designated from time to time by the Board of Directors and in which monies of the Association shall be deposited. Withdrawal of monies shall be only by check signed by those persons who are authorized by the Board of Directors to sign checks on behalf of the Association;

(s) invest monies of the Association in any investments which the Board of Directors deems to be reasonably prudent;

(t) borrow and repay monies and, subject to any restrictions under a first mortgage, give notes, mortgages or other security upon the terms which are deemed reasonable by the Board of Directors. The Board, on behalf of the Association, may pledge the Association's Assessments and assign the Association's lien rights as collateral for any loan obtained by the Board on behalf of the Association;

(u) acquire by purchase, gift, annexation or lease, real or personal property, if, at any time in the future, the Board of Directors deems it to be proper and not inconsistent with the terms hereof to do so;

(v) grant and reserve easements, leases, licenses or concessions where necessary or desirable for utilities, routes of ingress and egress, or any other purpose, over the Common Elements and to amend the map of the Community to show such interests;

(w) exercise all rights, remedies, powers, duties, responsibilities and obligations under the Declaration;

(x) charge a reasonable fee sufficient to cover the expense associated with changing the records of the Association upon the transfer of title to a Lot;

(y) 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; and

(z) compromise, participate in mediation, submit to arbitration, release with or without consideration, extend time for payment, and otherwise adjust any claims in favor of or against the Association; and

(aa) commence or defend any litigation in the Association's name with respect to the Association or any Association property.

(bb) do all things incidental and necessary to the accomplishment of the foregoing and the purpose of the Association.

#### **Section 7.14 Annual Budget and Assessments**

Copies of the proposed budget setting forth the proposed annual Common Expense Charges, proposed reserves and proposed Special Assessments for the next fiscal year of the Association shall be prepared by the Board of Directors and distributed to all Members at least thirty (30) days prior to the beginning of each fiscal year of the Association and shall be available to all Members for inspection during regular business hours at the Association's office. If the proposed budget is subsequently amended before the assessments or charges are made, a copy of the amended budget shall also be distributed and made available for inspection. Annual Common Expense Charges shall include, without limiting the generality of the foregoing, the estimated amounts necessary for maintenance and operation of the Common Elements, and any and all other expenses related to the operation thereof, including, but not limited to, the cost of common utility services, casualty and liability insurance, professional management expenses, administrative and office expenses, reserves and the costs associated with the administration of the Association. Reserves shall include a reserve for reasonable amounts to be credited, allocated or accumulated for replacement of those Common Elements or capital improvements that require replacement, renovation or rehabilitation periodically.

#### **Section 7.15 Management Certificate**

The Association shall record in the Walker County real property records a Management Certificate, signed and acknowledged by an officer of the Association stating all matters required by the Texas Property Code and may contain any other information as desired by the Association.

#### **Section 7.16 Open Meeting and Executive Session**

Meetings of the Association and the Board of Directors will be open to all Members. 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.

Regarding all Board meetings that are open to the Members, whether such open meeting occurs during the Development Period or thereafter, 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.

Subject to applicable law, the Board of Directors shall have the right to adjourn a meeting and reconvene in private, closed executive session to consider any actions involving personnel, pending litigation, contract negotiations, enforcement actions, or the invasion of privacy of individual Owners, or upon the request of an affected party, or to consider matters that are confidential in the opinion of the Board of Directors.

A Board meeting means a deliberation between a quorum of the voting directors or between a quorum of the voting directors and another person, during which Association business is considered and the Board takes formal action. A Board meeting does not include the gathering of a quorum of the Board at a social function unrelated to the business of the Association or the attendance by a quorum of the Board at a regional, state, or national convention, ceremonial event, or press conference, if formal action is not taken and any discussion of Association business is incidental to the social function, convention, ceremonial event, or press conference.

An open meeting may be held by electronic or telephonic means provided that (i) each director may hear and be heard by every other director, (ii) all Members in attendance at the meeting may hear all directors (except if adjourned to executive session), and (iii) all Members are allowed to listen using any electronic or telephonic communication method used or expected to be used by a director to participate.

### **Section 7.17 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.

## **ARTICLE VIII. OFFICERS**

### **Section 8.1 Officers**

The officers of the Association must be Owners and shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the Members of the Board. The Board of Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it may deem desirable, such officers to have the authority and perform the duties prescribed from time to time by 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 8.2 Election, Term of Office and Vacancies**

The officers of the Association shall be elected annually by the Board of Directors (except for the initial Officers appointed after incorporation of the Association) at the first meeting of the Board of Directors following each 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 8.3 Removal**

Any officer may be removed, with or without cause, 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 8.4. 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 specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

### **Section 8.5 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 8.6 Agreements, Contracts, Deeds, Leases, Checks, Etc.**

All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or such other person or persons as may be designated by resolution of the Board of Directors.

### **Section 8.7 Compensation**

The officers of the Association shall serve without compensation except that they shall be entitled to reimbursement for all expenses reasonably incurred in the discharge of their duties.

## **ARTICLE IX. INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHER AUTHORIZED REPRESENTATIVES**

The Association shall indemnify every Director, Officer, and committee member of the Association against, and reimburse and advance to every Director, Officer, and committee member for, all liabilities, costs and expenses incurred in connection with such directorship, office, or committee membership and any actions taken or omitted in such capacity to the greatest extent permitted under the Texas Business Organizations Code and all other applicable laws at the time of such indemnification, reimbursement or advance payment. The Association shall also obtain directors and officers insurance coverage for the Directors, Officers, and committee members in amounts approved by a majority vote of the Board of Directors.

**ARTICLE X. ASSOCIATION BOOKS AND RECORDS**

The Association shall keep or cause to be kept (a) detailed financial records of the Association in sufficient detail to enable the Association to prepare a resale certificate in accordance with the provisions of the Texas Property Code, (b) the plans and specifications used to construct the Community, (c) the ACC records, (d) the name and mailing address of each Owner of a Lot; (e) voting records, proxies and correspondence relating to all amendments to the Declaration, and (f) the minutes of all meetings of the Association and the Board of Directors. All books and records of the Association shall be available for inspection by the Owners, the Mortgagees, and their respective agents and representatives, during normal business hours. All books and records of the Association shall be kept in accordance with generally accepted accounting principles, consistently applied, and shall be audited at least once a year by an independent certified public accountant. If requested in writing by an Owner or Mortgagee, the Association shall furnish such requesting Owner or Mortgagee copies of the financial statements of the Association (audited or otherwise) within ninety (90) days following the end of each fiscal year of the Association at the expense of the requestor. The Board of Directors shall further make available for the inspection by Owners, their Mortgagees, and their respective agents and representatives, during normal business hours, the current version of the Declaration, these Bylaws, the Certificate of Formation, the Rules and Regulations and all other documents affecting the Association, the Owners or the Property, as well as all amendments thereto and revisions thereof. The cost of any copies shall be reimbursed to the Association at a rate set by the Board of Directors.

**ARTICLE XI. 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 will be composed and will 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 XII. INSURANCE**

**Section 12.1 Types of Insurance**

Commencing upon the first conveyance of any Lot to an Owner other than Declarant, the Association shall obtain and maintain, as a common expense, insurance coverage required pursuant to the Texas Property Code or the Association documents, the Declaration and such additional coverage as the Association deems appropriate.

**Section 12.2 Named Insured**

The name of the insured under the foregoing described policies shall be set forth substantially as follows:

Crown Point Home Owners Association, Inc. for the use and benefit of the individual owners (which owners may be designated by name if required by law)."

Notwithstanding the foregoing, the policies may be issued in the name of an authorized representative of the Association, including any Insurance Trustee with which the Association has entered into an insurance trust agreement for the use and benefit of the Owners. Loss payable provisions shall be in favor of the Association (or such Insurance Trustee) as a trustee for each Owner and each such Owner's Mortgagee. Each Owner and such Owner's Mortgagee, if any, shall be additional insureds and beneficiaries of such policies in the percentage set forth as to such Owner's Lot on Exhibit "B" of the Declaration.

### **Section 12.3 Waiver of Subrogation**

Each member and the Association hereby waives any rights they may have against each other (including, but not limited to, a direct action for damages) on account of any loss or damage occasioned to their respective property, and the contents of each arising from any risk (without regard to the amount of coverage or the amount of deductible) covered by the all risk full replacement cost property insurance required to be carried by such Members and Association as specified above and as specified in the Declaration. The Association and each Owner immediately shall give to each insurance company which has issued policies of insurance to such Owner, written notice of the terms of this mutual waiver, and cause such policies to be endorsed, if necessary, to prevent the invalidation of such coverages by reason hereof. If a party waiving rights under this Section is carrying an all risk full replacement cost insurance policy in the promulgated form used in the State of Texas and an amendment to such promulgated form is passed, such amendment shall be deemed not a part of such promulgated form until it applies to the policy being carried by the waiving party. SAID WAIVER SHALL APPLY EVEN IF SUCH LOSS OR DAMAGE IS CAUSED BY THE FAULT, NEGLIGENCE OR OTHER TORTIOUS CONDUCT, ACTS OR OMISSIONS OF THE RELEASED PARTY OR THE RELEASED PARTY'S DIRECTORS, EMPLOYEES, AGENTS OR INVITEES OR IF THE RELEASED PARTY OR THE RELEASED PARTY'S DIRECTORS, EMPLOYEES, AGENTS OR INVITEES WOULD OTHERWISE BE LIABLE UNDER STRICT LIABILITY.

## **ARTICLE XIII. MISCELLANEOUS Section 13.1**

### **Fiscal Year**

The fiscal year of the Association shall be the calendar year unless the Board of Directors shall determine otherwise.

### **Section 13.2 Amendments to Bylaws**

These Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of a majority of the Board of Directors and the consent of the Declarant, so long as the Declarant owns any portion of the Property. Notwithstanding the above, the percentage of votes or other approval necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

### **Section 13.3 Inspection of Bylaws**

The Association shall keep in its principal office the original or a copy of these Bylaws or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the Members during normal business hours.

### **Section 13.4 Construction**

Number and gender as used in these Bylaws shall extend to and include both singular and plural and all genders as the context and construction require. These Bylaws shall be liberally construed to give effect to their purposes and intent.

### **Section 13.5 Business Judgment Rule**

Any act or thing done by any Director, Officer, or committee member taken in furtherance of the purposes of the corporation, and accomplished in conformity with the procedures set forth in the Declaration, Certificate of Formation, the laws of the State of Texas, and/or these Bylaws, shall be reviewed under the standard of the Business Judgment Rule as established by the common law of Texas, and such act or thing done shall not be a breach of duty on the part of the Director, Officer, or committee member if they have been done within the exercise of their discretion and judgment.

The Business Judgment Rule means that a court shall not substitute its judgment for that of the Director, Officer or committee Member. A court shall not re-examine the quality of the decisions made by the Director, Officer, or Committee Member by determining the reasonableness of the decision as long as the decision is made in good faith in what the Director, Officer, or Committee Member believes to be the best interest of the corporation.

### **Section 13.6 Conflict**

If an Owner is involved in litigation with the Association as to a conflict of interpretation of the Declaration, the Certificate of Formation, Rules and Regulations promulgated by the Association, or these Bylaws, and/or the amount of delinquent assessments, that Owner may not participate in any Association meeting or activity.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK



CERTIFICATION

I, the undersigned, do hereby certify:

That I am the President of Crown Point Home Owners Association, Inc., a Texas non-profit corporation;

That the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof, at which a quorum was present, held on The 6<sup>th</sup> day of December, 20

IN WITNESS WHEREOF, I have hereunto subscribed my name on this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Charles Von Schmidt  
President

STATE OF TEXAS  
COUNTY OF POLK

BEFORE ME, the undersigned authority, on this day personally Charles Von Schmidt, known to me to be the person whose name is subscribed to the foregoing instrument, acknowledged to me that he executed the same for the purposes and consideration therein expresses,

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Texas