

BYLAWS OF  
HERITAGE PARKS HOMEOWNERS ASSOCIATION,  
AN UNINCORPORATED NONPROFIT ASSOCIATION OF INDIVIDUALS

**ARTICLE 1**  
**Definitions**

1.01 “ASSOCIATION” shall mean the HERITAGE PARKS HOMEOWNERS ASSOCIATION (HOA), an unincorporated nonprofit Association of Individuals, their successors, and assigns.

1.02 PROPERTY. These bylaws provide for the governance of Heritage Parks, a planned community located in Taylor County, Texas According to the original plat Records, Taylor County, Texas and subsequent plats or additional sections (the “Property” or the “Subdivision”).

1.03 “DECLARATION” shall mean that certain Declaration applicable to the Residential Planned Community of Heritage Parks, located in Taylor County, State of Texas, covering that certain tract of land described as follows:

Lots 106, and 110, Block A; Lots 102, 103, 104, 105, 106, and 107, Block F; Lots 101, 102, 103, 136, 137, and 138, Block E; and Lots 140, 141, and 142, Block D, Section 1, Heritage Parks Addition, a Replat of South 40’ of Sage Brush Trail & Replat of Lots 1 thru 4, and Lots 6 thru 10, Block A, and Lots 40 thru 42, Block D, and Lots 1, 2, 3, 36, & 37, Block E, and Lots 2 thru 7, Block F, Section 1, Quail Valley Northeast, Abilene, Taylor County, Texas.

Lots 8 thru 31, Block F; Lots 4 thru 13, Block E; Lots 14 thru 36, Block E, Lots 1 thru 16, Block G; Lots 1 and 2, Block J; Lots 2 thru 9, Block K; Lots 1 thru 36, Block D; Lots 37, 38, and 39, Block D, Lots 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, Block A; Lots 1 thru 42, Block C; Lots 1 thru 21, Block B, all being in Section 1, Heritage Parks Addition, formerly Quail Valley Northeast, Abilene, Taylor County, Texas. Lots 117, 118, 119, and 120, Block G; Lots 101, 103, Block K, Section 3. Heritage Parks Addition, Replat of Lot 1, Block K, Lot 3, Block J, Lots 17 thru 20, Block G, Lots 1 & 2, Block H and various closed streets out of Section 1, Quail Valley Northeast and a tract out of Section 25 Blind Asylum Lands, Abilene, Taylor County, Texas. All Lots and blocks formerly Section 2, Quail Valley Northeast Section 21 Blind Asylum Lands, Abilene, Taylor County, Texas.

Lots 10 thru 30, Block K, Section 3, Heritage Parks Addition, Abilene, Taylor County, Texas. (Lots 25, 26, 28, 29, and 30, Block K, Section 3, Heritage Parks Addition are landscaped areas with no habitable structures, and will be owned by Heritage Parks Community Association, Inc. Lot 29, Block K, Section 3, Heritage Parks Addition is the boulevard island, and is set aside for identification sign, landscape, and easements.)

Heritage Parks Section 1 all blocks and lots, Heritage Parks Section 2 all blocks and lots, Heritage Parks Section 3 all blocks and lots, Heritage Parks Section 4 all blocks and lots, Heritage Parks Section 5 all blocks and lots, Heritage Parks Section 6 all blocks and lots, Heritage Parks Section 7 all blocks and lots, Heritage Parks Section 8 all blocks and lots, Heritage Parks Section 9 all blocks and lots and any amendments and additional Sections in the Subdivision as approved thereto and hereafter to which the Bylaws and Deed Restrictions and Covenants are extended to cover whether expressly or implied by inclusion into the subdivision.

1.04 Other terms used herein shall have the meaning given them in this Declaration and are hereby incorporated by reference and made a part hereof.

1.05 PARTIES TO BYLAWS. All present or future lot owners and all other persons who use or occupy the Property in any manner are subject to these Bylaws, the Declaration, and the other Governing Documents as defined in the declaration. The mere acquisition of a lot or occupancy of a dwelling will signify that these bylaws are accepted, ratified, and will be strictly followed and the enforcement of these bylaws is deemed to be accepted as necessary.

1.06 TYPE OF ORGANIZATION. As an organization of lot owners, the Heritage Parks Homeowners Association (the "Association") is created by the Declaration and these Bylaws. The Association is a nonprofit formed and organized under the State of Texas.

1.07 APPLICABLE LAW. The Association is a legal entity governed by the Texas Business Organizations Code (the Code"). Sections of the Code that are cited in these Bylaws are incorporated herein by reference.

## **ARTICLE 2 OFFICE**

### **Principal Office**

2.01 The principal office of the Association in the State of Texas shall be located in the City of Abilene, County of Taylor, at the home of the Secretary or in absence of a Secretary, the Vice-President of the Association or an office of the Association as agreed by a majority of the members.

## **ARTICLE 3 MEMBERS**

3.01 All owners of property and those subject to Section 1.05 in the Residential Planned Development Community of Heritage Parks located in Abilene, Taylor, County, Texas covering that tract of land described in Article 1.02 and subject to any amendments or additional developed sections within the Residential Planned Development Community of Heritage Parks Located in Abilene, Taylor, County, Texas shall be a member of the Homeowners Association.

3.02 Voting. All owners of property in the Residential Planned Community of Heritage Parks as described in Article 1.02 of these bylaws shall be entitled to a vote on any issue to come before a meeting of the Association. When more than one person holds an interest in any lot, all such persons shall be members of the Association; however, the vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

### Membership Determination

3.03 Every person or entity who becomes a record owner of a fee interest in any residential lot and or subject to Section 1.02 and or Section 1.03 and or Section 1.05 which is a part of the Community shall automatically be a member of the Association and shall be subject to these Bylaws, the Declaration of covenants and restrictions, and these Bylaws and all amendments thereto; however, if a person or entity constructs a single family resident on more than one lot, then such shall entitle them to one membership per lot. Membership in the Association shall terminate without any formal Association action whenever such person or entity ceases to own an interest in any lot, but such termination shall not release or relieve any such person or entity from any liability or obligation or fees or assessments incurred under or in any way connected with this Association during the period of such ownership, or impair any rights or remedies which the Association has with regard to such former owner.

### Evidence of Ownership

3.04 Any person or entity on becoming an owner of a fee interest in a lot shall furnish to the Secretary of the Association, a machine or certified copy of the recorded instrument vesting that person or entity with a fee interest in the lot, which copy shall remain in the files of the Association. An owner shall not be deemed to be in good standing nor entitled to vote at any annual or special meeting of the members of this Association unless this requirement is first met.

### Designation of Voting Representative

3.05 If a lot is owned by one (1) person or entity, his right to vote shall be established by the record title thereto. If title to a lot is held by more than one (1) person, or by a firm, corporation, partnership, association or other legal entity, or any combination thereof, such Owners shall execute a proxy appointing and authorizing one (1) person or alternate persons to cast whatever vote all the Owners would cast, if they were personally present. Such proxy shall be effective and remain in force unless voluntarily revoked, amended or sooner terminated by operation of law; provided that, within thirty (30) days after such revocation, amendment, or termination, the Owners shall reappointment or authorize one (1) person or alternate persons to attend all annual and special meetings. The proxy required hereby shall be filed with the Secretary of the Association at least ten (10) days prior to an annual or special meeting of the members of the Association.

### Registration of Mailing Address

3.06 The Owner, or several Owners of a lot, shall have one and the same registered address to be used by the Association for mailing of semiannual statements, notices, demands and all other communications, and such registered address shall be the only mailing address of a person, or persons, firm, corporation, partnership, association, or other legal entity, or any combination thereof, to be registered by the Association. Such registered address of an owner or owners shall be furnished by such owner or owners to the Secretary of the Association within fifteen (15) days after transfer or title, or after change of address, and such notification of registered address shall be in written form and signed by all of the owners of the lot, or by such persons as are authorized by law to represent the interest (of all) of the owners thereof.

Service of process in any action involving the Association, as Plaintiff, and such owner or owners, as Defendant, may be served on any person residing at the aforesaid registered address of such owner or owners, and, in the event that no one is residing at said registered address, or no one can be found at that address at convenient hours, such owner or owners hereby consent to being served with process pursuant to Rule 106 of the Texas Rules of Civil Procedure or any other substitute service rule of statute, at such registered address.

Payment of Assessment

3.07 No owner shall be denied their right to vote at any annual or special meeting of the members of the Association because the owner has not fully paid all monthly and special assessments levied against the lot owned by him. TX SB 472

All assessments shall be prorated among the members on the basis of one assessment per each lot owned by a member.

**ARTICLE 4**  
**BOARD OF DIRECTORS**

General Duties

4.01 The affairs of the Association shall be managed by its Board of Directors. The Association, acting through the board, has the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of the Property as may be required or permitted by the Governing Documents, Deed Restrictions, Covenants and applicable Local, State and Federal Law. The Association may do any and all things that are lawful and which are necessary, proper, or desirable in operating, acquiring and negotiating for the best interests of its members, subject only to limitations upon the exercise of such powers as may be contained in applicable law or the Governing Documents.

General Powers

4.01.2 Powers Of Property Owners' Association. **TX Prop Code Sec. 204.010.** (a) Unless otherwise provided by the restrictions or the association's articles of incorporation or bylaws, the property owners' association, acting through its board of directors or trustees, may:

- (1) adopt and amend bylaws;
- (2) adopt and amend budgets for revenues, expenditures, and reserves and collect regular assessments or special assessments for common expenses from property owners;
- (3) hire and terminate managing agents and other employees, agents, and independent contractors;
- (4) institute, defend, intervene in, settle, or compromise litigation or administrative proceedings on matters affecting the subdivision;
- (5) make contracts and incur liabilities relating to the operation of the subdivision and the property owners' association;
- (6) regulate the use, maintenance, repair, replacement, modification, and appearance of the subdivision;
- (7) make additional improvements to be included as a part of the common area;
- (8) grant easements, leases, licenses, and concessions through or over the common area;
- (9) impose and receive payments, fees, or charges for the use, rental, or operation of the common area and for services provided to property owners;
- (10) impose interest, late charges, and, if applicable, returned check charges for late payments of regular assessments or special assessments;
- (11) if notice and an opportunity to be heard are given, collect reimbursement of actual attorney's fees and other reasonable costs incurred by the property owners' association relating to violations of the subdivision's restrictions or the property owners' association's bylaws and rules;
- (12) charge costs to an owner's assessment account and collect the costs in any manner provided in the restrictions for the collection of assessments;
- (13) adopt and amend rules regulating the collection of delinquent assessments and the application of payments;
- (14) impose reasonable charges for preparing, recording, or copying amendments to the restrictions, resale certificates, or statements of unpaid assessments;
- (15) purchase insurance and fidelity bonds, including directors' and officers' liability insurance, that the board considers appropriate or necessary;
- (16) Allow for an annual increase in the maximum regular assessment without a vote of the membership, assess the increase annually or accumulate and assess the increase after a number of years;

(17) subject to the requirements of the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and by majority vote of its board of directors, indemnify a director or officer of the property owners' association who was, is, or may be made a named defendant or respondent in a proceeding because the person is or was a director;

(18) if the restrictions vest the architectural control authority in the property owners' association or if the authority is vested in the property owners' association under TX Prop Code Section 204.011:

(A) implement written architectural control guidelines for its own use or record the guidelines in the real property records of the applicable county; and

(B) modify the guidelines as the needs of the subdivision change;

(19) exercise other powers conferred by the restrictions, its articles of incorporation, or its bylaws;

(20) exercise other powers that may be exercised in this state by a corporation of the same type as the property owners' association; and

(21) exercise other powers necessary and proper for the governance and operation of the property owners' association.

(b) Powers enumerated by this section are in addition to any other powers granted to a property owners' association by this chapter or other law.

#### Number, Tenure, and Qualifications

4.02 The number of Officers shall be four (4): President, Vice President, Treasurer and Secretary. Each Officer and Director shall hold office for a term of two years which concludes at the second-year meeting of members and until his successor shall have been elected and qualified.

4.02.1 The number of non-officer directors shall be no more than five (5).

4.02.2 The total number of directors and officers shall not exceed nine (9).

4.02.3 The board may establish temporary committees to explore topics, examine the feasibility of programs, or assist in basic functions of the boards requirements as needed from time to time. The committee's members do not reflect on the limited number of directors and officers.

4.03 Qualifications. The following qualifications apply to the election or appointment of persons to the board.

4.03.1 Owners. The directors at their annual organizational meeting will decide which officers and or board members must be Members of the Association or spouses of members and reside in the subdivision. Additionally, non-member, non-residents with special knowledge, skills or expertise may become board members, officers or committee members by a majority vote of the board. TX Prop Code. 209.0059 (A-1)

4.03.2 Delinquency. No person shall be denied election or appointment as a director if any assessment against the person or his lot is delinquent at the time.

4.03.3 Moral Turpitude. No person shall be appointed or elected to the board who has been convicted of a felony or crime involving moral turpitude within the past 20 years. TX Prop Code 209.00591 (1B)

4.03.4 Election. Directors will be elected by the members of the Association. The election of directors will be conducted every two years at the annual meeting of the Association, at any special meeting called for that purpose, or by any method permitted by applicable law, such as Section 22.160(d) of the Code, which may include, without limitation, mail, facsimile transmission, electronic mail, or any combination of these.

4.03.5 Officer Appointments. Officers are appointed by a majority vote of the board of directors within ten (10) days after the directors are elected to a term of two years.

### Regular Meetings

4.04 A regular annual meeting of the Board of Directors shall be held without other notice than this bylaw, immediately after, and at the same place as, the annual meeting of members. The Board of Directors may provide by resolution the time and place for the holding of additional regular meetings of the Board without other notice than such resolution.

### Special Meetings

4.05 Special meetings of the Board of Directors may be called by or at the request of the President or any two Directors. The person or persons authorized to call special meetings of the Board may fix any place as the place for holding any special meetings of the Board called by them.

### Notice

4.06 Notice of any special meeting of the Board of Directors shall be given at least two days previously thereto by electronic mail or written notice delivered personally or sent by mail or telegram to each Director at his address as shown by the records of the Association. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, of any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these bylaws.

### Quorum

4.07 A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board; but if less than a majority of the Directors are present at said meeting, a majority of the Directors that are present at said meeting may adjourn the meeting from time to time without further notice.

### Manner of Acting

4.08 The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a great number is required by law or by these bylaws.

### Compensation

4.09 All Officers and Directors as such shall not receive any stated salaries for their services, but by resolution of the Board of Directors, officers and directors may receive assessment remissions for annual dues and/or a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board; but nothing herein contained shall be construed to preclude any Director from serving the Association in any other capacity and receiving compensation therefore. Reasonable compensation may be paid to a director or officer for services rendered to the Association in other capacities.

- a. A director or officer may be reimbursed for his actual and reasonable expenses incurred on behalf of the Association in connection with the administration of the affairs of the Association, provided the expense has been approved by the board.
- b. The board may budget and use Association funds to purchase awards, certificates, a celebratory meal, or other customary tokens or demonstrations of appreciation for volunteer activities and other contributions.

#### Informal Action by Directors

4.10 Any action required by law to be taken at a meeting of Directors, or any action which may be taken at a meeting of Directors, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Directors.

4.11 Vacancies Any vacancy occurring in the Board of Directors, its officers and any directorship to be filled by reason of an increase in the number of Directors, shall be filled by a majority vote of the Directors. A Director or officer elected to fill a vacancy shall be elected for the expired term of his predecessor in office.

### **ARTICLE 5 OFFICERS**

TX HB 2761

5.1. Designation. The principal officers of the Association are the president, the vice president, the secretary, and the treasurer. The board may appoint one or more vice presidents and other officers and assistant officers as it deems necessary. Any two offices may be held by the same person, except the offices of president and treasurer. If an officer is absent or unable to act, the board may appoint a director or a committee to perform the duties of that officer and to act in place of that officer, on an interim basis.

5.2. Appointment Of Officers. The officers are appointed no less than bi-annually by the directors at the organizational meeting of the board, within ten (10) days after Annual Member meeting elections and hold office at the pleasure of the board. In the event of a tie in Director Votes the board member with the most Homeowner Popular votes is elected to the position. Except for resignation or removal, officers hold office until their respective successors have been designated by the board.

5.2.1 Election Of Board Members. TX Prop Code Sec. 209.00593. Any board member whose term has expired must be elected by owners who are members of the property owners' association. A board member may be appointed by the board to fill a vacancy on the board. A board member appointed to fill a vacant position shall serve for the remainder of the unexpired term of the position.

At least 10 days before the date a property owners' association composed of more than 100 lots disseminates absentee ballots or other ballots to association members for purposes of voting in a board member election, the association must provide notice to the association members soliciting candidates interested in running for a position on the board. The notice must contain instructions for an eligible candidate to notify the association of the candidate's request to be placed on the ballot and the deadline to submit the candidate's request. The deadline may not be earlier than the 10th day after the date the association provides the notice required by this subsection.

The notice required by Subsection TX Prop Code 209.00593 (a-1) must be:



- (1) mailed to each owner; or
  - (2) provided by:
    - (A) posting the notice in a conspicuous manner reasonably designed to provide notice to association members:
      - (i) in a place located on the association's common property or, with the property owner's consent, on other conspicuously located privately owned property within the subdivision; or
      - (ii) on any Internet website maintained by the association or other Internet media; and
    - (B) sending the notice by e-mail to each owner who has registered an e-mail address with the association.
- (a-3) An association described by Subsection (a-1) shall include on each absentee ballot or other ballot for a board member election the name of each eligible candidate from whom the association received a request to be placed on the ballot in accordance with this section.

#### 5.2.2 Election Process.

Notice Of Election Or Association Vote. TX Prop Code Sec. 209.0056. (a) For an election or vote taken at a meeting of the owners, not later than the 10th day or earlier than the 60th day before the date of the election or vote, a property owners' association shall give written notice of the election or vote to:

- (1) each owner of property in the property owners' association, for purposes of an association-wide election or vote; or
- (2) each owner of property in the property owners' association entitled under the dedicatory instruments to vote in a particular representative election, for purposes of a vote that involves election of representatives of the association who are vested under the dedicatory instruments of the property owners' association with the authority to elect or appoint board members of the property owners' association.

(a-1) For an election or vote of owners not taken at a meeting, the property owners' association shall give notice of the election or vote to all owners entitled to vote on any matter under consideration. The notice shall be given not later than the 20th day before the latest date on which a ballot may be submitted to be counted.

#### 5.2.3 Notice of Intent to be a Candidate for a Board of Director's Election TX Prop Code Sec. 209.00593

At least 10 days before the date a property owners' association disseminates absentee ballots or other ballots to association members for purposes of voting in a board member election, the association must provide notice to the association members soliciting candidates interested in running for a position on the board. The notice must contain instructions for an eligible candidate to notify the association of the candidate's request to be placed on the ballot and the deadline to submit the candidate's request. The deadline may not be earlier than the 10th day after the date the association provides the notice required by TX Prop Code Sec. 209.00593

5.2.4 Timeline of Election. On the 11<sup>th</sup> day and upon closing for the receipt of timely Notice of Intent to be a Candidate for a Board of Director's Election, ballots shall be disseminated to members. The association shall include on each absentee ballot or other ballot for a board member election the name of each eligible candidate from whom the association received a request to be placed on the ballot in accordance with this section.

All votes shall be received within 20 days. Vote tabulation begins on day 21 and shall not exceed (2) days.

5.3. Removal And Resignation Of Officers. A unanimous vote of the directors may remove any officer, with or without cause, at any regular meeting of the board or at any special meeting of the board called for that purpose. A successor may be elected at any regular or special meeting of the board called for that purpose. An officer may resign at any time by giving written notice to the board. Unless the notice of

resignation states otherwise, it is effective when received by the board and does not require acceptance by the board. The resignation or removal of an officer who is also a director does not constitute resignation or removal from the board.

#### 5.4. Description Of Principal Officers.

5.4.1. President. As the chief executive officer of the Association, the president: (1) presides at all meetings of the Association and of the board; (2) has all the general powers and duties which are usually vested in the office of president of an organization; (3) has general supervision, direction, and control of the business of the Association, subject to the control of the board; and (4) sees that all orders and resolutions of the board are carried into effect.

5.4.2. Vice-President. The vice-president acts in place of the president in event of the president's absence, inability, or refusal to act. The vice-president also exercises and discharges any duty required of the vice-president by the board.

5.4.3. Secretary. The secretary: (1) keeps the minutes of all meetings of the board and of the Association; (2) has charge of such books, papers, and records as the board may direct; (3) maintains a record of the names and addresses of the members for the mailing of notices; and (4) in general, performs all duties incident to the office of secretary.

5.4.4. Treasurer. The treasurer: (1) is responsible for Association funds; (2) keeps full and accurate financial records and books of account showing all receipts and disbursements; (3) prepares all required financial data and tax returns; (4) deposits all monies and other valuable effects in the name of the Association in depositories as may from time to time be designated by the board; (5) prepares the annual and supplemental budgets of the Association; (6) reviews the accounts of the managing agent on a monthly basis in the event a managing agent is responsible for collecting and disbursing Association funds; and (7) performs all the duties incident to the office of treasurer. The above-mentioned duties and obligations may be in part or in full performed by a bookkeeper appointed by the board. The duty of the treasurer then becomes one of stringent oversight. The appointment of a bookkeeper does not release the Treasurer's fiduciary duty to the board.

5.5. Authorized Agents. Except when the Governing Documents require execution of certain instruments by certain individuals, the board may authorize any person to execute instruments on behalf of the Association. In the absence of board designation, officers are the only persons authorized to execute instruments on behalf of the Association.

5.6. Succession Of Officers. The Vice-President acts in place of the president in event of the president's absence, inability, or refusal to act. If the Vice President position is vacant the Secretary acts in place of the president in event of the president's absence, inability, or refusal to act. The pro tempore position will be held until such time as the directors appoint a new president.

5.7 Beginning of Term. After elections, Reelected board members and officers shall continue in their current capacity unless the board by majority vote designates an officer serve in a new role. Incoming electees shall take their officer or director role effective January 1<sup>st</sup> of the year directly following the election if the position currently has an outgoing director or officer. If the position is vacant the board can by a majority vote fill the position immediately with the newly elected director. Outgoing directors maintain full

responsibilities through January 1<sup>st</sup> of the year following the election but additionally facilitate incoming director transition.

## **ARTICLE 6**

### **DUES AND ASSESSMENTS**

6.01 The board may not consider or vote on dues or assessment increases, except in an open meeting of which members have been provided notice. Upon ample notice provided, the board may consider and vote in open session to increase maximum regular dues and or assessments without a member vote:

1. To raise homeowner yearly dues in order to meet the association's yearly budget requirements.
2. No more than (TEN) 10%. The association has the authority to do so annually or after a period of years. Tex. Prop. Code § 204.010(16).
3. To impose special assessments that may be needed to complete, improve, or repair existing common area buildings, developments, amenities, etc.

#### Assessment Collection Policy and Procedure TX HB 1228

The Texas Property Code requires property owner associations to create an assessment collection policy and procedure. The Association will provide written notice to a delinquent Owner by certified mail, return receipt requested, that:

- (1) Specifies each delinquent amount and the total amount of the payment required to make the account current;
- (2) Describes the options the owner has to avoid having the account turned over to a collection agent, including information regarding availability of a payment plan through the association; and
- (3) Provides a period of at least 30 days for the owner to cure the delinquency before further collection action is taken.

The obligation for payment by the Association to the Association's collection agent for fees or costs associated with a collection action is not dependent or contingent on amounts recovered. The payment agreement between the Association and the Association's collection agent requires payment by the Association of all fees to a collection agent for the action undertaken by the collection. The agreement between the Association and the Association's collection regarding the Owner's delinquency. The Association will not sell or otherwise transfer any interest in the Association's accounts receivables for a purpose other than as collateral for a loan.

| <u>Steps</u> | <u>Collection Step</u>                     | <u>Date Range</u>                      | <u>Notes</u>  |
|--------------|--|--|---|
| 1            | Past Due Notice                            | <b>30 days after assessment is due</b> | Reminder to homeowner enclosing unit analysis for review.   |
| 2            | Demand letter/Intent title search          | <b>60 days after past due date</b>     | Demand Letter outlining balance & intended collection steps This step allows Owner (30) days to pay or dispute The balance. Owner has (10) days to pay prior title search.  |
| 3            | Order Title Search/Address Investigation   | <b>90 days after past due date</b>     | If a new Owner is found, the account balance is Transferred and billed to new owner. The Owner has (15) days to pay prior to credit bureau reporting.   |
| 4            | Credit Bureau filed/Intent lien            | <b>120 days after past due date</b>    | Owner has (15) days to pay prior to credit bureau intent letter.  |
| 5            | File lien against property/Intent attorney | <b>150 days after past due date</b>    | If payment is not received after The credit bureau reporting The lien is recorded at the county courthouse. Owner is Notified of lien filing with intent to send account to Attorney office for judicial or non-judicial foreclosure. |
| 6            | Send the account to association attorney   | <b>180 days after past due date</b>    |   |

Purpose

The Texas Property Code requires property owner associations to establish a repayment plan and priority of payments plan. This policy establishes an alternative payment schedule by which an owner may make partial payments to the Association for delinquent regular or special assessments or any other amount owed to the Association without accruing additional monetary penalties. For purposes of this policy, monetary penalties do not include reasonable costs associated with administering the payment plan or interest.

Policy

The Association relies upon assessments to pay operational and maintenance expenses. Annual assessments are paid in advance. Owners are considered late if the assessment is not paid by 30 days after billing.

Payment Plans

Evaluation of a payment plan is on a case-by-case basis. The Association's policy is to provide an Owner with a legitimate need an opportunity to repay amounts due over a payment period of no less than three (3) months but no longer than eighteen(18) months from the date of the Owner's request for a payment plan.

Generally, the Association, through its managing agent, offers a payment plan to Owners who are having a difficult time getting caught up on their account. The plan offers an Owner the option to pay ½ of the balance, including late fees and collection fees, followed by three equal payments of the remaining balance.

The Association is under no obligation to enter into a payment plan with an Owner who failed to honor the terms of a previous payment plan during the two years following the Owner's default under the previous payment plan.

Priority of Payments

A payment received by the Association from the owner shall be applied to the Owner's debt in the following order of priority unless specifically otherwise directed by an Owner:

- (1) Any delinquent assessment.
- (2) Any current assessment.
- (3) Any attorney's fees or third-party collections costs incurred by the Association associated solely with assessments or any other charge that could provide the basis for foreclosure;
- (4) Any attorney's fees incurred by the association that are not subject to Item (3);
- (5) Any fines assessed by the association; and,
- (6) Any other amount owed to the association.

If, at the time the Association receives a payment from an Owner, the Owner is in default under a payment plan entered into with the association:

- (1) The Association is not required to apply the payment in the order of priority previously specified; and,
- (2) In applying the payment, a fine assessed by the Association may not be given priority over any other amount owed to the Association.

**ARTICLE 7**  
**ARCHITECTURAL CONTROL COMMITTEE**

7.01 Membership of Architectural Control Committee. The Architectural Control Committee shall, initially, consist of not less than one (1) and not more than three (3) voting members (“Voting Members”) and appointed by Declarant. The initial Voting Members of the Architectural Control Committee appointed by Declarant to serve upon the filing and recordation of the Declaration shall be:

Heritage Parks Homeowners Association  
PO Box 3351  
Abilene, TX 79604-3351

7.02 Action by Architectural Control Committee. Items presented to the Architectural Control Committee shall be decided by majority vote of the Voting Committee Members. The Architectural Control Committee’s approval shall not be unreasonably withheld or delayed. If the Committee fails to respond in writing to a request for approval specifying its objections within five (5) business days, such approval shall be deemed to have been given.

7.03 Advisory Members. The Voting Members may from time to time designate Advisory Members.

7.04 Declarant’s Rights of Appointment. Declarant, its successors or assigns shall have the right to appoint and remove all members of the Architectural Control Committee.

7.05 Adoption Rules. The Architectural Control Committee may adopt such procedural substantive rules, not in conflict with this Declaration, as it may deem necessary or proper for the performance or its duties, including, but not limited to, a building code, a fire code, a housing code, and other similar codes as it may deem necessary and desirable, Each owner shall comply with said rules. Failure to comply shall constitute a default of this Declaration, and any Owner, including Declarant, at its sole expense may seek any of the remedies set forth herein for default of this Declaration.

7.06 Review of Proposed Construction. Whenever in this Declaration the approval of the Architectural Control Committee is required, it shall have the right to consider all of the Plans and Specifications of the Improvement or proposal in question and all other facts including CCR’s, Federal, State and Local regulations, codes etc., which in its sole discretion are relevant. The Architectural Control Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration and perform such other duties assigned to its by this Declaration. The Architectural Control Committee shall have the authority to disapprove any proposed Improvement, Addition, etc. partially or in its entirety based on the restrictions set forth herein. The decision of the Architectural Control Committee shall be final and binding so long as it is made in good faith. The Architectural Control Committee shall not be responsible for reviewing any proposed Improvement nor shall its approval of any Plans or Specifications be deemed approval thereof from standpoint of structural safety, engineering soundness or

conformance with building or other codes. Owner acknowledges his duty to review engineering soundness or conformance and/or other codes.

7.07 Variance. The Architectural Control Committee may grant variances from compliance with any of the provisions of this Declaration when, in the opinion of the Architectural Control Committee, in its sole and absolute discretion, such variance will not impair or detract from the high quality development of the Property and such variance is justified due to unusual or aesthetic consideration, topographic or other hardship or similar circumstances. The granting of such variance shall not operate to waive or amend any of the terms and provisions of these covenants and restriction applicable to the Lots for any purpose except as to the particular property in the particular instances covered by the variance and such variance shall not be considered to establish a precedent or future waiver, modification or amendment of the terms and provisions thereof.

7.08 No Waiver of Future Approvals. The approval or consent of the Architectural Control Committee to any Plans and Specifications for any work done or proposed, or in connection with any other matter requiring the approval or consent of the Architectural Control Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans or Specification, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.

7.09 Work In Progress. The Architectural Control Committee, as its option, may inspect all work in progress to ensure compliance with approved Plans and Specifications. All work is expected to be completed within the timeframes specified in the CCRs or within a reasonable local industry standard amongst contractors and installation providers for the type of work to be completed.

7.10 Non-Liability of Architectural Control Committee Members. Neither the Architectural Control Committee nor any member thereof, shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out for their being in any way connected with the performance of the Architectural Committee's duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Control Committee or its' members. Neither the Architectural Control Committee nor the members thereof shall be liable to any Owner due to the construction of any Improvement within the Property.

7.11 Address. Plans and Specifications shall be submitted to the Architectural Control Committee at [heritageparksacc@gmail.com](mailto:heritageparksacc@gmail.com), or such other address as may be designated by Declarant, its successors and assigns from time to time. Request forms shall be made available by regular mail or the Association's website.

7.12 Fees. There shall be no fee requirement for plan submission and approval except in cases where an outside consultant is needed to determine factors outside the general expertise of the ACC members. In such cases the consultant fees shall be paid by the homeowner seeking approval. Payment for consultant's fees is required whether or not the ACC grants approval for the proposal or denies the proposal.



**ARTICLE 8**  
**MEETING OF THE ASSOCIATION**

8.1 Annual Meeting. An annual meeting of the Association will be held during the third calendar quarter of each year. At annual meetings the members will elect directors in accordance with these Bylaws, and may also transact such other business of the Association as may properly come before them.

8.2 Special Meetings. It is the duty of the president to call a special meeting of the Association if directed to do so by a majority of the board or by one or more petitions signed by owners of at least 20 percent of the lots in the Property. If the petition process is used, petitions may be in any form that is customary for the time. The board may not require a specific form of petition, nor require that the petition be offered to every member of the Association. Signatures on petitions need not be notarized or witnessed. An electronic or faxed petition is acceptable if the “signer’s” identity is reasonably discernible.

8.3 Place Of Meetings. Meetings of the Association may be held at the Property or at a suitable place in Taylor County, Texas, as determined by the board.

8.4 Notice Of Meetings, Elections, Or Association Votes. Subject to the provisions below, at the direction of the board, written notice of meetings, elections, or votes of the Association will be mailed to an owner of each lot at least 10 days but not more than 60 days prior to the meeting; or, at least 72 hours before the meeting, notice shall be posted in a conspicuous manner reasonably designed to provide notice to Members on Association common area or privately owned property in the subdivision (with Owner’s consent) or on a Internet website maintained by the Association or other Internet media and sent by email to each Owner who has registered an e-mail address with the Association. Notices of meetings will state the date, time, and place the meeting is to be held. Notices will identify the type of meeting as annual or special, and will state the general subject of the meeting, including a general description of any matter to be brought up for deliberation in executive session. Notices may also set forth any other items of information deemed appropriate by the board.

8.4.1. Notice Exception. Individual notice of the regular annual meeting of the Association is not required if (1) the time and place of the meeting is largely unchanged from year to year and (2) information about the time and place is routinely available to all members, such as by year-long posting on the Association’s official website or repetitive announcements in the Association’s newsletter. This exception does not apply to special meetings of the Association, or to changes in the time and place of the regular annual meeting.

8.4.2. Special Meeting Notice. Within 30 days after the board resolution or receipt of petition, the board must give all members notice of the special meeting. If the board fails or refuses to call the special meeting in a timely manner, an ad hoc committee of owners may do so provided the notice

of meeting names the ad hoc committee and its individual members, and further provided that the notice is delivered to an owner of every lot in accordance with these Bylaws. The notice of any special meeting must state the time, place, and purpose of the meeting. No business, except the purpose stated in the notice of the meeting, may be transacted at a special meeting.

8.5. Record Date. Before each meeting of the Association, the board will establish a list of all members for purposes of receiving a meeting notice, and a list or way of identifying members who are ineligible to vote at the meeting because they lack a requirement. These membership lists are described in the Association Records Article below. The “cut off” date on which these lists are based is referred to in the Code as the “Record Date.” The Record Date for an Association meeting for which notice is given is 10 calendar days before the date the notice is distributed or published to the members. The Record Date for an Association meeting for which no notice is given is 45 calendar days before the meeting.

8.6 Eligibility. Every member is entitled to receive a notice of Association meetings, to attend Association meetings, and to be counted towards a quorum, even if the member is ineligible to vote or to stand for election to the board.

8.6.1. Meeting Notice. An owner of each lot in the Property as of the Record Date is eligible to receive notices of meetings of the Association. Because the ownership of lots may change during a year, the ownership as of the Record Date is used to produce the membership list for use in connection with the meeting.

8.6.2. Voting. The board may determine that a member may not vote at a meeting of the Association if the member’s financial account with the Association is in arrears on the Record Date, provided (1) the ineligibility applies to every member whose financial account is delinquent, and (2) each ineligible member is given notice of the arrearage and an opportunity to become eligible. The board may specify the manner, place, and time for payment for purposes of restoring eligibility. The Record Date determination of members entitled to vote at a meeting of the Association is effective for any adjournment of the meeting, provided the date of the adjourned meeting is not more than 30 days after the original meeting. The board is not required to disqualify owners with delinquent accounts, and may allow all owners to vote regardless of arrearages.

8.7. Quorum. At any meeting of the Association, the presence in person or by proxy of owners of at least 10 percent of the lots in the Property constitutes a quorum. Members present at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal, during the course of the meeting, of members constituting a quorum.

8.8. Lack Of Quorum. If a quorum is not present at any meeting of the Association for which proper notice was given, members representing at least a majority of the votes present at the meeting, although not constituting a quorum, may vote to recess the meeting for not more than 24 hours in the order to attain a quorum, provided the place of the meeting remains as stated in the notice. If the meeting is adjourned without attainment of a quorum, notice of a new meeting for the same

purposes within 15 to 30 days may be given to an owner of each lot, at which recalled meeting the quorum requirement is lowered to half the number of lots required for the first call of the meeting.

8.9. Votes. The vote of members representing at least a majority of the votes cast at any meeting at which quorum is present binds all members for all purposes, except when a higher percentage is required by these Bylaws, the Declaration, or by applicable law. Cumulative voting is prohibited.

8.9.1 Co-Owned Lots. If a lot is owned by more than one member, the vote appurtenant to that lot is cast as follows. If only one of the multiple owners of a lot is present at a meeting of the Association, that person may cast the vote allocated to the lot. If more than one of the multiple owners is present, the vote allocated to the 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 vote allocated to a lot and none of the other owners makes prompt protest to the person presiding over the meeting.

8.9.2. Entity-Owned Lots. If a lot is owned by an entity, such as a corporation or partnership, the vote appurtenant to that lot may be cast by any officer, manager, or partner of the entity in the absence of the entity's written appointment of a specific person to exercise its vote. The person presiding over a meeting or vote may require reasonable evidence that a person voting on behalf of an entity is qualified to vote.

8.9.3 Association-Owned Lots. Votes allocated to a lot owned by the Association may be counted towards a quorum only, and may not be voted.

8.9.4. Lots Owned By Declarant Or Builders. The Declarant may establish different voting rights during the Development Period.

8.10. Ballots.

8.10.1. Any vote cast in an election or vote by a Member must be in writing and signed by the member.

8.10.2. Electronic votes cast constitute written and signed ballots.

8.10.3. In an association-wide election, written and signed ballots are not required for uncontested races.

## 8.11. VOTING.

8.11.1. Voting Rights. The voting rights of an Owner may be cast or given in person or by proxy at a meeting of the Members; by absentee ballot in accordance with this article; by electronic ballot in accordance with this article; or, by an method of representative or delegated voting provided by a dedicatory instrument.

8.11.2. Except as provided by this Article, the Association is not required to provide an Owner with more than one voting method. An Owner must be allowed to vote by absentee ballot or proxy.

8.11.3. An absentee or electronic ballot:

- May be counted as an Owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot;
- May not be counted, even if properly delivered, if the Owner attends any meeting to vote in person, so that any vote cast at a meeting by an Owner supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal; and,
- May not be counted on the final vote of a proposal if the motion was amended at the meeting to be different from the exact language on the absentee or electronic ballot.

8.11.4. For purposes of Article 8.11.3, a nomination taken from the floor in a board member election is not considered an amendment to the proposal for the election.

8.11.5. A solicitation for votes by absentee ballot must include:

- An absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action;
- Instructions for delivery of the completed absentee ballot, including the delivery location; and,
- The following language: “By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail.”

8.11.6. If an electronic ballot is posted on an Internet website, a notice of the posting shall be sent to each Owner that contains instructions on obtaining access to the posting on the website.

## 8.12. TABULATION OF AND ACCESS TO BALLOTS

8.12.1. A person who is a candidate in an Association election or who is otherwise the subject of an Association vote, or a person related to that person within the third degree by consanguinity or affinity, as determined under Chapter 573, Texas Government Code, may not tabulate or otherwise be given access to the ballots cast in that election or vote except as provided by this Article.

8.12.2. A person other than a person described by Article 8.12.1 may tabulate votes in an Association election or vote

8.12.3 A person who tabulates votes under Article 8.12.2 or who performs a recount under Article 8.18 may not disclose to any other person how an individual voted.

8.12.4. Notwithstanding any other provision of this article or any other law, only a person who tabulates votes under Article 8.12.2 or who performs a recount under Article 8.18 may be given access to the ballots cast in the election or vote.

8.12.5. This Article may not be construed to affect a person's obligation to comply with a court order for the release of ballots or other voting records.

8.13. RECOUNT OF VOTES.

8.13.1 Any Owner may, not later than the 15<sup>th</sup> day after the date of any meeting of Owners at which the election or vote was held or the date of the announcement of the results of the election or vote, require a recount of the votes. A demand for a recount must be submitted in writing either:

8.13.2. By verified mail or by delivery by the United States Postal Service with signature confirmation service to the Association's mailing address as reflected on the latest management certificate filed under Section 209.004, Texas Property Code; or

8.13.3. In person to the Association's managing agent as reflected on the latest management certificated filed under Section 209.004, Texas Property Code, or to the address to which absentee and proxy ballots are mailed.

8.13.4. The Association must estimate the costs for performance of the recount by a person qualified to tabulate votes under Article 6.18 and must send an invoice for the estimated costs to the requesting Owner at the Owner's last known address according to Association records not later than the 20<sup>th</sup> day after the date the Association receives the Owner's demand for recount.

8.13.5. The Owner demanding a recount under these Articles must pay the invoice described in Article 8.14 in full to the Association on or before the 30<sup>th</sup> day after the date the invoice is sent to the Owner.

8.13.6. If the invoice described by Article 6.14 is not paid by the deadline prescribed by Article 6.15, the Owner's demand for a recount is considered withdrawn and a recount is not required.

8.13.7. If the estimated costs under Article 6.14 are lesser or greater than the actual costs, the Association must send a final invoice to the Owner on or before the 30<sup>th</sup> business day after the date the results of the recount are provided. If the final invoice includes additional amounts owed by the Owner, any additional amounts not paid to the Association before the 30<sup>th</sup> business day after the date the invoice is sent to the Owner may be added to the Owner's account as an assessment. If the estimated costs exceed the final invoice amount, the Owner is entitled to a refund. The refund shall be paid to the Owner at the time the final invoice is sent under this Article.

8.13.8. Following receipt of payment under Article 8.15, the Association shall, at the expense of the Owner requesting the recount, retain for the purpose of performing the recount, the services of a person qualified to tabulate votes under this article. The Association shall enter into a contract for the services of a person who is a current or former county judge; county elections administrator; justice of the peace; or county voter registrar; or, a person agreed on by the Association and the person requesting the recount, but who is not a member of the Association or related to a member of the Association board within the third degree by consanguinity or affinity, as determined under Chapter 573, Texas Government Code.

8.13.9. On or before the 30<sup>th</sup> day after the date of receipt of payment for a recount in accordance with Article 8.15, the recount must be completed and the Association must provide each Owner who requested the recount with notice of the results of the recount.

8.13.10. If the recount changes the results of the election, the Association shall reimburse the requesting Owner for the cost of the recount not later than the 30<sup>th</sup> day after the date the results of the recount are provided. Any action taken by the board in the period between the initial election vote tally and the completion of the recount is not affected by any recount.

8.14. Participation. Members may participate in person or by proxy at meetings of the Association. A member who participates is deemed “present” and may be counted towards a quorum unless the member participates for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

8.15. Proxies. A Member may participate in the affairs of the Association through a power of attorney or through a proxy. To be valid, each proxy must (1) be signed and dated by a member or his attorney-in-fact; (2) identify the lot to which the vote is appurtenant; (3) designate the person or position (such as “presiding officer”) in favor of whom the proxy is granted, such person having agreed to exercise the proxy; (4) identify the meeting for which the proxy is given/ (5) not purport to be revocable without notice; and (6) be delivered to the secretary, to the person presiding over the Association meeting for which the proxy is designated, or to a person or company designated by the board. Unless the proxy specifies a shorter or longer time, it terminates 11 months after the date of its execution. Perpetual or self-renewing proxies are permitted, provided they are revocable. To revoke a proxy, the granting member must give actual notice of revocation to the person presiding over the Association meeting for which the proxy is designated. Unless revoked, any proxy designated for a meeting which is adjourned, recessed, or rescheduled is valid when the meeting reconvenes. A proxy delivered by mail or by fax may be counted if any of the following occurs: (1) the proxy’s authenticity can be confirmed to the reasonable satisfaction of the board, (2) the proxy has been acknowledged or sworn to by the member before, and certified by, an officer authorized to take acknowledgments and oaths, or (2) the Association also receives the original proxy within 5 days after the vote.

8.16. Conduct Of Meetings. The president, or any person designated by the board, presides over meetings of the Association. The secretary keeps, or causes to be kept, the minutes of the meeting which should record all resolutions adopted and all transactions occurring at the meeting, as well as a record of any votes taken at the meeting. The person presiding over the meeting may appoint a parliamentarian. The then current edition of Robert’s Rules of Order governs the conduct of meetings of the Association when not in conflict with the Governing Documents. Votes should be tallied by tellers appointed by the person presiding over the meeting.

8.17 Meetings Of The Board. TX HB 2761

8.17.1 Organizational Meeting of the board. Within 10 days after the annual meeting, the directors will convene an organizational meeting for the purpose of appointing officers by majority vote. Attendance of all board members is mandatory. The Organizational Meeting will also finalize the next year’s budget, review contracts and if necessary, vote on upcoming contracts, assess the financial plans with regards to capital improvement projects for the coming year as well as any common area additions and any duty relating to its general powers under Section 4.01.2. The board shall determine at that time if a dues increase is needed and will either vote for the legally allowable increase without a homeowner vote or vote to take a more substantial increase to the homeowners for a vote. The time and place of the meeting will be fixed by directors.

8.17.2. Place of board meetings. The board will conduct its meetings at a location that is reasonably convenient for the greatest number of directors, and at a place or facility that is sufficiently large to accommodate the number of owners who typically attend board meetings as observers. The decision of where to meet may be made on a meeting by meeting basis by the officer or director who calls the meeting,

by board resolution, or by any other practice that is customary for property owners associations. The board is not required (1) to conduct its meetings at the Property, (2) to maintain a fixed place for its meetings, (3) to select a location that is convenient to owners, or (4) to select a facility that accommodates a larger number of spectator members than is customary.

8.17.3. Types of board meetings. Regular meetings of the board may be held at a time and place that the board determines, from time to time, but at least one such meeting must be held each calendar quarter, with or without notice. Special meetings of the board may be called, with notice, by the president or, if he is absent or refuses to act, by the secretary, or by any 2 directors. In case of emergency, the board may convene an emergency meeting for the purpose of dealing with the emergency after making a diligent attempt to notify each director by any practical method.

8.17.4 Notice to directors of board meetings. Notice is not required for regular meetings of the board, provided all directors have actual or constructive knowledge of the meeting date, time, and place. Notice of a special meeting must be given at least one day in advance of the meeting. If notice is given, it may be given by any method or combination of methods that is likely to impart the information to the directors.

8.17.5. Informing members of board meetings. The board will inform Association members of the date, time, place, and general subject of each board meeting, including a general description of any matter to be brought up for deliberation in executive session. Meetings of the Board will be communicated by members as set forth in paragraph 8.4. The information may be imparted by any method or combination of methods that is likely to be available or communicated to most if not all members in a timely manner, such as by posting on the Association's website, by broadcast email, by signs posted at the Property, or by hand-delivered fliers. On the written request of an owner, the Association will provide the owner with the time and place of the next regular or special meeting of the board. The failure of the Association to disseminate and the failure of an owner to receive timely or accurate information about the date, time, and place of a meeting does not invalidate the meeting.

8.17.6. Conduct of meetings. The president presides over meetings of the board and the secretary keeps, or causes to be kept, a record of resolutions adopted by the board and a record of transactions and proceedings occurring at meetings. When not in conflict with law or the Governing Documents, then the current edition of Robert's Rules of Order governs the conduct of the meetings of the board.

8.17.7. Quorum. At meetings of the board, a majority of directors constitutes 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 are the acts of the board. If less than a quorum is present at a meeting of the board, the majority of those present may adjourn the meeting from time to time. At any reconvened meeting at which a quorum is present, any business that may have been transacted at the meeting as originally called may be transacted without further notice.

8.17.8. Minutes. The written report of a board meeting is not the minutes of the meeting until approved by the directors at a future meeting. The minutes must report actions taken by the board, but need not report the substance of discussion. The board is not required to distribute minutes of its meetings to its members. The board shall make meeting records, including approved minutes, available to a member for inspection and copying on the member's written request to the Association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the board.

8.17.9. Voting. A director who is also an officer of the Association, even the presiding officer, is expected to participate and to vote in the manner of every other director. The president of the Association is not

prohibited from voting and is not limited to tie-breaking votes. Directors may not participate by proxy at meetings of the board.

8.17.10. Open meetings. Regular and special meetings of the board are open to members of the Association, subject to the following provisions to the extent permitted or required by applicable law:

- a. No audio or video recording of the meeting may be made, except by the board or with the board's prior express consent.
- b. Members who are not directors may not participate in board deliberations under any circumstances, and may not participate in board discussions unless the board expressly so authorizes at the meeting.
- c. Executive sessions are not open to members.
- d. The board may prohibit attendance by non-members, including representatives, proxies, agents, and attorneys of members.
- e. The board may prohibit attendance by any members who dispute meetings or interfere with the conduct of board business.

8.17.11. Executive session. The board may adjourn any regular or special meeting of the board and reconvene in executive session, subject to the following conditions:

- a. The nature of business to be considered in executive session will first be announced in open session.
- b. No action may be taken nor decision made in executive sessions, which is for discussion and informational purposes only.
- c. The limited purposes for which the board may convene in executive session are (1) to confer with the Association's legal counsel, (2) to discuss litigation or resolution of claims with which the Association is threatened or involved, (3) to discuss labor or personnel matters, (4) to discuss a complaint from or an alleged violation by an owner when the board determines that public knowledge would be injurious to the owner, and (5) on advice of counsel, to discuss matters of a particularly sensitive nature.
- d. At the end of executive session, the board must return to the open meeting and announce the general nature of the business that was considered in executive session (but for this requirement) must be made in the open meeting.
- e. The board is not required to make or maintain minutes of executive sessions.

8.17.12. Telephone & Virtual Meetings. Members of the board or any committee of the Association may participate in and hold meetings of the board or committee by means of conference telephone or virtual communications equipment by means of which all persons participating in the meeting can hear each other. Except for any portion of a board meeting conducted in executive session, all Owners in attendance at the meeting must be able to hear all board members and Owners must be allowed to listen using any electronic or telephonic communication method used or expected to be used by a board member to participate. The notice of such meeting by means of conference telephone or similar communications equipment must include instructions for Owners to access any communication method required to be accessible under this Article. Participation in such meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

8.18. Action Without Meeting. Any action required or permitted to be taken by the board at a meeting may be taken without a meeting, if each board member is given a reasonable opportunity to express the board member's opinion to all other board members and to vote, subject to the following requirements:



8.18.1. Unanimous consents. If all directors individually or collectively consent in writing to such action, the written consents have the same force and effect as the unanimous approval of directors at a meeting.

8.18.2. Majority consents. If at least a majority of the directors, individually or collectively, consent in writing to such action, the written consents have the same force and effect as approval by a majority of the directors at a meeting. Prompt notice of the action so approved must be delivered to each non-consenting director.

8.18.3. Procedures. Written consents must state the date of each director's signature. The required number of written consents must be received by the Association within 60 days after the date of the earliest dated consent. Written consents must be filed with the minutes of board meetings. Additional procedures may be required by the Code.

8.18.4 Summarization of actions. Any action taken without notice to Owners under paragraph 8.4 must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special board meeting.

8.18.5. Action precluded. The board may not, unless done in an open meeting for which prior notice was given to owners under paragraph 8.4, consider or vote on:

- Fines;
- Damage assessments;
- Initiation of foreclosure actions;
- Initiation of enforcement actions, excluding temporary restraining orders or violation involving a threat to health or safety;
- Increases in assessments;
- Levying of special assessments;
- Appeals from a denial of architectural control approval;
- A suspension of a right of a particular owner before the owner has an opportunity to attend a board meeting to present the owner's position, including any defense, on the issue;
- Lending or borrowing money;
- The adoption or amendment of a dedicatory instrument;
- The approval of an annual budget or the approval of an amendment of an annual budget that increases the budget by more than 10 percent;
- The sale or purchase of real property;
- The filling of a vacancy on the board;
- The construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or
- The election of an officer.

8.19. Powers And Duties. Generally, the board has all the powers and duties necessary for the administration of the Association and for the operation, maintenance and enjoyment of the Property. The board may do all acts and things except those which, by applicable law or the Governing Documents, are reserved to the members and may not be delegated to the board. Without prejudice to the general and specific powers and duties set forth in applicable law, the Governing Documents, or powers and duties as may hereafter be imposed on the board by resolution of the Association, the powers and duties of the board include, but are not limited to, the following:

8.19.1. Appointment of Committees. The board, by resolution, may from time to time designate standing or ad hoc committees to advise or assist the board with its responsibilities. The resolution may establish the purposes and powers of the committee created, provide for the appointment of a chair and committee members, and may provide for reports, termination, and other administrative matters deemed appropriate by the board. Members of committees will be appointed from among the owners and residents. The board may not appoint a committee to act in its place in managing the affairs of the Association.

8.19.2. Manager. The board may employ a manager or managing agent for the Association, at a compensation established by the board, to perform duties and services authorized by the board.

8.19.3. Emergency Powers: An emergency exists for purposes of this Section if a local, state, or national government or governmental entity declares a disaster or state of emergency in the area in which the Property is located, or declares a state of war. In anticipation of, during, or in the aftermath of an emergency, the officers and directors may take or authorize any action they deem necessary or advisable to protect lives and property. A decision or action made in good faith under emergency conditions may not be used to impose liability on an officer, director, employee, or agent of the Association.

8.20. Fidelity Bonds. The Treasurer and his agents who handle Association funds, must furnish adequate fidelity bonds. The premiums on the bonds may be a common expense of the Association.

8.21. ORDER OF BUSINESS. Unless the notice of meeting states otherwise, or the assembly adopts a different agenda at the meeting, the order of business at meetings of the Association is as follows:

- Determine votes present by roll call or check-in procedure
- Announcement of quorum
- Proof of notice of meeting
- Old Business Forum
- Approval of minutes of preceding meeting Reports
- Election of directors (when required)
- President's Report
- Treasurer's Report
- Bookkeeper's Report
- Event's Report
- Curb Inspector's Report
- Neighborhood Resource Coordinator's Report
- Architectural Control Committee's Report
- Open Session Adjournment
- Closed Executive Session Call To Order
- Closed Executive Session Business Forum
- Closed Executive Session Adjournment

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

8.23. Action Without Meeting. Subject to board approval, any action which may be taken by a vote of the members at a meeting of the Association may also be taken without a meeting by written consents. The

board may permit members to vote by ballots delivered by any method allowed by applicable law, which may include hand delivery, mail, fax, email, electronic balloting or any combination of these. Written consents by members representing at least a majority of votes in the Association, or such higher percentage as may be required by the Governing Documents constitutes approval by written consent. This Section may not be used to avoid the requirement of an annual meeting.

8.24. Meetings By Remote Communications. Members of the Association may participate in and hold meetings of the Association by means of electronic town halls, conference telephone, video conference, or similar communications equipment by means of which all persons participating in the meeting can communicate concurrently. Participation in the meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. By acquiring an interest in a lot, each owner automatically consents to the use of communication technology to effect meetings of the Association, provided the owners of at least 75 percent of the lots in the Property have access to the form of technology and are able to attain at their own expense the form of technology chosen by the board, and further provided that the Association arranges a place of method of participation for those who do not have the technology.

8.25 Minutes of Meetings. Minutes of monthly, annual, or special meetings must be available for public view no later than (10) ten days following meeting date. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.

## **ARTICLE 9 RULES**

9.1. Rules. The board has the right to establish and amend, from time to time, reasonable rules and regulations for: (1) the administration of the Association and the Governing Documents; (2) the maintenance, management, operation, use conservation, and beautification of the Property; and (3) the health, comfort, and general welfare of the residents; provided, however, that such rules may not be in conflict with applicable law or the Governing Documents. The board will, at all times, maintain the then current and complete rules in a written form which can be copied and distributed to the members.

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

9.3. Notice And Comment. At least 10 days before the effective date, the board will give written notice to an owner of each lot of any amendment, termination, or adoption of a rule, or will publish same in a newsletter, on the Association's website, or in any form or medium that is circulated or available to the members. The board may, but is not required to, give similar notice to residents who are not members. Any member or resident so notified has the right to comment orally or in writing to the board on the proposed action.

9.4. Distribution. On request from any member or resident, the board will provide a current and complete copy of rules. Additionally, the board will, from time to time, distribute copies of the current and complete rules to owners and, if the board so chooses, to non-member residents.

## **ARTICLE 10 ENFORCEMENT**

10.1. Actions Requiring Notice And Hearing. Before taking any of the below-described actions, the Association must give written notice and an opportunity for a hearing according to the requirements of this Article and the notice and hearing requirements of applicable law, such as Chapter 209 Texas Property Code. The following actions by or with the approval of the board, the Association, or the Architectural Reviewer, require notice and hearing as provided by this Article:

- a. Suspension of use of a common area, if applicable.
- b. Imposition of a fine for violation of any provision of the Governing Documents, other than fines, interest or collection fees charged for delinquent accounts.
- c. Charging an owner or a lot for property damage.
- d. Filing suit against an owner other than a suit related to the collection of assessments or foreclosure of the Association's assessment lien.

10.2. Notice. The required written notice must contain (1) the date of violation notice is prepared or mailed; (2) a statement that not later than the 30<sup>th</sup> day after the date the owner receives the notice, the owner may request a hearing to discuss and verify facts and resolve the matter in issue, pursuant to this Article and applicable law, such as Section 209.007 Texas Property Code; (3) a statement of how or where the request for hearing should be made or delivered; (4) a statement that if the hearing is before a committee or any body other than the board, the owner has the right to appeal the decision to the board by written notice to the board; (5) a statement that the owner may be liable for reimbursement of attorney's fees and costs if the violation continues or the damage is not paid by a stated date; and (6) the following contents applicable to violations or damage claims, as the case may be:

10.2.1. Notice Of Violation. In the case of a violation of a provision of the Governing Documents, the written notice must also:

- Describe the violation
- Reference the rule or provision of the Governing Documents that is being violated, if applicable;
- Except as provided by Article 10.2.3 inform the Owner that the Owner:

- Is entitled to a reasonable period to cure the violation and avoid the fine or suspension if the violation is of a curable nature and does not pose a threat to public health or safety;
- May request a hearing under Article 10.3 on or before the 30<sup>th</sup> day after the date the notice was mailed to the Owner; and
- May have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. App. Section 501 et seq.), if the Owner is serving on active military duty;
  - Specify the date by which the Owner must cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety; and
  - Be sent by verified mail to the Owner at the Owner's last known address as shown on the Association records.

10.2.2. The date specified in the notice under Article 10.2.1 must provide a reasonable period to cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety

10.2.3. Article 10.2.1 does not apply to a violation for which the Owner has been previously given notice under Article 10.2.1 in the preceding six months.

10.2.4. If the Owner cures the violation before the expiration of the period for cure described in Article 10.2.2, a fine may not be assessed for violation.

10.2.5. For purposes of Articles 10.2.1 through 10.2.8, a violation is considered a threat to public health or safety if the violation could materially affect the physical health or safety of an ordinary resident.

10.2.6. For purposes of Articles 10.2.1 through 10.2.8, a violation is considered incurable if the violation has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. For purposes of this Article 10.2.6, the non-repetition of a one-time violation or other violation that is not ongoing is not considered an adequate remedy.

10.2.7. The following are examples of acts considered incurable for purposes of Articles 10.2.1 through 10.2.6:

- An act constituting a threat to health or safety;
- A noise violation that is not ongoing;
- Property damage, including the removal or alteration of landscape; and
- Holding an event prohibited by a dedicatory instrument.

10.2.8. The following are examples of acts considered curable for purposes of this section:

- A parking violation;
- A maintenance violation;
- The failure to construct improvements or modifications in accordance with approved plans and specifications; and
- An ongoing noise violation such as a barking dog.

10.2.9. Notice of Damage. In the case of property damage for which the Association seeks reimbursement or imposition of a charge on the owner or the lot, the written notice must also contain (1) a description of the property damage and (2) the amount of the Association's claim against the owner or the lot.

10.2.10. Notice to Resident. In addition to giving the violation notice to the owner, the board may also give a copy of the notice to the non-owner resident, if the board deems it appropriate.

10.2.4. Receipt of Notice. Unless applicable law provides otherwise, any notice given to an owner pursuant to this Article will be deemed received by the owner (1) on personal delivery to the owner or to a person at

the owner's address, or (2) on the third business day after the notice is deposited with the U.S. Postal Service, addressed to the owner at the most recent address shown on the Association's records, whether or not the owner actually received the notice.

### 10.3 Hearing

10.3.1. Request for Hearing. To request a hearing, an owner must submit a written request within 30 days after receiving the Association's written notice. Within 10 days after receiving the owner's request for a hearing, and at least 10 days before the hearing date, the Association will give the owner notice of the date, time, and place of the hearing. If the Association or the owner requests a postponement of the hearing, the hearing will be postponed for up to 10 days. Additional postponements may be granted by agreement of the parties.

10.3.2. Pending Hearing. Pending the hearing, the board may continue to exercise the Association's other rights and remedies for the violation, as if the declared violation were valid. The owner's request for a hearing suspends only the action described in the Association's written notice.

10.3.3. Attendance. The hearing may be held with or without the presence of the owner or the owner's representative.

10.3.4. Hearing. The hearing may be held in a closed or executive session of the board. At the hearing, the board will consider the facts and circumstances surrounding the violation. The owner may attend the hearing in person, or may be represented by another person or written communication.

10.3.5. Minutes of Hearing. The minutes of the hearing must contain a statement of the results of the hearing and the amount of fine or charge, if any, imposed, or abatement or suspension action, if any, authorized. A copy of the notice and request for hearing should be placed in the minutes of the hearing. If the owner appears at the hearing, the notice requirement will be deemed satisfied.

10.4. Actions Exempt From Notice And Hearing Requirements. As a general rule, every action other than the above-described actions requiring notice and hearing are impliedly exempt from the requirements of this Article. As permitted by applicable law, such as Section 209.007 of Texas Property Code, the following actions are expressly exempt:

- a. If applicable, a temporary suspension of a person's right to use common areas if the temporary suspension is the result of a violation that occurred in a common area and involved a significant and immediate risk of harm to others in the Property. The temporary suspension is effective until the board makes a final determination on the suspension action after following the procedures prescribed by this Article.
- b. A lawsuit in which the Association seeks a temporary restraining order or temporary injunctive relief.
- c. A lawsuit filed by the Association that includes foreclosure as a cause of action.
- d. The collection of delinquent assessments.

10.5. Imposition Of Fine. Within 30 days after levying the fine or authorizing the abatement, the board must give the owner notice of the levied fine or abatement action. If the fine or action is announced at the hearing at which the owner is actually present, the notice requirement will be satisfied. Otherwise, the notice must be in writing.

10.5.1. Amount of fines and fees. The board may set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effects of the violation. The board may establish a schedule of fines for certain types of violations. The amount and cumulative total of a fine must be reasonable in comparison to the violation. If the board allows fines to accumulate, it may establish a maximum amount for a particular fine, at which point the total fine will be capped. Fines which continue to go unpaid will accrue \$25 Administrative Fee added monthly per violation as well as any and all expenses derived from the collection and notice process.

10.5.2. Continuous fines. If the violation is ongoing or continuous, the fine may be levied on a periodic basis (such as daily, weekly, or monthly). If the violation is not ongoing, but is instead sporadic or periodic, the fine may be levied on a per occurrence basis.

10.5.3. Other fine related. The Association is not entitled to collect a fine from an owner to whom it has not give notice and an opportunity to be heard. The Association may not charge interest on unpaid fines. The Association may not foreclose its assessment lien on a debt consisting solely of fines.

10.6. Reimbursement Of Expenses And Legal Fees. In addition to any other rights set forth in the Governing Documents for violation of a provision of the Governing Documents, the board may levy and collect individual assessments for reimbursement of reasonable fees and expenses, including without limitation legal fees, incurred by the Association to enforce the Governing Documents, including the collection of delinquent assessments, subject to the following conditions:

10.6.1. Notice of fees and expenses. The Association must give the owner written notice that the owner will be liable for reimbursement of any such fees and expenses incurred by the Association if the delinquency or violation continues after a date certain that is stated in the notice. This notice requirement does not apply to legal fees incurred by the Association in connection with the Association's counterclaim in a lawsuit to which an owner is a plaintiff.

10.6.2. Hearing. If legal fees are incurred by the Association for an action requiring notice and hearing, the owner is not liable for reimbursement of legal fees incurred (1) before the date of which the owner must request a hearing, if the owner does not request a hearing, or (2) before conclusion of the hearing, if the owner does request a hearing.

10.6.3. Records. By written request, an owner may obtain from the Association copies of any invoices for charges, including legal fees, for which the Association seeks reimbursement.

10.6.4. Foreclosure. In connection with a nonjudicial foreclosure of the Association's assessment lien, applicable law, such as Chapter 209 of the Texas Property Code, may establish a limit for the amount of attorney's fees that the Association may include in its lien.

10.7. Additional Enforcement Rights. Notwithstanding the notice and hearing requirement, the board may take immediate and appropriate action, without giving the notices required in this Article, against violations of the Governing Document which, in the board's opinion, are (1) self-evident, such as vehicles parked illegally or in violation of posted signs; (2) threatening to life or property; or (3) repeat violations of the same provision by the same owner to whom prior notices and demands have been given for the same violation. Further, the provisions of this Article do not apply to specific remedies provided in the Governing Documents for certain violations, such as nonpayment of assessments.

10.8. Enforcement Of Restrictive Covenants. TX PROP CODE 202.004 An exercise of discretionary authority or selective enforcement by a property owners' association or other representative designated by an owner of real property concerning a restrictive covenant is presumed reasonable so long as the exercise of discretionary authority was not arbitrary, capricious, or discriminatory. Notice of Associations right to enforce restrictions unenforced in the past must be given to members in the manner notices are traditionally given at least 30 thirty days prior to inspection.



**ARTICLE 11**  
**OBLIGATIONS OF THE OWNERS**

11.1 Notice Of Private Sale. Any owner intending to sell or convey his lot or any interest therein without the use of a closing attorney or real estate agent must give written notice to the board of his intention, together with (1) the address or legal description of the lot being conveyed, (2) the name and address of the intended purchaser, (3) the name, address, and phone number of the title company, (4) names and phone numbers of real estate agents, if any, representing purchaser, and (5) scheduled date of closing. An owner will furnish this information to the board at least 10 business days before the scheduled date of closing or conveyance. The requirements of this Section may be satisfied by giving the Association a copy of an accepted resale contract in connection with the owner's request to the Association for a resale certificate.

11.2 Proof Of Ownership. Except for those owners who initially purchase a lot from Declarant, any person, on becoming an owner of a lot, must furnish to the board evidence of ownership in the lot, which copy will remain in the files of the Association. A copy of the recorded deed is the customary evidence. The Association may refuse to recognize a person as a member unless this requirement is first met. This requirement may be satisfied by receipt of a board-approved form that is completed and acknowledged by a title company or attorney at time of conveyance of the lot or any interest therein.

11.3 Owners Information. Within 30 days after acquiring an ownership interest in a lot, the owner must provide the Association with the owner's mailing address, telephone number, the name and telephone number of any resident other than the owner if property is a rental/lease; and the name, address, and telephone number of any person managing the lot as agent of the lot owner. An owner must notify the Association within 30 days after he has notice of a change in any information required by this Section, and must provide the information on request by the Association from time to time.

11.4 Mailing Address. The owner or the several co-owners of a lot must register and maintain one mailing address to be used by the Association for mailing of notices, demands, and all other communications. If an owner fails to maintain a current mailing address with the Association, the address of the owner's lot is deemed to be his mailing address.

11.5 Registration Of Mortgagees. With 30 days after granting a lien against his lot, the owner must provide the Association with the name and address of the holder of the lien and the loan number. The owner must notify the Association within 30 days after he has notice of a change in the information required by this Section. Also, the owner will provide the information on request by the Association from time to time.

11.6 Assessments. All owners are obligated to pay assessments imposed by the Association to meet the common expenses as defined in the Declaration. A member is deemed to be in good standing and entitled to vote at any meeting of the Association.

11.7 Compliance With Documents. Each owner will comply with the provisions and terms of the Governing Documents, and any amendments thereto. Further, each owner will always endeavor to observe and promote the cooperative purposes for which the Property was established.

**ARTICLE 12**  
**ASSOCIATION RECORDS**  
TX ADMIN CODE 70.3

12.1. Inspection Of Books And Records. Books and records of the Association will be made available for inspection and copying pursuant to applicable law, such as Section 22.351 of the Code and Section 209.005 Texas Property Code.

12.1.1 Proper Purpose. The board may require a member to submit a written demand for inspection, stating the purpose for which the member will inspect the books and records. The board has the following rights: (1) to determine whether the member's purpose for inspection is proper; (2) to deny the request if the board determines that the member's purpose is not proper;(3) if granting the request, to identify which books and records are relevant to the member's stated purpose for inspection.

12.1.2. Copies. A member, at member's expense, may obtain photocopies of books and records for which the board grants the right of inspection. The board has the right to retain possession of the original books and records, to make copies requested by the member, and to charge the member a reasonable fee for copying.

**COST OF COPIES OF PUBLIC INFORMATION**

(a) The charges in this section to recover costs associated with providing copies of public information are based on estimated average costs to governmental bodies across the state. When actual costs are 25% higher than those used in these rules, governmental bodies other than agencies of the state, may request an exemption in accordance with 70.4 of this title (relating to Requesting an Exemption).

(b) Copy charge.

(1) Standard paper copy. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page or part of a page. Each side that has recorded information is considered a page.

(2) Nonstandard copy. The charges in this subsection are to cover the materials onto which information is copied and do not reflect any additional charges, including labor, that may be associated with a particular request. The charges for nonstandard copies are:

- (A) Diskette--\$1.00;
- (B) Magnetic tape—actual cost;
- (C) Data cartridge—actual cost;
- (D) Tape cartridge—actual cost;
- (E) Rewritable CD (CD-RW)--\$1.00;
- (F) Non-rewritable CD (CD-R)--\$1.00;
- (G) Digital video disc (DVD)--\$3.00;
- (H) Flash drive—actual cost;

- (I) Other electronic media—actual cost;
  - (J) VHS video cassette--\$2.50;
  - (K) Audio cassette--\$1.00;
  - (L) Oversize paper copy (e.g.: 11 inches by 17 inches, greenbar, bluebar, not including maps and photographs using specialty paper—See also 70.9 of this title)--\$.50;
  - (M) Specialty paper (e.g.: Mylar, blueprint, blueline, map, photographic—actual cost.
- (c) Labor charge for programming. If a particular request requires the services of a programmer in order to execute an existing program or to create a new program so that requested information may be accessed and copied, the governmental body may charge for the programmer's time.
- (1) The hourly charge for a programmer is \$28.50 an hour. Only programming services shall be charged at this hourly rate.
  - (2) Governmental bodies that do not have in-house programming capabilities shall comply with requests in accordance with 552.231 of the Texas Government Code.
  - (3) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of 552.261 (b) of the Texas Government Code.
- (d) Labor charge for locating, compiling, manipulating data, and reproducing public information.
- (1) The charge for labor costs incurred in processing a request for public information is \$15 an hour. The labor charge includes the actual time to locate, compile, manipulate data, and reproduce the requested information.
  - (2) A labor charge shall not be billed in connection with complying with requests that are for 50 or fewer pages of paper records, unless the documents to be copied are located in:
    - (A) Two or more separate buildings that are not physically connected with each other; or
    - (B) A Remote storage facility.
- (3) A labor charge shall not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information:
- (A) To determine whether the governmental body will raise any exceptions to disclosure of the requested information under the Texas Government Code, Subchapter C, Chapter 552; or
  - (B) To research or prepare a request for a ruling by the attorney general's office pursuant to 552.301 of the Texas Government Code.
- (4) When confidential information pursuant to a mandatory exception of the Act is mixed with public information in the same page, a labor charge may be recovered for time spent to redact, blackout, or otherwise obscure confidential information in order to release the public information. A labor charge shall not be made for redacting confidential information for requests of 50 or fewer pages, unless the request also qualifies for a labor charge pursuant to Texas Government Code, 552.261 (a)(1) or (2).
- (5) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of Texas Government Code, Chapter 552, 552.261 (b).
- (6) For Purposes of paragraph (2) (A) of this subsection, two building connected by a covered or open sidewalk, an elevated or underground passageway, or a similar facility, are not considered to be separate buildings.
- (e) Overhead charge.
- (1) Whenever any labor charge is applicable to a request, a governmental body may include in the charges direct and indirect costs, in addition to the specific labor charge. This overhead charge

would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead. If a governmental body chooses to recover such costs, a charge shall be made in accordance with the methodology described in paragraph (3) of this subsection. Although an exact calculation of costs will vary, the use of a standard charge will avoid complication in calculating such costs and will provide uniformity for charges made statewide.

- (2) An overhead charge shall not be made for requests for copies of 50 or fewer pages of standard paper records unless the request also qualifies for a labor charge pursuant to Texas Government Code, 552.261(a)(1) or (2)
  - (3) The overhead charge shall be computed at 20% of the charge made to cover any labor costs associated with a particular request. Example: if one hour of labor is used for a particular request, the formula would be as follows: Labor charge for locating, compiling, and reproducing,  $\$15.00 \times .20 = \$3.00$ ; or Programming labor charge,  $\$28.50 \times .20 = \$5.70$ . If a request requires one hour of labor charge for locating, compiling, and reproducing information ( $\$15.00$  per hour); and one hour of programming labor charge ( $\$28.50$  per hour), the combined overhead would be:  $\$15.00 + \$28.50 = \$43.50 \times .20 = \$8.70$ .
- (f) Microfiche and microfilm charge.
- (1) If a governmental body already has information that exists on microfiche or microfilm and has copies available for sale or distribution, the charge for a copy must not exceed the cost of its reproduction. If no copies of the requested microfiche or microfilm are available and the information on the microfiche or microfilm can be released in its entirety, the governmental body should make a copy of the microfiche or microfilm. The charge for a copy shall not exceed the costs of its reproduction. The Texas State Library and Archives Commission has the capacity to reproduce microfiche and microfilm for governmental bodies. Governmental bodies that do not have in-house capability to reproduce microfiche or microfilm are encouraged to contact the Texas State Library before having the reproduction made commercially.
  - (2) If only a master copy of information in microfilm is maintained, the charge is \$.10 per page for standard size paper copies, plus any applicable labor and overhead charge for more than 50 copies.
- (g) Remote document retrieval charge.
- (1) Due to limited on-site capacity of storage documents, it is frequently necessary to store information that is not in current use in remote storage locations. Every effort should be made by governmental bodies to store current records on-site. State agencies are encouraged to store inactive or non-current records with the Texas State Library and Archives Commission. To the extent that the retrieval of documents results in a charge to comply with a request, it is permissible to recover costs of such services for requests that qualify for labor charges under current law.
  - (2) If a governmental body has a contract with a commercial records storage company, whereby the private company charges a fee to locate, retrieve, deliver, and return to storage the needed record(s), no additional labor charge shall be factored in for time spent locating documents at the storage location by the private company's personnel. If after delivery to the governmental body, the boxes must still be searched for records that are responsive to the request, a labor charge is allowed according to subsection (d) (1) of this section.
- (h) Computer resource charge.
- (1) The computer resource charge is utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources, which might

include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communications devices, software, and system utilities.

- (2) These computer resource charges are not intended to substitute for cost recovery methodologies or charges made for purposes other than responding to public information requests.
  - (3) The charges in this subsection are averages based on a survey of governmental bodies with a broad range of computer capabilities. Each governmental body using this cost recovery charge shall determine which category (ies) of computer system(s) used to fulfill the public information request most closely fits its existing system (s), and set its charge accordingly. Type of System—mainframe--\$10 per CPU minute; Midsize--\$1.50 per CPU minute; Client/Server--\$2.20 per clock hour; PC or LAN--\$1.00 per clock hour.
  - (4) The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program times the applicable rate. The CPU charge is not meant to apply to programming or printing time; rather it is solely to recover costs associated with the actual time required by the computer to execute a program. This time, called CPU time, can be read directly from the CPU clock, and most frequently will be a matter of seconds. If programming is required to comply with a particular request, the appropriate charge that may be recovered for programming time is set forth in subsection (d) of this section. No charge should be made for computer print-out time. Example: IF a mainframe computer is used, and the processing time is 20 seconds, the charges would be as follows:  $\$10 / 3 = \$3.33$ ; or  $\$10 / 60 \times 20 = \$3.33$ .
  - (5) A governmental body that does not have in-house computer capabilities shall comply with requests in accordance with the 552.231 of the Texas Government Code.
- (i) Miscellaneous supplies. The actual cost of miscellaneous supplies, such as labels, boxes, and other supplies used to produce the requested information, may be added to the total charge for public information.
  - (j) Postal and shipping charges. Governmental bodies may add any related postal or shipping expenses which are necessary to transmit the reproduced information to the requesting party.
  - (k) Sales tax. Pursuant to Office of the Comptroller of Public Accounts' rules sales tax shall not be added on charges for public information (34 TAC, Part 1, Chapter 3, Subchapter O 3.341 and 3.342).
  - (l) Miscellaneous charges: A governmental body that accepts payment by credit card for copies of public information and that is charged a "transaction fee" by the credit card company may recover that fee.
  - (m) These charges are subject to periodic reevaluation and update.

12.1.3. Member's Agent. A member's inspection of the books and records may be assisted or performed by the member's agent, accountant, or attorney.

10.1.4. Records of Attorneys. Except as provided by this Article, an attorney's files and records relating to the Association, excluding invoices requested by an owner under Section 209.008(d) Texas Property Code, are not records of the association and are not subject to inspection by the Owner or production in a legal proceeding. If a document in an attorney's files and records relating to the association would be responsive to a legally authorized request to inspect or copy association documents, the document shall be produced by using the copy from the attorney's files and records if the Association has not maintained a separate copy of the document. This Article does not require

production of a document that constitutes attorney work product or that is privileged as an attorney-client communication.

12.2. Resale Certificates. Any officer may prepare, or cause to be prepared, assessment estoppel certificates or resale certificates pursuant to applicable law, such as Chapter 207 of the Texas Property Code, titled Disclosure of information by Property Owners Association. The Association may charge a reasonable fee for preparing such certificates, and may refuse to furnish such certificates until the fee is paid. Any unpaid fees may be assessed against the lot for which the certificate is furnished. The Association may delegate the responsibility for a resale certificate to its managing agent, if any.

12.3. Management Certificate. As required by applicable law, such as Section 209.004 of the Texas Property Code, the Association will maintain a current management certificate in the county's public records. When the Association has notice of a change in any information in the recorded certificate, the Association will prepare a restated or amended certificate and deliver it to the county clerk for filing. Absent gross negligence, the Association is not liable for a delay or failure to record a certificate. The Association may delegate the responsibility for a management certificate to its managing agent, if any.

12.4. Membership List. The board must maintain a comprehensive list of Association members for compliance with the Code as well as the Governing Documents. The Association must make the membership list available to any owner on written request, and may charge a reasonable fee for the cost of copying and delivering the owners list.

12.4.1. Types Of Information. At a minimum, the Association must maintain for each lot the name and mailing address of at least one owner, and a description of the lot owned (if different from the mailing address). The Association may also maintain, as an Association record, additional contact information for owners, such as phone numbers, fax numbers, email addresses, places of employment, emergency contact information, mortgage, information, and any other items of information provided by owners or obtained by the Association.

12.4.2. Source Of Ownership Information. In compiling the ownership or membership list, the Association may rely on any combination of (1) public records, such as tax rolls, (2) documentation provided by title insurance companies, (3) self-reporting by owners and residents, and (4) any other reasonably reliable and customary source of ownership information. The requirement of maintaining ownership records may not be construed to require the Association to affirmatively investigate or research title to a lot.

12.4.3. Information Available To Members. Membership information to be maintained by the Association is similar to what is typically available to the public on the website of the appraisal district and may not be considered confidential, private, or protected information as between the Association and its members. Neither the Association, nor a member of the Association may sell or otherwise market the Association's membership information without the express prior consent of the owners. Each owner, by acquiring an ownership interest in a lot, acknowledges that the owner's contact information is a record of the Association that is available to all members of the Association.

12.4.4. Inspection List. In accordance with applicable law, the Association will prepare a list of owners of all lots in the Property for inspection by the members prior to the meeting. The purpose of the list is to enable members to communicate with each other about the meeting. The inspection list must be available for inspection by the members from the second business day after the date notice of the meeting is given until adjournment of the meeting for which it was prepared. The list may be inspected or copied by an owner or the owner's attorney or agent. The inspection list must have the following characteristics:

- a. The list must be in alphabetical order of owner's surnames, or in numerical order of street addresses.
- b. The list must contain the name of at least one owner of each lot, or an indication that the current ownership cannot be determined and the identity of the last known owner.
- c. The list must contain an address for each member.
- d. The list must identify how many lots are owned by each owner, if that cannot otherwise be determined from the list.
- e. If all lots do not have uniform votes, such as lots owned by Declarant during the Declarant Control Period, the list must identify the number or weight of votes attached to each lot.
- f. The list must identify which owners or lots are ineligible to vote at the meeting due to an assessment of delinquency or other disqualifying condition.

12.5. Document Retention. TX HB 2761

12.5.1. The Association will retain certain documents as follows:

- Certificates of formation, by laws, restrictive covenants, and all amendments to the certificates of formation, bylaws, and covenants shall be retained permanently;
- Financial books and records shall be retained for seven years;
- Account records of current Owners shall be retained for five years;
- Contracts with a term of one year or more shall be retained for four years after the expiration of the contract term;
- Minutes of meeting of the members and the board shall be retained for seven years; and,
- Tax returns and audit records shall be retained for seven years.

## **ARTICLE 13 NOTICES**

13.1. Co-Owners. If a lot is owned by more than one person, notice to one co-owner is deemed notice to all co-owners. Similarly, notice to one resident of a lot is deemed notice to all residents of the lot.

13.2. Delivery Of Notices. Any written notice required or permitted by these Bylaws may be given personally, by mail, by fax, by email, or by any other method permitted by applicable law, such as the Texas Business Organizations Code. If mailed, the notice is deemed delivered when deposited in the U.S. Mail addressed to the member at the address shown on the Association's records. If transmitted by fax or email, the notice is deemed delivered on successful transmission of the facsimile or electronic correspondence. The notice must be sent to the party's last known address as it appears on the records of the Association at the time of transmission. If an owner fails to give the Association an effective address, the notice may be

sent (1) to the address of the owner's lot and/or (2) to the owner's address shown on the then-current property tax rolls for the lot. If the Association properly transmits the notice, the owner is deemed to have been given notice whether or not he actually receives it.

13.3. Waiver Of Notice. Whenever a notice is required to be given to an owner, member, or director, a written waiver of the notice, signed by the person entitled to the notice, whether before or after the time stated in the notice, is equivalent to giving the notice. Attendance by a member or director at any meeting of the Association or board, respectively, constitutes a waiver of notice by the member or director of the time, place, and purpose of the meeting. If all members or directors are present at any meeting of the Association or board, respectively, no notice is required and any business may be transacted at the meeting.

## **ARTICLE 14 INDEMNIFICATION**

14.1. General. The purpose of this Article is to mandate some of the permissive provisions of Chapter 8 of the Code, and to indemnify Association Leaders whether or not the Association is incorporated at the time indemnification is needed. The definitions of Chapter 8 of the Code are hereby incorporated by reference, without regard to the corporate status of the Association. As used in this Article, "Association Leader" means a person who is a current or former officer or director of the Association, or a current or former committee chair or committee member of the Association.

14.2. Mandatory Indemnification. The Association will indemnify an Association Leader who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was an Association Leader, if the following determinations are made.

14.2.1. Determinations. It must be determined that the person acted in good faith, and that:

- a. the person reasonably believed (1) in the case of conduct in the person's official capacity, that the person's conduct was in the Association's best interest, or (2) in any other case, that the person's conduct was not opposed to the Association's best interests;
- b. in the case of a criminal proceeding, the person did not have a reasonable cause to believe the person's conduct was unlawful;
- c. with respect to expenses, the amount of expenses other than a judgment is reasonable; and
- d. indemnification should be paid.

14.2.2. Effect of proceeding termination. A person does not fail to meet the determination standard solely because of the termination of a proceeding by judgment, order, settlement, conviction, or a plea of nolo contendere or its equivalent.

14.2.3. How determinations are made. If all of the directors are disinterested and independent, as defined in the Code, the determinations required under this Section will be made by a special legal counsel selected by the board. Otherwise, the determinations will be made by the owners of a majority of lots in the Property, other than lots owned by persons who are not disinterested and independent as defined in the Code, or by a special legal counsel selected by those owners.

14.3. Exceptions To Mandatory Indemnification. A person who is found liable to the Association or is found liable because the person improperly received a personal benefit is not entitled to indemnification under this Article if, in a legal proceeding, the person has been found liable for (1) willful or intentional misconduct in the performance of the person's duty to the Association, (2) breach of the person's duty of



loyalty owned to the Association, or (3) an act or omission not committed in good faith that constitutes a breach of duty owned by the person to the Association. In all other instances, indemnification of a person who is found liable to the Association is limited to reasonable expenses actually incurred by the person in connection with the proceeding, excluding a judgment, a penalty, a fine, or any other type of sanction. A person indemnified by the Association is considered to have been found liable in relation to a claim, issue, or matter only if the liability is established by an order, including a judgment or decree of a court, and all appeals of the order are exhausted or foreclosed by applicable law.

14.4. Expenses. The Indemnification provided by this Article covers reasonable expenses and costs, such as legal fees, actually and necessarily incurred by the indemnified person in connection with a qualified claim.

14.4.1. Advancement of expenses. The Association may pay or reimburse reasonable expenses incurred by an indemnified person who was, is, or is threatened to be made a respondent in a proceeding in advance of the final disposition of the proceeding without making the determinations required under Article 14.2. after the Association receives a written affirmation by the person of the person's good faith belief that the person has met the standard of conduct necessary for indemnification under this Article, and a written undertaking by or on behalf of the person to repay the amount paid or reimbursed if the final determination is that the person has not met the standard or that indemnification is prohibited by this Article. The required written undertaking must be an unlimited general obligation of the person but need not be secured and may be accepted by the Association without regard to the person's ability to make repayment.

14.4.2. Witness expenses. The Association may pay or reimburse reasonable expenses incurred by an Association Leader, member, employee, agent, or other person in connection with that person's appearance as a witness or other participation in a proceeding at a time when the person is not a respondent in the proceeding.

14.5. Indemnification Of Other Persons. Subject to the same limitations, determinations, and exceptions for Association Leaders, the Association may indemnify and advance expenses to a person who is not otherwise covered by this Article's indemnification as provided by (1) a provision in a Governing Document of the Association, (2) a contract to which the Association is a party, (3) common law, (4) a board resolution, or (5) a resolution approved by the Association's members. A person indemnified under this Section may seek indemnification or advancement of expenses from the Association to the same extent that an Association Leader may seek indemnification or advancement of expenses under this Article.

**ARTICLE 15**  
**AMENDMENTS TO BYLAWS**

15.1. Authority. TX PROP CODE 204.010. Authority for amending the Bylaws resides with the directors.

15.1.1. Amendments by board. For the following purposes, the board may amend these Bylaws: (1) to correct mistakes in the Bylaws, (2) to conform the Bylaws to changes in controlling law applicable to any topic addressed in these Bylaws, (3) to change the name of the Association, (4) to restate previously amended Bylaws, for the sole purpose of incorporating the amendments into the body of the Bylaws, (5) to delineate articles, provisions, amendments and sections which are necessary for the board to perform its responsibilities and obligations under TX Property Code SEC. 204.010.

**ARTICLE 16**  
**GENERAL PROVISIONS**

16.1. Conflicting Provisions. If any provision of these Bylaws conflicts with any provision of the applicable laws of the State of Texas, the conflicting Bylaws provision is null and void, but all other provisions of these Bylaws remains in full force and effect. If a provision of the Association's certificate of formation or Articles of Association conflicts with these Bylaws, the certificate of formation or Articles controls.

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

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

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

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

## **ARTICLE 17 STANDARDS**

17.1. Separate Liability. The Association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort, Members, directors, and officers of the Association are not personally and individually liable for the Association's breach of a contract or for the Association's tort or omission merely because they are members, directors, or officers of the Association. A member has the right to assert a claim against the Association, and the Association has the right to assert a claim against a member.

17.2. General Standards. The general standards of duty for an officer or director of the Association are the State's standards for officers and directors of a nonprofit corporation, as stated in the Code as it may be amended. On the date of this document, Sections 22.221 and 22.235 of the Code provide the following standards:

- a. A director will discharge the director's duties in good faith, with ordinary care, and in a manner the director reasonably believes to be in the best interest of the Association.
- b. A director is not liable to the Association, its members, or another person for an action taken or not taken as a director if the director acted in compliance with the above-stated standard for discharging duties. A person seeking to establish liability of a director must prove that the director did not act (1) in good faith, (2) with ordinary care, and (3) in a manner the director reasonably believed to be in the best interests of the Association.
- c. An officer is not liable to the Association or any other person for an action taken or omission made by the officer in the person's capacity as an officer unless the officer's conduct was not exercised (1) in good faith, (2) with ordinary care, and (3) in a manner the officer reasonably believes to be in the best interest of the Association.

17.3. Reliance. An officer or director may rely on information prepared or presented by (1) an officer or employee of the Association, (2) an attorney licensed by the State of Texas, (3) a certified public accountant, (4) an investment banker, or (5) a person whom the officer or director reasonable believes to possess professional expertise in the matter, and (6) in the case of a director, a committee of the Association of which the director is not a member. Such reliance must be exercised in good faith and with ordinary care. An officer or director may not rely on such information if he has actual knowledge that makes the reliance unwarranted.

17.4. Loans. The Associations may not loan money to or guaranty a loan for an officer or director of the Association. The Association may seek loans for the financing, procurement, or purchase of capital items, association amenities, substantial infrastructure repairs or improvements and such acquisitions which are necessary for the board to perform its responsibilities and obligations under TX Property Code SEC. 204.010.

17.5. Conflicts Of Interest. TX Prop Code 209.0052 The association may enter into an enforceable contract with a current association board member. If a contract(s) or transaction(s) is fair to the Association, it is not disallowed merely because an officer or director has a financial interest in the transaction, provided:

- (1) the “interested” officer or director, fully and accurately discloses the nature of this interest to the board in a manner that is timely for the board’s consideration of the contract or transaction.
- (2) the “interested” officer or director does not participate in the vote to approve the contract or transaction, although the “interested” director may be counted toward a quorum at the meeting.
- (3) the board member, relative, or company bids on the proposed contract and the Association has received at least two other bids for the contract from person not associated with the board member, relative, or company, if reasonably available in the community,
- (4) the board or officer member:
  - a) is not given access to the other bids; and
  - b) does not participate in any board discussion regarding the contract, and
- (5) the resolution is approved by an affirmative vote of the majority of the board members who do not have an interest under this Article.