

AFTER RECORDING RETURN TO:

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**AMENDED AND RESTATED BYLAWS OF
LEGENDS PARK HOMEOWNERS' ASSOCIATION**

Cross reference to that certain Bylaws of Legends Park Homeowners' Association, recorded at Document No. 2015-11942 in the Official Public Records of Midland County, Texas.

**AMENDED AND RESTATED BYLAWS OF
LEGENDS PARK HOMEOWNERS' ASSOCIATION**

RECITALS:

- A. WHEREAS, Legends Park Homeowners' Association (the "**Association**") is a Texas nonprofit corporation that serves as a property owners association for the owners of tracts in those certain platted subdivisions in Hays County, Texas, known as Stagecoach Ranch (the "**Subdivision Development**").
- B. WHEREAS, the Association is governed by that certain Bylaws of Legends Park Homeowners' Association, recorded at Document No. 2015-11942 in the Official Public Records of Midland County, Texas (the "**Bylaws**").
- C. WHEREAS, Article XII of the Bylaws provides that the Bylaws may be amended, at a regular or special meeting of members, by a vote of a majority of a quorum of members present in person or by proxy.
- D. WHEREAS, a majority of a quorum of members present in person or by proxy at a meeting of the Association's member conducted on _____, 2019, approved the amended and restated Bylaws (the "Amended and Restated Bylaws"), which are attached hereto.

NOW THEREFORE, the Bylaws are hereby rescinded and replaced by the attached Amended and Restated Bylaws, which shall be effective upon its recording in the Official Public Records of Midland County, Texas.

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SECRETARY'S CERTIFICATION

The undersigned Secretary of Legends Park Homeowners' Association (the "Association") hereby certifies that this Amended and Restated the Bylaws of Legends Park Homeowners' Association was approved by a majority of a quorum of members present in person or by proxy at a meeting of the Association's members conducted on _____, 2019.

**LEGENDS PARK HOMEOWNERS'
ASSOCIATION**

[insert name of Secretary], Secretary

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

THIS INSTRUMENT was acknowledged before me this ____ day of _____, 2019 by [insert name of Secretary], Secretary of Legends Park Homeowners' Association.

Notary Public of Texas

AMENDED AND RESTATED BYLAWS

OF

LEGENDS PARK HOMEOWNERS' ASSOCIATION

ARTICLE I

NAME AND PRINCIPAL OFFICE AND DEFINITIONS

1.1 **Name.** The name of the corporation is Legends Park Homeowners' Association (the "**Association**").

1.2 **Principal Office.** The principal office of the Association shall be located in Midland County, Texas, or in such other county in Texas as the Board of Directors determines.

ARTICLE II

DEFINITIONS

2.1 "**Association**" shall mean and refer to Legends Park Homeowners' Association, a nonprofit corporation organized under the provisions of the Texas Business Organizations Code.

2.2 "**Properties**" shall mean and refer to that certain real property described in the Declaration, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

2.3 "**Common Area**" shall mean and refer all real property owned by the Association for the common use and enjoyment of Owners.

2.4 "**Lot**" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

2.5 "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

2.6 "**Declaration**" shall mean and refer to that certain Amended and Restated Declaration of Community Guidelines, Covenants, Conditions, and Restrictions on and for Legends Park, recorded at Document No. 2011-17597 in the official public records of Midland County, Texas, as may be amended from time to time.

2.7 "**Member**" shall mean and refer to each Person who owns an interest in one or

more of the Lots

2.8 **“Person”** shall mean and refer to an individual, corporation, trust or trustee estate, executor, administrator, partnership, limited liability company or other legal or commercial entity.

2.9 **Additional Definitions.** Capitalized terms contained in these Bylaws (herein so called) that are not defined herein shall have the meaning given to such terms in the Declaration, which definitions are incorporated herein by this reference.

ARTICLE III

ASSOCIATION; MEMBERSHIP AND MEETINGS

3.1 **Membership.** The Owners shall be the Members of the Association.

3.2 **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors.

3.3 **Annual Meetings.** Regular annual meetings shall be held at a time and place as determined by the Board of Directors, or in the absence thereof, as determined by the President.

3.4 **Special Meetings.** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board of Directors or upon a petition signed by Members representing at least 10% of the total votes of all Members. No business except as stated in the notice shall be transacted at a special meeting of the Members.

3.5 **Notice of Meetings.** Written or printed notice stating the place, day and hour of any meeting of the Members shall be delivered, either personally or by mail, to an Owner of each Lot entitled to vote at such meeting, not less than 10 nor more than 60 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. Written notice shall be addressed to

3.6 **Quorum - Adjournment.** Except as provided in these Bylaws or in the Declaration, the presence, in person or by proxy, absentee ballot or electronic voting of Members representing 10% or greater of the total votes in the Association shall constitute a quorum at all meetings of the Association. If, however, such quorum shall not be present or represented at any meeting, another meeting may be called subject to the same notice requirements provided that the quorum requirements for such subsequent meeting shall be one-half of the quorum requirement for the previous meeting. The Association may call as many subsequent meetings as may be required to achieve a quorum. No such subsequent meeting shall be held more than sixty

(60) days following the preceding meeting.

3.7 **Voting.** The voting rights of the Members shall be as set forth in the Declaration and in these Bylaws, and such voting rights provisions are specifically incorporated herein by this reference.

3.8 **Manner of Voting.** At all meetings of Members, each Member may vote: (i) in person (or if a corporation, partnership or trust, through any officer, director, partner or trustee duly authorized to act on behalf of the Member); (ii) by proxy; and/or (iii) if authorized by the Board, by absentee ballot and/or by electronic ballot (to the extent electronic voting is offered for a given matter submitted to a vote of the Members), subject to the requirements and limitations of Texas law regarding each such method of voting, including those set forth in Section 209.00592 of the Texas Property Code or any successor statute. All proxies shall be in writing specifying the Lot(s) for which it is given, signed by the Member or its duly authorized attorney-in-fact, dated and filed with the Secretary of the Association prior to any meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon the occurrence of any of the following circumstances: (1) conveyance of any Lot for which it is given; (2) upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member giving such proxy who is a natural person, (3) upon receipt of written revocation of such proxy by the Secretary from the Member giving such proxy; (4) the attendance of the Member at the meeting for which the proxy was given; or (5) 11 months from the date of the proxy, unless a shorter or longer period is specified in the proxy.

3.9 **Action Without a Meeting.** To the fullest extent permitted under applicable law, any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without notice and without a vote, if written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within 90 days of the earliest date that a notice regarding such consent is delivered by the Association, which date shall be designated in the notices. Such consents shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Members at a meeting. For votes taken by written consent as provided above, the date specified in the notice as the ownership date, which date shall not be more than 20 days prior to the date the notices are sent, shall be the date used for determining the ownership of the Lot for the written consent voting purposes. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

ARTICLE IV

BOARD OF DIRECTORS

4.1 **Governing Body; Composition.** The affairs of the Association shall be governed by a Board of Directors, each of whom shall be a Member of the Association and shall have one equal vote on all matters submitted to a vote of the Board of Directors. In the case of a Member which is not a natural person, any officer, director, partner, employee or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member, provided that no Member may have more than one such representative on the Board of Directors at a time.

4.2 **Number of Directors.** The Board of Directors shall consist of 5 directors, as provided herein.

4.3 **Nomination and Election of Directors.** The directors shall be nominated and elected as follows:

(a) **Nomination Procedures.** Prior to each election, the Board of Directors shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible Member who has a bona-fide interest in serving as a director may file as a candidate for any position. The Board of Directors shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner. Nominations from the floor shall also be permitted.

(b) **Nominating Committee.** Nominations for election to the Board of Directors may also be made by a nominating committee. The nominating committee, if any, shall consist of a Chairperson, who shall be a member of the Board of Directors, and 3 or more Members or representatives of Members. The Board of Directors shall appoint the members of the nominating committee not less than 30 days prior to each annual meeting to serve a term of one year and until their successors are appointed, and such appointment shall be announced at each annual meeting. The nominating committee may make as many nominations for election to the Board of Directors as it shall in its discretion determine. In making the nominations, the nominating committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

(c) **Election and Term.** Directors shall serve terms of office consisting of three (years). So as to promote a continuity of leadership, the terms of office will be staggered so that each year the terms of office of only two or one directors will expire. In light of the fact that Members have previously elected five directors to the Board of Directors, in order to transition to staggered terms of office: (1) the Members shall elect one new director at the annual meeting of Members conducted in 2019; (2) the Members shall elect two new directors at the annual meeting of Members conducted in 2020; and

(3) the Members shall elect two new directors at the annual meeting of Members conducted in 2021. At the first regular meeting of the Board of Directors following the adoption of these Bylaws, the Board shall decide which directors' terms of office shall expire in 2019, 2020, and 2021. Thereafter, all subsequently elected directors shall serve three-year terms of office. A director takes office upon the adjournment of the meeting or balloting at which he is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his or her successor is elected or appointed. The number of directors may be changed by amendment of these Bylaws, but may not be less than three.

(d) **Election Procedures.** Each Owner may cast the entire vote assigned to his or her Lot for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

(e) **Removal.** Any director elected by the Members may be removed, with or without cause, by a 40% or greater vote of all outstanding votes entitled to be cast. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Members to fill the vacancy for the remainder of the term of such director. Any director who has 3 or more consecutive unexcused absences from the Board of Directors meetings, or who is more than 60 days delinquent (or is the representative of a Member who is delinquent more than 60 days) in the payment of any assessment or other charge due the Association, or who after notice and hearing is held to be in violation of the Declaration, may be removed by a majority of the other directors present at a regular or special meeting at which a quorum is present, in which event a successor shall be elected by the Members to fill the vacancy for the remainder of the term of such director. In the event of death, disability or resignation of a director, the Board of Directors may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members shall elect a successor for the remainder of the term.

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

4.5 **Compensation.** Directors shall not receive any compensation from the Association for acting in such capacity. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board of the Directors prior to entering into such contract and

such contract was approved by a majority of the Board of Directors, excluding the interested director.

4.6 **Meetings of the Board of Directors.**

(a) **Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as a majority of the directors shall determine, but at least 1 such meeting shall be held during each fiscal year. Notice of each regular meeting of the Board of Directors shall be provided to all Members to the extent required by, and in accordance with the provisions of, Section 209.0051 of the Texas Property Code or any successor statute.

(b) **Special Meetings.** Special meetings of the Board of Directors shall be held when called by the President or by any 3 directors. Notice of each special meeting of the Board of Directors shall be provided to all Members to the extent required by, and in accordance with the provisions of, Section 209.0051 of the Texas Property Code or any successor statute.

(c) **Notice of Board Meetings.** When notice of a meeting of the Board of Directors is required hereby or by applicable law, such notice shall be given in accordance with the requirements set forth in Section 209.0051(e) of the Texas Property Code or any successor statute.

(d) **Alternative Methods of Meeting (Including Action by Written Consent) Without Prior Notice to Members.** Notwithstanding subsection 3.6(c) above, and to the fullest extent permitted under Section 209.0051(h) of the Texas Property Code or any successor statute (but subject to the limitations set forth therein), the Board of Directors may meet by any method of communication, including electronic or telephonic, without prior notice to owners, if each director may hear and be heard by every other director, or the Board of Directors may take action by unanimous written consent, to consider routine and administrative matters or a reasonably unforeseen emergency or urgent necessity that requires immediate action by the Board of Directors. Any action taken without notice to owners must be summarized orally, including an explanation of any actual or known expenditures approved at the meeting, and documented in the minutes of the next regular or special meeting of the Board of Directors.

(e) **Quorum of Board of Directors.** At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors, unless otherwise specified in these Bylaws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

(f) **Open Meetings.** All meetings of the Board of Directors shall be open to

all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board of Directors and reconvene in closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the Association's attorney, matters involving the invasion of privacy of Members, or matters that are to remain confidential at the request of the affected parties and agreement of the Board of Directors, and as otherwise permitted under applicable law. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual Members, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.

4.7 Powers of Directors. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs and operation of the Association and for the operation and maintenance of the Property as may be required or permitted by the Declaration, these Bylaws, the Certificate of Formation and Texas law. The Association, acting through the Board of Directors, may do any and all things that are lawful and which are necessary, proper, or desirable in operating for the best interests of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Declaration, the Certificate of Formation or these Bylaws.

4.8 Duties of Directors. The powers and duties of the Board of Directors shall include, without limitation:

(a) preparing and adopting, in accordance with the Declaration, an annual budget for the projected costs of the maintenance, upkeep, insurance and payment of taxes for the Common Area and for the preservation of the Common Area for the intended uses and purposes thereof establishing and determining the amount(s) of all assessments;

(b) fixing the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period, which assessment shall be an equal amount for each Lot and which shall be calculated to meet the anticipated costs of the maintenance, upkeep and payment of taxes for the Common Area and for the preservation of the Common Area for the intended purpose thereof;

(c) sending written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period and foreclosing the lien securing payment of assessments against any Lot for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.

(d) issuing, or causing an appropriate officer to issue, upon demand by any

person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) providing for the operation, care, upkeep and maintenance of the Common Area;

(f) paying required taxes for the Common Area;

(g) procuring and maintaining adequate liability and hazard insurance on property owned by the Association;

(h) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and materials to be used by such personnel in the performance of their duties;

(i) depositing all funds received on behalf of the Association in appropriate bank accounts or in other accounts approved by the Board of Directors, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board of Directors' good faith best business judgment, in depositories other than banks;

(j) making, amending and enforcing policies, resolutions, rules and regulations governing the administration and operation of the Association, including but not limited to, policies and procedures regarding the application of payments for assessments, late charges, interest, costs of collection (including, but not limited to, attorneys' fees), fines and any and all other charges received from Owners;

(k) adopting and setting a fining policy as deemed appropriate in enforcing these Bylaws and Declaration.

(l) opening the bank accounts on behalf of the Association and designating the signatories required;

(m) making or contracting for the making of repairs, additions and improvements to or alterations of the Common Area in accordance with the Declaration and these Bylaws;

(n) enforcing the provisions of the Declaration and any rules or standards developed pursuant to the Declaration, the Certificate of Formation and/or these Bylaws, and bringing any legal proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;

(o) obtaining and carrying insurance as provided in the Declaration, paying

the cost thereof, and filing and adjusting claims, as appropriate;

(p) paying the cost of all services rendered to the Association;

(q) keeping books with detailed accounts of the receipts and expenditures of the Association;

(r) causing all Officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(s) taking such actions as contemplated by the Board of Directors in the Declaration, these Bylaws and/or the Certificate of Formation;

(t) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Property; and

(u) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association or any agent, contractor or management company of the Association to the extent such indemnity is required or permitted under Texas law, the Certificate of Formation, the Bylaws or the Declaration.

4.9 **Borrowing.** The Association shall have the power to borrow money for any legal purpose; provided, however, that the Board of Directors shall obtain Member approval in the same manner provided for special assessment as specified in the Declaration if the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 10% of the budgeted gross expenses of the Association for that fiscal year.

ARTICLE V

OFFICERS

5.1 **Officers.** The officers of the Association shall be a President, Vice President, Secretary and Treasurer. The President and Secretary shall be elected from among the members of the Board of Directors; other officers may, but need not be members of the Board of Directors. Any two or more offices may be held by the same person, except for the offices of President and Secretary.

5.2 **Election of Officers.** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

5.3 **Term.** The officers of the Association shall be elected annually by the Board of Directors and each shall hold office for 1 year, unless he or she shall sooner resign, or shall be removed, or otherwise be disqualified to serve.

5.4 **Special Appointments.** The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board of Directors may, from time to time, determine.

5.5 **Resignation and Removal.** Any officer may be removed from office, with or without cause, by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

5.6 **Vacancies.** A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

5.7 **Powers and Duties.** The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors, including, without limitation, the following:

(a) **President.** The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Board of Directors and the Members and shall see that orders and resolutions of the Board of Directors are carried out.

(b) **Vice President.** The Vice President shall act in place and stead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board of Directors.

(c) **Secretary.** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members; serve notice of meetings of the Board of Directors and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as required by the Board of Directors.

(d) **Treasurer.** The Treasurer shall receive and deposit, in appropriate bank accounts or in other accounts approved by the Board of Directors, all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; sign all checks of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of each to the Members.

5.8 **Authorized Agents.** Except when the Declaration, these Bylaws or the Certificate

of Formation require execution of certain instruments by certain individuals, the Board of Directors may authorize any person to execute instruments on behalf of the Association. In the absence of such Board of Directors' resolution, the President, Secretary and Treasurer are the only persons authorized to execute instruments on behalf of the Association. However, only the President and/or Secretary shall have the authority to sign a mortgage or deed of trust relating to the Common Area.

ARTICLE VI

ASSOCIATION MATTERS

6.1 **Committees.** In addition to the committees established below, the Board of Directors may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board of Directors may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

(a) **Nominating Committee.** The Board of Directors shall appoint a Nominating Committee, as provided in these Bylaws, to nominate candidates for election to the Board of Directors

(b) **Architectural Control Committee.** The President shall be chairman of the Architectural Control Committee and along with the other board members shall chose the other two (2) Members to serve on the Architectural Control Committee. Members on the Architectural Control Committee serve at the pleasure of the Board of Directors and may be removed at any time by the Board. The actions of the Architectural Control Committee. shall be subject to the rights of individuals bringing matters before the Architectural Control Committee to appeal same to the Board of Directors.

6.2 **Management.** The Board of Directors may employ for the Association a professional management agent or agents at such compensation as the Board of Directors may establish, to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policymaking authority. The Board of Directors may delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

6.3 **Right to Contract.** The Association shall have the right to contract with any person or entity for the performance of various duties and functions. This right shall include, without limitation, the right to enter into management, operational or other agreements with other persons or entities; provided, any such agreement shall require approval of the Board of Directors.

6.4 **Accounting Standards.** The following management standards of performance shall be followed unless the Board of Directors by resolution specifically determines otherwise:
(a) accrual accounting, as defined by generally accepted accounting principles, shall be

employed; (b) accounting and controls should conform to generally accepted accounting principles; (c) cash accounts of the Association shall not be commingled with any other accounts; (d) no remuneration shall be accepted by the managing agent from vendors, independent contractors or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts or otherwise; anything of value received shall benefit the Association; and (e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors.

6.5 Accounting Reports. Unless the Board of Directors by resolution specifically determines otherwise, commencing at the end of each fiscal year, the Board of Directors shall obtain an annual report consisting of at least the following, which shall be made available to all Members within 6 months after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board of Directors determines, by an independent public accountant.

6.6 Enforcement of Declaration. The Association shall have the power, as provided in the Declaration and in accordance with all applicable laws, regulations, rules and statutes, to impose sanctions for any violation of any duty imposed under the Declaration (and any rules promulgated pursuant thereto), these Bylaws and the Certificate of Formation and any amendment thereto.

6.6 Indemnification. To the fullest extent permitted by applicable law, the Association will indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that such person is or was a director, officer, committee member, employee, servant, or agent of the Association against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement) actually and reasonably incurred by such person in connection with such action, suit or proceeding if it is found and determined by the Board or a court that such person: (i) acted in good faith and in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the Association; or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of any action, suit, or proceeding by settlement, or upon a plea of Nolo Contendere or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner reasonably believed to be in, or not opposed to, the best interests of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful.

ARTICLE VII

ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessment (and specific assessments if applicable) which are secured by a continuing lien upon the Lot against which the assessment is made. If an assessment is not paid as provided in the Declaration, then the Association shall be entitled to the remedies provided in the Declaration, these Bylaws and the Certificate of Formation.

ARTICLE VIII

AMENDMENTS

8.1 **Amendment by the Board of Directors.** The Board of Directors may amend these Bylaws if such amendment (a) is necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation or judicial determination; (b) is necessary to comply with the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U. S. Department of Veterans Affairs, the U. S. Department of Housing and Urban Development or any other applicable governmental agency or secondary mortgage market entity; (c) is necessary to clarify or to correct technical, typographical or scrivener's errors; or (d) any other purpose; provided, however, that any such amendment must not have a material adverse effect upon any right of any Owner.

8.2 **Amendment by Members.** Except as provided above, these Bylaws may be amended, at a regular or special meeting of Members, by a vote of a majority of a quorum of Members present in person or by proxy.

8.3 **Validity and Effective Date of Amendments.** Amendments to these Bylaws shall become effective upon the date of its recording in the Official Public Records of Midland County, Texas, unless a different date is specified in the amendment. Any procedural challenge to an amendment must be made within 3 months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

ARTICLE VIII

MISCELLANEOUS

9.1 **Fiscal Year.** The fiscal year of the Association shall be determined by the Board of Directors. If the Board of Directors fails to adopt a certain fiscal year, then until the Board of Directors adopts a specific fiscal year the fiscal year shall be January 1st to December 31st of every year, except that the first fiscal year shall begin on the date of incorporation of the Association.

9.2 **Conflicts.** In the event of any conflict between the Certificate of Formation and

these Bylaws, the Certificate of Formation shall control; and in the event of any conflict between the Declaration and these Bylaws, the Declaration shall control.

9.3 **Books and Records.**

(a) **Inspection by Members.** The Board of Directors shall make the books and records of the Association available for inspection and copying by any Member, or the duly appointed representative of any Member, in accordance with the requirements of Section 209.005 of the Texas Property Code or any successor statute.

(b) **Rules of Inspection.** Except to the extent expressly prohibited by applicable law, the Board of Directors may establish reasonable rules with respect to: (i) notice to be given to the custodian of the records; (ii) hours and days of the week when such an inspection may be made; and (iii) payment of the cost of reproducing copies of documents requested.

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

9.4 **Notices.** Except as otherwise provided in the Declaration or these Bylaws, all notices, demands, bills, statements and other communications under the Declaration or these Bylaws shall be in writing and shall be given personally or by mail. Notices that are mailed shall be deemed to have been duly given 3 days after deposit, unless such mail service can prove receipt at an earlier date. Owners shall maintain one mailing address for a Lot, which address shall be used by the Association for mailing of notices, statements and demands. If an Owner fails to maintain a current mailing address for a Lot with the Association, then the address of that Owner's Lot is deemed to be such Owner's mailing address. If a Lot is owned by more than one person or entity, then notice to one co-owner is deemed notice to all co-owners. Attendance by a Member or director at any meeting shall constitute waiver of notice by the Member or director of the time, place and purpose of the meeting. Written waiver of notice of a meeting, either before or after a meeting, of the Members or directors shall be deemed the equivalent of proper notice.

9.5 **Choice of Law.** These Bylaws will be construed under Texas law.

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

9.7 **Construction.** To the greatest extent possible, these Bylaws shall be construed to conform to all legal requirements for obtaining and maintaining all tax exemptions available to nonprofit corporations. 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 may not 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.

9.8 **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.