

## Office of the Secretary of State

### CERTIFICATE OF FILING OF

DELANO CROSSING HOMEOWNERS ASSOCIATION, INC.

File Number: 800804840

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Nonprofit Corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 04/20/2007

Effective: 04/20/2007



A handwritten signature in black ink that reads "Roger Williams".

Roger Williams  
Secretary of State

**CERTIFICATE OF FORMATION OF NONPROFIT CORPORATION**  
**(DELANO CROSSING HOMEOWNERS ASSOCIATION, INC.)**

The undersigned, being a natural person over the age of eighteen (18) years or more, and a citizen of the State of Texas, acting as Organizer under Chapter 3 of the Texas Business Organizations Code, submits this Certificate of Formation of Nonprofit Corporation.

**ARTICLE I**  
*Entity Name and Type*

The filing entity being formed is a nonprofit corporation. The name of the entity is **DELANO CROSSING HOMEOWNERS ASSOCIATION, INC.** (hereafter referred to as the "Nonprofit Corporation").

**ARTICLE II**  
*Registered Agent and Registered Office*

The initial registered agent is an individual resident of the state whose name is Michael Van. The business address of the Nonprofit Corporation's registered agent and the registered office address is 322 Julie Rivers Drive, Sugar Land, Texas 77478.

**ARTICLE III**  
*Management*

**Section 1.** The management of the affairs of the Nonprofit Corporation is vested in the Board of Directors. The initial Board of Directors shall consist of three (3) Directors. The names and addresses of the persons hereby elected to serve as Directors until the first Board of Directors is elected by the Member, or until a successor or successors shall have been elected and qualified, are:

<u>Name</u>	<u>Address</u>
Richard Shaver	322 Julie Rivers Drive Sugar Land, Texas 77478
Michael Van	322 Julie Rivers Drive Sugar Land, Texas 77478
Tim F. Naizer	322 Julie Rivers Drive Sugar Land, Texas 77478

**Section 2.** The number of Directors constituting the Board of Directors of the Nonprofit Corporation and their qualifications shall be fixed or determined by, or in the manner provided in, the Bylaws of the Nonprofit Corporation, except that the initial Board of Directors shall be established in accordance with Section 1 above.

**Section 3.** The number of Directors may be increased or decreased from time to time by the manner provided in the Bylaws, except that no decrease shall have the effect of shortening the term of any incumbent Directors. In the absence of a Bylaw providing for the number of Directors, or should the Nonprofit Corporation fail to determine the number of Directors in the manner provided in the Bylaws, the number shall be the same as the number of Directors constituting the initial Board of Directors.

#### **ARTICLE IV**

##### ***Members***

The Nonprofit Corporation shall have members. Every person or entity who is a record owner of fee simple title to any property subject to assessment by the Nonprofit Corporation shall be a member of the Nonprofit Corporation. Persons or entities who hold an interest in any property subject to assessment merely as security for the performance of any obligation shall not, however, be members. Membership shall be appurtenant to and may not be separated from property ownership, which shall be the sole qualification to be a member.

#### **ARTICLE V**

##### ***Purposes and Powers***

The Nonprofit Corporation is formed for the purposes of providing for community, civic, and social welfare of the owners, residents, and occupants of the land which may at any time, and from time to time, be subject to that certain Declaration of Covenants, Conditions, Restrictions and Easements of Delano Crossing Townhomes (the "Declaration") and any Supplemental Restrictions or Annexation Agreements related to Delano Crossing Townhomes to be recorded in the Official Public Records of Real Property of Harris County, Texas, and to promote the health, safety, and welfare of the owners, residents, and occupants, and for these purposes:

- a. To provide an organization consisting of the owners of townhomes in and to govern the affairs of that certain property known as Delano Crossing Townhomes consisting of and located on the real property in Harris County, Texas, known as Delano Crossing Subdivision, a Subdivision of a 0.8604 acre tract being a Replat of Lots 1-5, 11, & 12, Block 502, South Side Buffalo Bayou, City of Houston, Harris County, Texas, according to the map or plat thereof recorded under Harris County Clerk's File No. Z478355. IT SHALL NOT BE ONE OF THE PURPOSES OF THE NONPROFIT CORPORATION TO PROVIDE SECURITY TO THE RESIDENTS OF THE PROPERTY OR THEIR GUESTS AND INVITEES. NEITHER DELANO CROSSING, LTD., A TEXAS LIMITED PARTNERSHIP, ITS SUCCESSORS, ASSIGNS, BENEFICIARIES OR PARTNERS (THE "DECLARANT"), THE NONPROFIT CORPORATION, ITS BOARD, NOR ITS OFFICERS, DIRECTORS OR ITS AGENTS SHALL EVER IN ANY WAY, BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE DELANO CROSSING TOWNHOMES NOR SHALL

THEY BE LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR ALLEGED FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY.

- b. To provide and maintain the common areas, facilities, and services of overall benefit to owners, residents, and occupants of the land subject to the jurisdiction of the Nonprofit Corporation, including, but not by way of limitation, maintenance of the common areas conveyed to or owned by the Nonprofit Corporation, and other services, facilities and activities as may be in the community's interest.
- c. To exercise all of the powers and privileges and to perform all of the duties and obligations of the Nonprofit Corporation as set forth in the Declaration.
- d. To fix, levy, collect, and enforce payment by any lawful means of any charges or assessments as set forth in or pursuant to the Declaration.
- e. To pay all office and other expenses incident to the conduct of the business of the Nonprofit Corporation, including all licenses, taxes, and governmental charges levied or imposed against the property of the Nonprofit Corporation.
- f. To acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of interests in and to real or personal property in connection with the affairs of the Nonprofit Corporation.
- g. To borrow money and with the approval of a majority of the votes of the Nonprofit Corporation, mortgage, pledge, deed in trust, or hypothecate any or all of the Nonprofit Corporation's real or personal property as security for money borrowed or debts incurred;
- h. To dedicate, sell, or transfer all, or any part, of the parks, common area, and facilities owned by the Nonprofit Corporation to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Board of Directors; provided that no conveyance of any parks, common area, or facilities other than the granting of utility easements shall be permitted except to a public entity established for purposes similar to the Nonprofit corporation or which shall be dedicated to the preservation of community purposes and interest and which is capable of maintaining and agreeing to maintain the same; and further provided that any dedication, sale, or transfer other than for utility easements shall be approved by a 2/3 majority of the votes in the Nonprofit Corporation.

- i. To participate in mergers and consolidations with other nonprofit corporations organized for the same purposes provided that any merger or consolidation shall be approved by a 2/3 majority of the votes in the Nonprofit Corporation.
- j. To establish and enforce rules and regulations governing the use, operation, maintenance, control and disposition of property to which the Nonprofit Corporation holds title or to which control is vested in the Nonprofit Corporation.
- k. To exercise any and all powers, rights and privileges which a corporation organized under the Texas Business Organization Code by law now, or hereafter, may have or exercise; provided that none of the objects or purposes set out in this document shall be construed to authorize the Nonprofit Corporation to do any act in violation of the Texas Business Organization Code, and all such objects or purposes are subject to such Code.

**ARTICLE VI**  
***Voting Rights***

Votes in the Nonprofit Corporation shall be assigned on the basis of Townhome Sites which shall be defined as the portion of the Property on which a Dwelling is or will be situated.

For as long as Class B votes shall continue to exist, there shall be two classes of votes in the Nonprofit Corporation, as follows:

**Class A.** Class A Member shall be all Members with the exception of Declarant. Class A Members shall be entitled to one vote for each Townhome Site in which they hold the interest required for membership. When more than one person holds such interest or interests in any Townhome Site, all such persons shall be Members, and the vote for such Townhome Site shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any such Townhome Site.

**Class B.** The Class B Member(s) shall be the Declarant. The Class B Member(s) shall be entitled to five (5) votes for each Townhome Site owned by the Class B Member(s); provided, however, that the Class B membership shall cease and be converted to Class A membership on the Election Date. The Election Date shall mean the earliest of the dates when (i) all of Declarant's Townhome Sites have been sold to Owners; (ii) five (5) years have lapsed from the date of recordation of the Declaration; or (iii) Declarant by written notice to the Board of Directors notifies the Association of the Declarant's election to cause the Election Date to occur.

**ARTICLE VII**  
*Duration*

The Nonprofit Corporation shall exist perpetually.

**ARTICLE VIII**  
*Dissolution and Manner of Distribution*

The Nonprofit Corporation may be dissolved upon approval by 2/3 majority of the total votes in the Nonprofit Corporation. Upon dissolution of the Nonprofit Corporation, other than incident to a merger or consolidation, the assets of the Nonprofit Corporation shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Nonprofit Corporation was created. If dedication is refused, the assets shall be granted, conveyed, and assigned to any non-profit corporation, association, trust, or other organization to be devoted to such similar purposes. No part of the income or assets of the Nonprofit Corporation is distributable to or for the benefit of its members, directors, or officers, except to the extent permissible under law.

**ARTICLE IX**  
*Indemnification*

The Nonprofit Corporation shall indemnify any person who was, or is, threatened to be made a named defendant or respondent in a proceeding (as hereinafter defined) because the person: (i) is, or was, a Director or officer of the Nonprofit Corporation; or (ii) while a Director or officer of the Nonprofit Corporation is, or was, serving at the request of the Nonprofit Corporation as a trustee, officer, partner, venturer, proprietor, Director, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise, to the fullest extent that corporation may grant indemnification to a Director under the Texas Business Organization Code, as the same exists or may hereafter be amended. Such right shall be a contract right and shall include the right to be paid by the Nonprofit Corporation expenses incurred in defending any such proceeding in advance of its final disposition to the maximum extent permitted under the Texas Business Organization Code, as the same exists or may hereafter be amended. If a claim for indemnification or advancement of expenses hereunder is not paid in full by the Nonprofit Corporation within ninety (90) days after a written claim has been received by the Nonprofit Corporation, the claimant may, at any time thereafter, bring suit against the Nonprofit Corporation to recover the unpaid amount of the claim. And if successful in whole or in part, the claimant shall be entitled to be paid also the expenses of prosecuting such claim. It shall be a defense to any such action that such indemnification or advancement of costs of defense are not permitted under the Texas Business Organization Code, but the burden of proving such defense shall be on the Nonprofit Corporation. Neither the failure of the Nonprofit Corporation (including its Board of Directors or any committee thereof, special legal counsel, or members, if any) to have made its determination prior to the commencement of such action that indemnification or, or advancement of costs of defense to, the claimant is permissible in the circumstances, nor an actual determination by the Nonprofit Corporation (including its Board of

Directors, or any committee thereof, special legal counsel, or members, if any) that such indemnification or advancement is not permissible shall be a defense to the action or create a presumption that such indemnification or advancement is not permissible. In the event of the death of any person having a right of indemnification under the foregoing provisions, such right shall inure to the benefit of that person's heirs, executors, administrators, and personal representatives. The rights conferred above shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, bylaw, resolution of members, if any, or Directors, agreement otherwise. To the extent permitted by then applicable law, the grant of mandatory indemnification to any person pursuant to this section shall extend to proceedings involving the negligence of such persons. The Nonprofit Corporation may additionally indemnify any person covered by the grant of mandatory indemnification contained above to such further extent as is permitted by law and may indemnify any other person to the fullest extent permitted by law. The Nonprofit Corporation may purchase and maintain insurance on behalf of any person who is serving the Nonprofit Corporation (or another entity at the request of the Nonprofit Corporation) against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person, whether or not the Nonprofit Corporation would have the power to indemnify him against that liability under this Article or by statute. Notwithstanding the foregoing, no person shall be indemnified pursuant to the provisions of this section and no insurance may be maintained on behalf of any person if such indemnification or maintenance of insurance would subject the Nonprofit Corporation or such person to income or excise tax under the Internal Revenue Code of the United States as in effect from time to time, including any tax asserted under Chapter 42 of the Code. As used herein, the term "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitral, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

## **ARTICLE X** ***Director Liability***

To the fullest extent permitted by applicable law, no Director of the Nonprofit Corporation shall be liable to the Nonprofit Corporation for monetary damages for an act or omission in such Director's capacity as a Director of the Nonprofit Corporation, except that this Article shall not eliminate or limit the liability of a Director of the Nonprofit Corporation to the extent the Director is found liable for any of the following:

- a. A breach of such Director's duty of loyalty to the Nonprofit Corporation;
- b. An act or omission not in good faith that constitutes a breach of duty of the Director to the Nonprofit Corporation, or an act or omission that involves intentional misconduct or a knowing violation of the law;
- c. A transaction from which such Director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of such Director's office; or

- d. An act or omission for which the liability of such Director is expressly provided for by statute.

Any repeal or amendment of this Article by the Nonprofit Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a Director of the Nonprofit Corporation existing at the time of such repeal or amendment. In addition to the circumstances in which a Director of the Nonprofit Corporation is not personally liable as set forth in the foregoing provisions, a Director shall not be liable to the Nonprofit Corporation to such further extent as permitted by any applicable law hereafter enacted, including without limitation, any subsequent amendments of the Texas Business Organization Code.

## **ARTICLE XI**

### ***Indemnification***

The Board of Directors shall adopt Bylaws consistent with this Certificate of Formation and the Declaration. Those Bylaws may be amended by the Class B Member(s) on their own motion from the date hereof until termination of the Class B membership on the Conversion Date. Alternatively, the Bylaws may be amended at a regular or special meeting of the Members by a vote of the Members holding a majority of the votes of the Class Members that are present in person or by proxy and the assent of the Class B Member(s), if any.

## **ARTICLE XII**

### ***General Provisions***

The Nonprofit Corporation is a non-profit corporation, without capital stock, organized solely for the purposes specified in Article V; and no part of the Nonprofit Corporation's property, whether income or principal, shall ever inure to the benefit of, or be distributable to, any Director, officer, or employee of the Nonprofit Corporation, or of any individual having a personal or private interest in the activities of the Nonprofit Corporation, nor shall any such Director, officer, employee, or individual receive or be lawfully entitled to receive any profit from the operations of the Nonprofit Corporation except a reasonable allowance for salaries or their compensation for personal services actually rendered in carrying out one or more of its stated purposes.

## **ARTICLE XIII**

### ***Action Without Meeting***

Provided the provisions of Article 1396-9.10C of the Texas Non-Profit Corporation Act are fully complied with, any action required by the Texas Non-Profit Corporation Act to be taken at a meeting of Members or Directors of the Nonprofit Corporation or any action that may be taken at a meeting of the Members or Directors or of any committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of Members, Directors, or committee members as would be necessary to take that action at a meeting at which all of the Members, Directors, or members of the committee were present and voted.



**ARTICLE XIV**  
*Organizer*

The name and address of the organizer is:

Dwight Donaldson  
322 Julie Rivers Drive  
Sugar Land, Texas 77478

**ARTICLE XV**  
*Effectiveness of Filing*

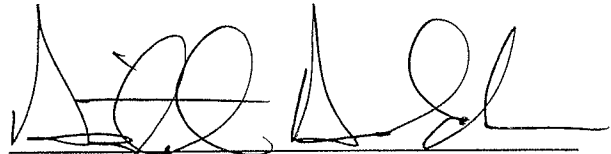
This document becomes effective when filed by the Secretary of State.

**ARTICLE XVI**  
*Execution*

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date:

April 20, 2007



Dwight Donaldson