

Notice

INSTRUMENT TO RECORD DEDICATORY INSTRUMENTS

STATE OF TEXAS §
COUNTY OF HARRIS §

X982204
10/11/04 100615214 \$56.00

This Instrument is being recorded by Terrace Brook Homeowner Association, Inc., a Texas non-profit corporation (the "Association"), pursuant to Section 202.006 of the Texas Property Code.

Section 202.006 of the Texas Property Code requires a property owners' association to record each dedicatory instrument in the real property records of the county in which the property to which the dedicatory instrument relates is located, if such instrument has not previously been recorded; and

Restrictive covenants and other matters concerning the encumbered property and/or Association are set forth in the previously recorded dedicatory instruments described hereinbelow. The previously recorded dedicatory instruments described hereinbelow may not include all the dedicatory instruments previously recorded with regard to the encumbered property and/or the Association.

Document

- 1. Declaration of Covenants, Conditions & Restrictions for Terrace Brook
2. Plat for Terrace Brook

Recording Data

Clerk's File No. X941667, Official Public Records of Real Property, Harris County, Texas
Film Code No. 566118, Map Records, Harris County, Texas

The Association is currently subject to the following additional dedicatory instruments, which have not been previously recorded, to-wit:

- 1. Articles of Incorporation, and
2. Bylaws.

Pursuant to Section 202.006 of the Texas Property Code, the Association does hereby record such additional dedicatory instruments, copies of which are attached hereto. Each dedicatory instrument attached hereto is subject to amendment pursuant to the amendatory procedures applicable thereto.

Executed to be effective as of the 6th day of October, 2004.

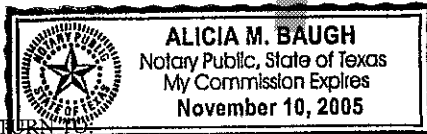
TERRACE BROOK HOMEOWNER ASSOCIATION, INC.

By:

Stephen L. Brown, President

STATE OF TEXAS §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 11th day of October, 2004, by Stephen L. Brown, President of Terrace Brook Homeowner Association, Inc., a Texas non-profit corporation, on behalf of said corporation.



Notary Public, State of Texas

WHEN RECORDED, RETURN TO:
Terrace Brook HOA
Attn: Kathy F. Powell
1601 Elm Street, Suite 300
Dallas, Texas 75201

FILED FOR RECORD
8:00 AM

OCT 11 2004

County Clerk, Harris County, Texas

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OCT 06 2004

ARTICLES OF INCORPORATION
OF
TERRACE BROOK HOMEOWNER ASSOCIATION, INC
Corporations Section

The undersigned natural person of the age of eighteen (18) years or more, a citizen of the State of Texas, acting as the incorporator of a corporation under the Texas Non-Profit Corporation Act, hereby adopts the following Articles of Incorporation for such Corporation:

ARTICLE I.

The name of the corporation is Terrace Brook Homeowner Association, Inc. (hereinafter referred to as the "Association").

ARTICLE II.

The Corporation is a non-profit corporation.

ARTICLE III.

The period of the Corporation's duration is perpetual.

ARTICLE IV.

Reference is hereby made to that certain Declaration of Covenants, Conditions and Restrictions for Terrace Brook, duly recorded under Clerk's File No. X941667, in the Official Public Records of Real Property of Harris County, Texas (as amended from time to time, the "Declaration"). All terms defined in the Declaration are used herein with the same meaning, unless otherwise defined herein. The Association does not contemplate pecuniary gain or profit to its Members. The purpose or purposes for which the Association is formed are: (a) to provide for the preservation of the values and amenities and the maintenance of the common improvements of the Terrace Brook single family residential project, being the land more fully described in the Declaration and subdivided as one or more sections of Terrace Brook, a subdivision in Harris County, Texas, according to the maps or plats thereof recorded in the Map Records of Harris County, Texas, and any and all other property that is accepted by the Association in accordance with the terms of the Declaration (collectively, the "Property"); (b) to exercise the powers of (i) maintaining, administering and using the Common Areas and such other common areas and facilities (collectively, the "Common Properties"), (ii) administering and enforcing the covenants, conditions and restrictions affecting the Property and set forth in the Declaration, and (iii) collecting and disbursing the assessments and charges imposed, or to be imposed, upon the Property, all as more fully described in the Declaration; (c) to promote the common health, and welfare of the Members of the Association; and (d) to perform the actions of the Association that are required or permitted by these Articles of Incorporation of the Association, the Bylaws, and the Declaration. In fulfilling these purposes, the Association shall do the following:

- A. Exercise all of the powers and privileges and perform all of the duties set forth in the Declaration as may be amended from time to time, the Declaration being incorporated herein as if fully set forth (but subject to any limitations as may be contained in the Declaration);
- B. Operate without profit for the sole and exclusive benefit of its Members; and

C. Have and exercise any and all powers, rights and privileges that may now or hereafter be exercised by a corporation organized under the Non-Profit Corporation Act of the State of Texas.

ARTICLE V.

The street address of the initial registered office of the Association is 1601 Elm Street, Suite 300, Dallas, Texas 75201, and the name of its initial registered agent at such address is Stephen L. Brown.

ARTICLE VI.

The affairs of the Association shall be managed by the Board of Directors. The number of Directors of the Association shall be fixed by the Bylaws of the Association but shall not be less than three (3). The number of Directors constituting the initial Board of Directors of the Association is three (3), and the names and addresses of the persons who are to serve as the initial Directors are as follows:

Name	Address
Stephen L. Brown	1601 Elm Street, Suite 300 Dallas, Texas 75201
Keith D. Martin	1601 Elm Street, Suite 300 Dallas, Texas 75201
James S. Cornelius	1601 Elm Street, Suite 300 Dallas, Texas 75201

ARTICLE VII.

The Association shall indemnify any person who was, is, 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 Association or (ii) while a Director or officer of the Association, is or was serving at the request of the Association 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 a corporation may grant indemnification to a Director under the Texas Non-Profit Association Act, 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 Association expenses incurred in defending any such proceeding in advance of its final disposition to the maximum extent permitted under the Texas Non-Profit Association Act, 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 Association within ninety (90) days after a written claim has been received by the Association, the claimant may at any time thereafter bring suit against the Association 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 Non-Profit Association Act, but the burden of proving such defense shall be on the Association. Neither the failure of the Association (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 of, or advancement of costs of defense to, the claimant is permissible in the circumstances nor an actual determination by the Association (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, or otherwise. To the extent permitted by then applicable law, the grant of mandatory indemnification to any person pursuant to this Article shall extend to proceedings involving the negligence of such persons. The Association 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 Association may purchase and maintain insurance on behalf of any person who is serving the Association (or another entity at the request of the Association) 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 Association 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 Article and no insurance may be maintained on behalf of any person if such indemnification or maintenance of insurance would subject the Association or such person to income or excise tax under the Internal Revenue Code of the United States as in effect from time to time (the "Code"), 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, arbitrative, 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 VIII.

To the fullest extent permitted by applicable law, no Director of the Association shall be liable to the Association for monetary damages for an act or omission in such Director's capacity as a Director of the Association, except that this paragraph shall not eliminate or limit the liability of a Director of the Association 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 Association;
- B. An act or omission not in good faith that constitutes a breach of duty of the Director to the Association, 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 Association shall be prospective only, and shall not adversely affect any limitation on the personal liability of a Director of the Association existing at the time of such repeal or amendment. In addition to the circumstances in which a Director of the Association is not personally liable as set forth in the foregoing provisions, a Director shall not be liable to the Association to such further extent as permitted by any applicable law hereafter enacted, including without limitation, any subsequent amendments of the Texas Miscellaneous Association Laws Act or the Texas Non-Profit Association Act.

ARTICLE IX.

The Board of Directors shall adopt Bylaws consistent with these Articles of Incorporation and the Declaration. Thereafter, the Bylaws may be amended (including the repeal of the Bylaws accompanied by the adoption of new Bylaws) in any manner set forth in the Declaration, or, if no provision for amendment is made

in the Declaration, then at any annual or special meeting of the Members at which a quorum is present, by a vote of the Members holding a majority of the eligible votes of all Members (regardless of class) that are present in person or by proxy at that meeting (provided that the Declarant, or each Declarant if there are more than one, must consent thereto if such amendment is to be effective at a time when Declarant owns at least one Lot). To the extent that this provision (x) requires that a greater number of votes of Members be cast for the adoption of an amendment to the Bylaws than would otherwise be required under the Texas Non-Profit Corporation Act or other law or (y) permits the Bylaws to be amended by the casting of a lesser number of votes of Members than would otherwise be permitted under the Texas Non-Profit Corporation Act or other law, this provision is intended to, and shall operate to, limit, enlarge or deny (as is applicable) voting rights of certain classes of Members.

ARTICLE X.

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

Upon dissolution of the Association, other than incident to a merger or consolidation, any assets required to be distributed pursuant to the terms of §6.02A(1), (2) or (3) of the Texas Non-Profit Corporation Act, as amended, shall be so distributed, and any excess assessments collected by the Corporation shall be rebated to the Members to the extent that such rebate by a "homeowner's association" is permitted by Section 528 of the Internal Revenue Code and in the manner determined by the Board of Directors to most fairly take into account the amount and nature of assessments paid to the Association with respect to each Lot comprising the Property from among the manners of distribution permitted in the case of a homeowner's association qualifying under Section 528 of the Internal Revenue Code.

ARTICLE XI.

These Articles may be amended in any manner set forth in the Declaration, or, if no provision for amendment is made in the Declaration, then at any annual or special meeting of the Members at which a quorum is present, by a vote of the Members holding a majority of the eligible votes of all Members (regardless of class) that are present in person or by proxy at that meeting (provided that the Declarant, or each Declarant if there are more than one, must consent thereto if such amendment is to be effective at a time when Declarant owns at least one Lot). To the extent that this provision (x) requires that a greater number of votes of Members be cast for the adoption of an amendment to these Articles than would otherwise be required under the Texas Non-Profit Corporation Act or other law, (y) permits these Articles to be amended by the casting of a lesser number of votes of Members than would otherwise be permitted under the Texas Non-Profit Corporation Act or other law or (z) permits these Articles to be amended without a resolution of the Board of Directors, this provision is intended to, and shall operate to, limit, enlarge or deny (as is applicable) voting rights of certain classes of Members and limit the authority of the Board of Directors.

ARTICLE XII.

Any action required by the Texas Non-Profit Corporation Act to be taken at a meeting of the members or directors of a 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

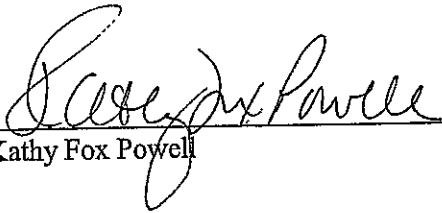
by a sufficient number of Members, Directors or committee members as would be necessary to take that action at a meeting at which all of the Members, Directors or committee members entitled to vote with respect to the subject matter thereof were present and voted.

ARTICLE XIII.

The name and address of the incorporator is:

Name	Address
Kathy Fox Powell	1601 Elm Street, Suite 300 Dallas, Texas 75201

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of October, 2004.



 Kathy Fox Powell

593-78-2452

COPY

UNOFFICIAL

BYLAWS

OF

TERRACE BROOK HOMEOWNER ASSOCIATION, INC.

0542-01-03-050

UNOFFICIAL COPY

TABLE OF CONTENTS

SECTION 1	CERTAIN DEFINITIONS	1
SECTION 2	NAME	1
SECTION 3	OFFICES	1
3.1	Registered Office.....	1
3.2	Other Offices.....	1
SECTION 4	PURPOSES AND PARTIES	1
4.1	Purposes.	1
4.2	Parties.	2
SECTION 5	MEMBERSHIP, MEMBER IN GOOD STANDING, VOTING RIGHTS, VOTING, CUMULATIVE VOTING, QUORUM, PROXIES, ACTION WITHOUT A MEETING	2
5.1	Membership.....	2
5.2	Member in Good Standing.	2
5.3	Voting Rights in the Association.	2
5.4	Voting.	2
5.5	Notice and Quorum.....	3
5.6	Proxies.	3
5.7	Action Without a Meeting.	3
SECTION 6	ASSOCIATION RESPONSIBILITIES AND MEETINGS OF MEMBERS.....	3
6.1	Association Responsibilities.....	3
6.2	Place of Meetings.	3
6.3	Annual Meetings.	3
6.4	Special Meetings.	4
6.5	Notice of Meetings.....	4
6.6	Order of Business.....	4
6.7	Action Without a Meeting.....	4
SECTION 7	BOARD OF DIRECTORS	5
7.1	Number, Character and Qualification.	5
7.2	Powers and Duties Generally.	5
7.3	Certain Specific Powers and Duties.	5
7.4	Reserve Fund.	7
7.5	No Waiver of Rights.	7
7.6	Election and Term of Office.	7
7.7	Vacancies.	7
7.8	Removal of Directors.....	7
7.9	First Meeting of New Board.	8
7.10	Regular Meetings.	8
7.11	Special Meetings.	8
7.12	Waiver of Notice.....	8
7.13	Board of Directors' Quorum.....	8
7.14	Action Without a Meeting.	8
7.15	Compensation.....	9

SECTION 8	FISCAL MANAGEMENT.....	9
8.1	Books and Records.....	9
8.2	Accounts.....	9
8.3	Separate Accounts.....	9
8.4	Fiscal Year.....	9
8.5	Right to Purchase Insurance.....	9
8.6	Insurance Proceeds.....	10
8.7	Insufficient Proceeds.....	10
8.8	Mortgagee Protection.....	10
SECTION 9	OFFICERS.....	10
9.1	Designation.....	10
9.2	Election of Officers.....	10
9.3	Resignation and Removal of Officers.....	10
9.4	Vacancies.....	11
9.5	President.....	11
9.6	Vice President.....	11
9.7	Secretary.....	11
9.8	Assistant Secretary.....	11
9.9	Treasurer.....	11
SECTION 10	AMENDMENTS TO BYLAWS.....	11
SECTION 11	EVIDENCE OF OWNERSHIP, REGISTRATION OF MAILING ADDRESS	12
11.1	Proof of Ownership.....	12
11.2	Registration of Mailing Addresses.....	12
SECTION 12	NON-PROFIT ASSOCIATION.....	12
12.1	Non-Profit Association.....	12
12.2	Liability Limitations.....	12
SECTION 13	MISCELLANEOUS.....	12
13.1	Execution of Documents.....	12
13.2	Conflicting or Invalid Provisions.....	13
13.3	Notices.....	13

**BYLAWS
OF
TERRACE BROOK HOMEOWNER ASSOCIATION, INC.**

SECTION 1 CERTAIN DEFINITIONS Reference is hereby made to that certain Declaration of Covenants, Conditions, & Restrictions for Terrace Brook, duly recorded at Clerk's File No. X941667 in the Official Public Records of Real Property of Harris County, Texas (as amended from time to time, the "Declaration"). All terms defined in the Declaration are used herein with the same meaning, unless otherwise defined herein.

SECTION 2 NAME The name of this Corporation shall be TERRACE BROOK HOMEOWNER ASSOCIATION, INC. (the "Association").

SECTION 3 OFFICES

3.1 Registered Office. The registered office of the Association shall be as designated with the Secretary of State of the State of Texas, as it may be changed from time to time.

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

SECTION 4 PURPOSES AND PARTIES

4.1 Purposes. The purpose or purposes for which the Association is formed are: (a) to provide for the preservation of the values and amenities and the maintenance of the common improvements of the Terrace Brook single family residential project, according to the plat thereof recorded in Film Code No. 566118, in the Map Records of Harris County, Texas, and any and all other property that is accepted by the Association in accordance with the terms of the Declaration (collectively, the "Property"); (b) to exercise the powers of (i) maintaining, administering and using the Common Areas, the Common Facilities, the Common Personalty, Detention/Drainage Areas, and all Landscaping in the Common Areas and the Detention/Drainage Areas and such other common areas and facilities (collectively, the "Common Properties"), (ii) administering and enforcing the covenants, conditions and restrictions affecting the Property and set forth in the Declaration and (iii) collecting and disbursing the assessments and charges imposed, or to be imposed, upon the Property, all as more fully described in the Declaration; (c) to promote the common health, safety and welfare of the Members of the Association; and (d) to perform the actions of the Association that are required or permitted by these Bylaws, the Articles of Incorporation of the Association, and the Declaration. In fulfilling these purposes, the Association shall do the following:

- (a) Exercise all of the powers and privileges and perform all of the duties set forth in the Declaration as may be amended from time to time, the Declaration being incorporated herein as if fully set forth (but subject to any limitations as may be contained in the Declaration);
- (b) Operate without profit for the sole and exclusive benefit of its Members; and
- (c) Have and exercise any and all powers, rights and privileges that may now or hereafter be exercised by a corporation organized under the Non-Profit Corporation Act of the State of Texas.

4.2 **Parties.** All present or future Owners of any Lot are subject to the provisions and any regulations set forth in these Bylaws. The mere acquisition, lease, or rental of all or any portion of a Lot or the mere act of occupancy of all or any portion of a Lot will signify that these Bylaws are accepted, approved and ratified and shall be complied with.

SECTION 5 MEMBERSHIP, MEMBER IN GOOD STANDING, VOTING RIGHTS, VOTING, CUMULATIVE VOTING, QUORUM, PROXIES, ACTION WITHOUT A MEETING

5.1 **Membership.** The determination of who is or may be a Member, and the causes and effects of termination of membership in the Association, shall be governed by the terms of the Declaration, including without limitation Article II thereof.

5.2 **Member in Good Standing.** A Member of the Association shall be considered to be a Member in good standing and eligible to vote if such Member:

(a) Has, not less than seven (7) days prior to the taking of any vote by the Association, fully paid all assessments or other charges levied by the Association then due and payable, as such assessments or charges are provided for hereunder and in the Declaration; and

(b) Has discharged all other obligations to the Association as may be required of Members hereunder or under the Declaration.

The Board of Directors shall have sole responsibility and authority for determining the good standing status of any Member at any time, and shall make such determination with respect to all Members prior to a vote being taken by the Members on any matter. The Board of Directors shall have the right and authority, in its sole discretion, to waive the seven (7) days prior payment requirement and require only that such payment be made at any time before such vote is taken if the Board of Directors shall determine, in its own judgment, that extenuating circumstances exist that have prevented a particular Member from meeting either or both of the requirements stated herein at or before seven (7) days in advance of any vote. Any Member not conforming with the provisions of this Section 5 shall be declared by the Board of Directors to be not a Member in good standing and, unless the time requirement hereunder is specifically waived by the Board of Directors in writing prior to any particular vote being taken, shall be disqualified from voting on matters before the Association until such time as Member in good standing status is attained and so declared by the Board of Directors.

5.3 **Voting Rights in the Association.** The Members shall have voting rights with respect to the affairs of the Association as set forth in the Declaration and as limited, enlarged or denied by the terms and provisions of the Articles of Incorporation and these Bylaws.

5.4 **Voting.** Only Members in good standing shall be entitled to vote, and voting membership shall be decreased by the number of Members who are not Members in good standing to determine the votes entitled to be cast for the purpose of establishing a quorum, such determination of the total number of Members in good standing to be as of the date on which a vote is taken (subject to the operation of Section 5.2). The vote of the majority of those votes entitled to be cast by the Members in good standing present or voting by legitimate proxy, regardless of class, at a duly called meeting at which a quorum of Members are represented shall be sufficient for the transaction of any business, unless otherwise provided by law, the Articles of Incorporation, these Bylaws or the Declaration.

5.5 **Notice and Quorum.** Written notice of any meeting called for the purpose of taking any action authorized herein shall be given to all Members who, at the time of the giving of the notice, would be entitled to vote at such meeting, not less than ten (10) days nor more than sixty (60) days in advance of the meeting and shall set forth the purpose of such meeting (except to the extent that a different notice period is provided for in the Declaration, in which case the notice period provided for in the Declaration shall govern). At any such meeting called, the presence of Members or of proxies or voting representatives holding thirty percent (30%) of all the eligible votes of the Association, regardless of class, shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at such subsequent meeting shall be one-half (1/2) of the quorum requirement for such prior meeting. The Association may call as many subsequent meetings as may be required to achieve a quorum (the quorum requirement being reduced for each such meeting). No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

5.6 **Proxies.** Votes may be cast in person or by written proxy. No proxy shall be valid after eleven (11) months from the date of its execution unless specifically provided in the proxy. All proxies must be filed with the Secretary or Assistant Secretary, if any, of the Association before the appointed time of each meeting.

5.7 **Action Without a Meeting.** As an alternative to the procedures set forth hereinabove, the transaction of any business of the membership of the Association may be taken without a meeting if a consent in writing setting forth the action to be taken shall be signed by a sufficient number of Members as would be necessary to take that action at a meeting (occurring on the date of the last signature thereto) at which all of the Members then eligible to vote were present and voted.

SECTION 6 ASSOCIATION RESPONSIBILITIES AND MEETINGS OF MEMBERS

6.1 **Association Responsibilities.** The Members will constitute the Association. The Association will have the responsibility, acting through the Board of Directors, to fulfill the purposes for which the Association is formed, as set forth in Section 4.1 above. In the event of any dispute or disagreement between any Members relating to the Common Properties, or any questions of interpretation or application of the provisions of the Declaration, the Articles of Incorporation of the Association or these Bylaws, such dispute or disagreement shall be submitted to the Board. The reasonable determination of such dispute or disagreement by the Board shall be final and binding on each and all such Members.

6.2 **Place of Meetings.** Meetings of the Association shall be held at such suitable place, reasonably convenient to the Members, as the Board of Directors may determine.

6.3 **Annual Meetings.** The annual meetings of the Association shall be held on or before ninety (90) days after the expiration of the prior fiscal year of the Association. At such meetings there shall be elected by ballot of the Members a Board of Directors in accordance with the requirements of Section 7.6 of these Bylaws. The Members may also transact such other business of the Association as may properly come before them. If, in any year, the election of Directors is not held on the day designated for the annual meeting, or at any adjournment of the annual meeting, the Board of Directors shall call a special meeting of the Members as soon thereafter as is reasonably possible to conduct the election of Directors. If, in any year, the Directors are elected by written consent of Members as permitted by the Articles of Incorporation of the Association and Section 6.7 of these Bylaws, there shall be no separate annual meeting of the Association during that year, and the annual meeting for that year shall be deemed to have occurred on the date of the last signature to that written consent.

6.4 **Special Meetings.** Special meetings of the Members may be called by action of the President, by resolution of the Board of Directors, or by a petition signed by Members holding not less than one-sixth (1/6) of the votes of the Association (of all classes) eligible to vote. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business except as stated in the notice shall be transacted at a special meeting. Any such meetings shall be held within sixty (60) days after receipt by the President of such resolution or petition.

6.5 **Notice of Meetings.** It shall be the duty of the Secretary or Assistant Secretary, if any, of the Association to provide notice of each annual or special meeting, stating the purpose thereof as well as the time and place it is to be held, to each Member who, at the time of the giving of the notice, would be entitled to vote at such meeting, at least ten (10) days, but not more than sixty (60) days prior to such meeting (except to the extent that a different notice period is provided for in the Declaration, in which case the notice period provided for in the Declaration shall govern). The delivery of a notice in any manner as provided in *Section 13.3* of these Bylaws shall be considered notice served.

6.6 **Order of Business.** The order of business at all meetings of the Members shall be as follows:

- (a) Roll call and certifying proxies;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading and disposal of unapproved minutes;
- (d) Reports of officers;
- (e) Reports of committees;
- (f) Election of directors;
- (g) Unfinished business;
- (h) New business; and
- (i) Adjournment.

6.7 **Action Without a Meeting.** As an alternative to the procedures set forth herein, the transaction of any business of the Members of the Association may be taken without a meeting if a consent in writing setting forth the action to be taken shall be signed by a sufficient number of Members as would be necessary to take that action at a meeting at which the Members holding all of the eligible votes with respect to the subject matter thereof were present and voted.

SECTION 7

BOARD OF DIRECTORS

7.1 Number, Character and Qualification. Until the first meeting of the Association, the affairs of this Association shall be governed by a Board of Directors consisting of the three (3) persons identified in the Articles of Incorporation of the Association. Successor Directors shall be elected in accordance with *Sections 6.3 and 7.6*. Directors need not be Members.

7.2 Powers and Duties Generally. The Board of Directors shall have the powers and duties described in the Declaration, the Articles of Incorporation and these Bylaws and such additional powers and duties as may be necessary or appropriate for the administration of the affairs of the Association and for carrying out the purposes for which it is formed. The Board of Directors may do all such acts and things except as by law, by the Articles of Incorporation, by these Bylaws, or by the Declaration may not be delegated to the Board of Directors. From and after the date on which the rights, obligations or title to the Common Properties has been conveyed to the Association, the Board shall have the exclusive right to contract for all goods, services and insurance, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided in the Declaration.

7.3 Certain Specific Powers and Duties. The powers and duties of the Board of Directors shall include, but shall not be limited to, the following:

(a) Setting, levying and collecting Regular Annual Assessments and other assessments as provided in the Declaration in any fiscal year or portion thereof and establishing a reserve fund as provided in the Declaration or in *Section 7.4* hereof.

(b) Care, preservation, operation, improvement, maintenance and repair (and, as is necessary, replacement) of the Common Properties and the furnishing and upkeep of any desired personal property for use in connection with the Common Properties. Expenditures for the repair (or replacement) or installation of capital improvements, not included in the annual maintenance budget, may be paid from the reserve fund as specifically provided in *Section 7.4* hereof.

(c) Using and expending the assessments and funds of the Association in connection with performing or fulfilling the purposes and activities contemplated or permitted under law, the Declaration, the Articles of Incorporation and these Bylaws.

(d) Care and maintenance of the landscaping, masonry screening walls and/or ornamental metal fence and entry features which may be constructed by Declarant on the Common Properties, within the public right-of-way, or on private property within screen wall easements shown on the plat of the Properties. Maintenance includes all repair or rebuilding required and cleaning as required to remove graffiti or obscenities.

(e) Maintenance, should the Board so elect, of exterior grounds, parkways and access areas, including care of trees, shrubs and grass, the exact scope of which shall be further specified by the Board from time to time. In particular, the Board shall be empowered to contract with persons or entities who shall be responsible for the maintenance of landscaping, trees, shrubs, grass and like improvements which are located on Lots within landscape easements shown on the plat of the Property. Landscaping and other like improvements which are located within rear yards or side yards enclosed by a fence shall be maintained by the individual Lot Owner. Maintenance services contracted for by the Board in accordance with this paragraph shall be paid for out of Association funds.

(f) Contracting and paying for the services of a person or firm to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and contracting and paying for the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the President.

(g) Contracting and paying for legal and accounting services for the Association.

(h) Contracting and paying for any other materials, supplies, furniture, labor, services, maintenance, repairs, alterations, taxes or assessments which the Board or the Association is required or permitted to obtain or pay for pursuant to the terms of the Declaration or by law or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of the Declaration.

(i) Executing all declarations of ownership for tax assessment purposes and paying all taxes with regard to the Common Properties.

(j) Entering into agreements or contracts with insurance companies, taxing authorities and the holders of mortgage liens on the individual Lots with respect to: (i) taxes on the Common Properties, and (ii) insurance coverage of the Common Properties, as they relate to the assessment, collection and disbursement process contemplated by the Declaration and these Bylaws.

(k) Borrowing funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit.

(l) Entering into contracts, maintaining one or more bank accounts, and generally having all the powers necessary or incidental to the operation and management of the Association and the Common Properties.

(m) If, as, and when the Board, in its sole discretion, deems necessary, taking action to protect or defend the Common Properties from loss or damage by suit or otherwise, suing or defending in any court of law on behalf of the Association and to providing adequate reserves for repairs and replacements.

(n) Making reasonable rules and regulations for the operation and use of the Common Properties (and the personal conduct of Members, their families and guests thereon or with respect thereto) and amending them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by those Members holding a majority of the votes of the Association (regardless of class) eligible to vote, or, with respect to a rule affecting or applicable to less than all of the Property, by those Members holding a majority of the eligible votes of the Association (regardless of class) that arise out of ownership of that affected portion.

(o) Making available to each Owner, within one hundred twenty (120) days after the end of each year, an unaudited annual report.

(p) Pursuant to *Section 8* hereof, adjusting the amount of, collecting and using any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to

repair damage or replace lost property, to assess the Members in accordance with the Declaration to cover the deficiency.

(q) If, as and when the Board, in its sole discretion, deems necessary, taking action to enforce the provisions of the Declaration and any rules made hereunder and enjoining or seeking damages from any Member for violation of such provisions or rules.

(r) Doing anything that the Board of Directors deems appropriate and proper, in its reasonable opinion, to carry out the purposes of the Association as set forth in its Articles of Incorporation, the Declaration, or these Bylaws, or which, in its reasonable opinion, shall be necessary or proper for the operation or protection of the Association or for the enforcement of the Declaration and which is not otherwise prohibited by law, the Declaration, the Articles of Incorporation or these Bylaws.

7.4 Reserve Fund. The Board may establish reserve funds, for such purposes as may be determined by the Board, which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and are not net income to the Association. Expenditures from any such fund will be made at the direction of the Board. The reserve fund provided for herein shall be used for the general purposes of protecting and promoting the comfort, collective mutual enjoyment, health, safety and welfare of the Owners of the Property, or any part thereof, and for carrying out the purposes of the Association as stated in the Declaration, the Articles of Incorporation of the Association and these Bylaws, all as may be more specifically authorized from time to time by the Board of Directors. Capital expenditures from this fund may include by way of example, but not be limited to, improvements to the Common Properties or repair of damage to the Common Properties not covered by insurance.

7.5 No Waiver of Rights. The omission or failure of the Association or any Member to enforce the covenants, conditions, restrictions, easements, uses, liens, limitations, obligations or other provisions of the Declaration, these Bylaws, or the rules and regulations adopted pursuant thereto, shall not constitute or be deemed a waiver, modification or release thereof, and the Board of Directors shall have the right to enforce the same thereafter.

7.6 Election and Term of office. At the first meeting of the Association the term of office of the three (3) Directors shall be fixed at one (1) year. At the expiration of the initial term of office of each respective Director, his successor shall be elected to serve a term of one (1) year. Each Director shall hold office until its qualified successor has been duly elected. Directors of the Association shall be elected by a plurality of the votes cast by the Members (regardless of class) entitled to vote in the election of directors of the Association at a meeting of Members at which a quorum is present. Cumulative voting for the election of directors is expressly denied and prohibited.

7.7 Vacancies. Vacancies in the Board of Directors caused by death, resignation, or disqualification, or by any other reason other than the removal of a Director by a vote of the Association, shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a qualified successor is duly elected at the next annual meeting of the Members. If a vote by the Board of Directors fails to result in any one candidate being elected by a majority, then the Members may elect a Director in accordance with *Section 7.6* to fill the vacancy.

7.8 Removal of Directors. For so long as the Declarant owns at least one Lot, any one or more of the Directors may be removed with or without cause by resolution of the Declarant, and a successor may similarly be elected to fill the vacancy thus created. Thereafter, at any annual or special meeting of the Association duly called, any one or more of the Directors may be removed with or without cause by the Members holding a majority of the votes of the Association (regardless of class) entitled to vote (and present in person or by proxy) at a meeting duly called for such purpose, and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting (unless the removal is effected by written consent as permitted by the Articles of Incorporation of the Association and Section 6.7 of these Bylaws).

7.9 First Meeting of New Board. The first meeting of a newly elected Board of Directors following the annual meeting of the Members shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice thereof shall be necessary to the newly elected Directors in order to conduct such meeting, providing a majority of the Directors shall be present. If the Directors are elected by written consent of the Members, the first meeting thereafter of the newly elected Board shall be held within ten (10) days after notice of such election is given to each Director, and such meeting shall occur at such time and place as may be fixed by the Members in such written consent or otherwise by a majority of those Directors (and if the time and place is determined by the Directors, notice thereof shall be given in accordance with Section 7.10).

7.10 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or facsimile, at least five (5) days prior to the day named for such meeting.

7.11 Special Meetings. Special meetings of the Board of Directors may be called by the President on five (5) days' notice to each Director, given personally or by mail, telephone or facsimile, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary or Assistant Secretary of the Association in like manner and on like notice on the written request of one or more Directors.

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

7.13 Board of Directors' Quorum. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and, except as is otherwise specifically provided elsewhere in these Bylaws or the Declaration, the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

7.14 Action without a Meeting. As an alternative to the procedures set forth hereinabove, the transaction of any business of the Board of Directors may be taken without a meeting if a consent in writing setting forth the action to be taken shall be signed by a sufficient number of directors as would be necessary

to take that action at a meeting at which all of the directors entitled to vote with respect to the subject matter thereof were present and voted.

7.15 Compensation. No member of the Board of Directors shall receive any compensation for acting as a Director.

SECTION 8 FISCAL MANAGEMENT

8.1 Books and Records. The Association shall keep correct and complete books and records of account. The Association's books and records shall include:

(a) A file-stamped copy of all documents filed with the Texas Secretary of State relating to the Association, including, but not limited to, the Articles of Incorporation, and any Articles of Amendment, Restated Articles, Articles of Merger, Articles of Consolidation, and Statement of Change of Registered Office or Registered Agent;

(b) A copy of the Bylaws and any amended versions or amendments to the Bylaws; and

(c) Minutes of the meetings of the Members and Board of Directors and written consents in lieu of meetings.

8.2 Accounts. The funds and expenditures of the Members by and through the Association shall be credited and charged to accounts under the following classifications as shall be appropriate:

(a) Regular Annual Assessments Accounts for allocating funds to fulfill the purposes of the regular annual assessments authorized by the Declaration; and

(b) Special Assessment Account for allocating funds collected for special assessments and special member assessments authorized by the Declaration.

8.3 Separate Accounts. Separate accounts (such as, but not by way of limitation, the Reserve Fund contemplated by *Section 7.4*) may be established in order to better demonstrate that the amounts deposited therein are capital contributions and not income to the Association.

8.4 Fiscal Year. The fiscal year for the Association shall be the calendar year.

8.5 Right to Purchase Insurance. The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Properties, the improvements thereon and appurtenant thereto, for the interest of the Association and of all Members thereof, in such amounts and with such endorsements and coverage as shall be considered good sound insurance coverage for properties similar in construction, location and use to the Common Properties. Such insurance may include, but need not be limited to:

(a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs as determined annually by the insurance carrier.

- (b) Public liability and property damage insurance on a broad form basis.
- (c) Fidelity bond for all offices and employees of the Association having control over the receipt or the disbursement of funds in such penal sums as shall be determined by the Board of Directors.
- (d) Officers and directors liability insurance.

8.6 Insurance Proceeds. Proceeds of insurance shall be disbursed by the insurance carrier to the Association or contractors designated by the Association as the Board of Directors may direct; provided, however, until such time as the liens securing any development loan have been released as to the Common Properties, a mortgagee's loss payable clause for the benefit of the lender may be attached to such insurance coverage and the insurance proceeds may be paid to the Association as provided for in the documents executed in connection with any such development loan. The Association shall use the net insurance proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of insurance paid to the Association remaining after satisfactory completion of repair and replacement shall be retained by the Association as part of a general reserve fund for repair and replacement of the Common Properties.

8.7 Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special assessment as provided for in the Declaration (or increase the Regular Annual Assessment) to cover the deficiency. If the insurance proceeds are insufficient to repair or replace any loss or damage for which an Owner is bound, such Owner shall, as such Owner's undivided responsibility, pay any excess costs of repair or replacement.

8.8 Mortgagee Protection. There may be attached to all policies of insurance against loss or damage by fire and other hazards, a mortgagee's or lender's loss payable clause, provided, however, that amounts payable under such clause to the mortgagee may be paid to the Association to hold for the payment of costs of repair or replacement, subject to the provisions of *Section 8.6* hereof. The Association shall be responsible to hold said monies or to collect additional monies if the proceeds are insufficient to pay for the cost of all repairs or replacements and shall ensure that all mechanic's, materialmen's and similar liens which may result from said repairs or replacements are satisfied.

SECTION 9 OFFICERS

9.1 Designation. The officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by the Board of Directors, and such assistant officers as the Board of Directors shall, from time to time, elect. Such officers need not be Directors. The offices of President and Treasurer may be held by the same person, and the offices of Vice President and Secretary or Assistant Secretary may be held by the same person.

9.2 Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board and shall hold office subject to the continuing approval of the Board.

9.3 Resignation and Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose. 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.

9.4 Vacancies. A vacancy in any office because of the death, resignation, removal disqualification of the officer previously filling such office, or for any reason, 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 being replaced.

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

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

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

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

9.9 Treasurer. The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors.

SECTION 10 AMENDMENTS TO BYLAWS These Bylaws may be amended (including the repeal of the Bylaws accompanied by the adoption of new Bylaws) in any manner set forth in the Declaration, or, if no provision for amendment is made in the Declaration, then at any annual or special meeting of the Members at which a quorum is present, by a vote of the Members holding a majority of the eligible votes of all Members (regardless of class) that are present in person or by proxy at that meeting (provided that the Declarant, or each Declarant if there are more than one, must consent thereto if such amendment is to be effective at a time when Declarant owns at least one Lot). To the extent that this provision (x) requires that a greater number of votes of Members be cast for the adoption of an amendment

to the Bylaws than would otherwise be required under the Texas Non-Profit Corporation Act or other law or (y) permits the Bylaws to be amended by the casting of a lesser number of votes of Members than would otherwise be permitted under the Texas Non-Profit Corporation Act or other law, this provision is intended to, and shall operate to, limit, enlarge or deny (as is applicable) voting rights of certain classes of Members.

SECTION 11 EVIDENCE OF OWNERSHIP, REGISTRATION OF MAILING ADDRESS

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

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

SECTION 12 NON-PROFIT ASSOCIATION

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

12.2 Liability Limitations. Neither any Member nor the Board of Directors (or any Director) nor the officers (if any) of the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether such other Member was acting on behalf of the Association or otherwise. Neither the Association nor its directors, officers, agents or employees (even if negligent) shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Neither the Association nor its directors, officers, agents or employees responsible for making such repairs or maintenance shall be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission (even if negligent) in the repair or maintenance of any premises, improvements or portions thereof.

