

STATE OF TEXAS

§

COUNTY OF BURLESON

§

§

**AMENDED AND RESTATED BY-LAWS OF  
SOMERVILLE PLACE PROPERTY OWNER'S ASSOCIATION, INC.**

These "Amended & Restated By-laws of Somerville Place Property Owner's Association, Inc." (hereinafter referred to as the "By-Laws"), supersede, replace, and revoke any and all previous bylaws of Somerville Place Property Owners Association, Inc.; any prior bylaws, amended or otherwise, no longer have any force or effect.

These By-Laws govern the affairs of the Somerville Place Property Owner's Association, Inc.

**ARTICLE I  
NAME & LOCATION**

**1.01 Definitions:** All capitalized terms used in these By-Laws shall have the meaning defined herein. However, in the event a term is not defined herein, the term shall have the same meaning given such words in the Declaration of Covenants, Conditions, and Restrictions, and/or Restrictions, for Somerville Property Place Subdivision, Sections and/or Phases 1, 2, and 3 (hereinafter collectively referred to as the "Declaration"), and recorded in the Official Records of Burleson County, Texas.

**1.02 Name:** The name of the Corporation is "Somerville Place Property Owner's Association, Inc." (hereinafter sometimes referred to as the "Association").

**1.03 Principal Office:** The Principal Office of the Association shall be located at 900 Parallel Road, Somerville, Texas 77879 (hereinafter "Principal Office"); however, the Association may have other offices, within the State of Texas or elsewhere, as designated by the Association's Board of Directors (hereinafter sometimes referred to as the "Board"). The Board of Directors may change the location of any office of the Association.

**1.03.01 Mailing Address:** The "Mailing Address" for the Association is: P.O. Box 125, Lyons, Texas 77863.

**1.04 Registered Office and Registered Agent:** The Association will maintain a registered office and registered agent in Texas. The registered office may, but need not, be identical with the Association's principal office in Texas. The Board of Directors may change the registered office and the registered agent as permitted by the Texas Non-Profit Corporation Act, as amended from time to time, or any successor act or statute.

**1.05 Purpose:** The Association is the association described in the Declaration and also defined herein; further, the Association is and shall be a non-profit organization for the purposes as stated in the Articles of Incorporation of Somerville Place Property Owner's Association, Inc., executed

on the 19th day of March 1981, and filed with the Texas Secretary of State on the 5th day of May, 1981 (hereinafter referred to as the “Articles”).

**1.06 Powers:** Subject to such limitations and restrictions as are set forth in the Declaration, the Articles, and these By-Laws, the Association shall have the powers of a Texas non-profit corporation, including, but not limited to, all powers provided under the provisions of the Texas Non-Profit Corporation Act, as amended from time to time, or any successor act or statute. The Association, with the Board acting on its behalf, shall have the power to do and perform any and all of the duties and/or purposes set forth in the Declaration, the Articles, and these By-Laws of the Association.

**1.07 Property:** As used herein, the term “Property” and/or “Properties” shall mean and refer to that certain property or properties described in the Declaration for all sections and/or phases of the Somerville Place Subdivision, a residential development in the James Craft Survey (Abstract 83), Burleson County, Texas, according to the plat recorded in Book/Volume 1, Pages 7-16, of the Official Records of Burleson County, Texas, and any additional property and/or properties which may hereinafter be brought within the jurisdiction of the Association by supplemental declarations, amendments, or supplements thereto.

**1.07.01** As used herein, the terms “Common Property,” “Common Properties,” and/or “Common Areas” shall mean and refer to the Property, but not the separate interests or ownership therein (*see also 2.03.01*).

**1.08 Owner Obligation:** All present or future owners, or any other person who might use the Property in any manner, are subject to the regulations set forth in these By-Laws. The mere acquisition of any Property, or the mere act of occupancy of any of the Property, will signify that these By-Laws are accepted, ratified, and will be strictly followed.

## **ARTICLE 2 MEMBERS**

**2.01 Lot:** As used herein, the term “Lot” shall mean and refer to a plot or tract of land that is part of the Property and subject to the jurisdiction of the Association (the term “Lot” includes the house and/or dwelling, including any and all structures that are either in existence, or under construction, on the Lot).

**2.02 Owner:** As used herein, the term “Owner” shall mean and refer to the record title owner, according to the deed records in the county clerk’s office, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Property and subject to a maintenance charge or Assessment by the Association, but excluding those having such interest merely as security for the performance of any obligations.

**2.03 Membership & Member:** Any person or entity, on becoming an Owner of any Lot of the Property, shall automatically become a “Member” of this Association and be subject to these By-Laws. However, the holders of security interests in any Lot as security for the performance of an

obligation shall not be a Member. All such memberships shall terminate without any formal Association action whenever such person ceases to own any Lot of the Property. Such termination of membership shall not relieve or release any such former Owner from any liability or obligation incurred under or in any way connected with the Association during the period of such ownership and/or membership in this Association, or impair any rights or remedies which the Board of Directors or others may have against such former Owner and Member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto. No certificates of stock shall be issued by the Association.

**2.04 Voting Rights:** The Association shall have one (1) class of voting membership.

The right to cast votes, and the number of votes which may be cast, for the election of Directors and Officers and/or on all other matters voted on, or to be voted on, by the Members shall be calculated so that each Member shall have one (1) vote per Member regardless of how many Lots are owned by the Member (and regardless of how many Members own any given Lot).

**2.04.01 Maximum Votes Per Member:** In no event shall any Member be entitled to more than one (1) vote regardless of the total number of Lots owned by the Member.

**2.04.02 Total Number of Votes:** As used herein, the “Total Number of Votes” will always be either equal to or less than the total number of Members.

**2.04.03** Once a meeting is called, a list of voting Members shall be prepared and made available in accordance with section 22.158 of the Texas Business Organizations Code (and any other applicable law).

**2.05 Suspension of Rights:** In the event that any Member shall have failed to pay any Assessment as authorized by the Declaration or By-Laws (herein “Assessment”) when due, and said Member becomes “Delinquent” as defined herein, the Member’s Common Property enjoyment rights and right to the use of any facilities or services provided by the Association shall be suspended in accordance with these By-Laws and Texas Property Code chapter 209.006 et seq.

**2.05.01** In the event that any Member violates any of the restrictions found in the Declaration, these By-Laws, or any other rules of the Association, the Member’s Common Property enjoyment rights and right to the use of any facilities or services provided by the Association shall be suspended in accordance with these By-Laws and Texas Property Code chapter 209.006 et seq. Further, in addition to the suspension of a Member’s rights, the Association shall have all other rights and remedies afforded to them in the Declaration, the By-Laws, or Texas Property Code chapter 209.006 et seq.

**2.06 Assessment Amount, Due Date, Delinquency, and other fees:** In accordance with the Declaration, the Assessment and/or Maintenance Fees (herein “Assessment”) are \$65.00 for the first Lot owned and \$24.00 for each additional Lot owned; paid annually. (By way of example and illustration only, and not limitation: If a Member owns one Lot, then said Member owes \$65.00

per year as an Assessment. However, if the Member owns two Lots, then said Member owes \$89.00 annually. Finally, if two people are Owners of one Lot, they owe a total of \$65.00 together for the one Lot.)

- 2.06.01 Due Date & Late Charge:** A Member's total amount of Assessment is due to the Association without notice each year, on or before January 1st (herein, the "Due Date"). Failure to pay the Assessment on or before the start of the Annual Meeting of Members will result in a \$10.00 late charge for each Lot owned, per year.
- 2.06.02 Delinquency:** Anyone who fails to pay their Assessment by the Due Date will be Delinquent, and shall remain Delinquent until the Assessment, plus any and all applicable late charges are paid to the Association (herein, "Delinquent").
- 2.06.03 Method of Payment:** Payments of Assessments and any applicable late charges can be paid by mailing payment to the Association's Mailing Address (*see 1.03.01*), addressed to the Treasurer. Payments of Assessments and any applicable late charges shall be paid by check or money order, as cash will not be accepted. Payments shall be made payable to: "SPPOA, Inc."
- 2.06.04 Assessment Lien:** As provided for in the Declaration or otherwise, each Member is obligated to pay to the Association the Assessment, and associated late charges, that are levied and secured by a continuing vendor's lien against each Lot owned by the Member; and said lien is expressly created and retained upon each Lot to secure the payment of the Assessment. Further, each such vendor's lien is hereby transferred and assigned to the Association, as necessary, and each such lien is to be superior and paramount to any homestead. The Association is expressly authorized to foreclose this lien. No Member may waive or otherwise escape liability for the Assessment provided for herein by non-use of any of the Common Property, facilities or services provided by the Association, or abandonment of the Member's Lot. Further, extinguishment of the lien pursuant to a mortgage foreclosure, or any proceeding in lieu thereof, shall relieve the Delinquent Owner/Member from his/her/its personal/individual obligation and/or liability for payment of the Assessment.
- 2.06.05 Collection Costs:** Costs incurred in the collection of a Delinquent Member's Assessment may be charged to the Member in accordance with these By-laws and Texas Property Code chapter 209. Further, before the cost of collection is added to a Member's account balance, the Association must provide written notice by certified mail advising the member of the Delinquent Assessment amount, the Member's options for avoiding collection, and that the Member may avoid collection by curing the delinquency within a cure period of at least 30 days. Finally, the Association shall adopt a policy for an alternate payment schedule for Assessments, allowing a Member to pay the Assessment under a schedule that extends for between three and eighteen months, in accordance with Texas Property Code chapter 209.0062.

**2.06.06 Attorney's Fees:** The Association may collect reimbursement of attorney's fees and other reasonable costs that are related to collecting amounts due to the Association as Assessments, enforcing restrictions, enforcing the By-Laws, or enforcing rules of the Association in accordance with Texas Property Code chapter 209.

**2.06.07 Fee Table:** Any and all fees and/or Assessment amounts shall be reflected on a "Fee Table." Any and all Fees or Assessments included on the Fee Table, as well as any future changes or adjustments to the Fee Table, shall be approved by the Members in accordance with these By-Laws.

**2.07 Member Mailing Address:** It shall be the responsibility of each Member to keep the Association advised as to the current mailing address of that Member.

**2.08 Member Email Address:** Upon providing an email address to the Association, a Member gives their express consent to the receipt of any and all required notices via that email address; it shall be the responsibility of each Member to keep the Association advised as to the current email address of that Member. However, a Member can revoke their consent upon submitting a written request that all notices be sent via USPS; in order for the written revocation to be valid, it must include a mailing address where the Member desires all notices be sent.

**2.09 No Cumulative Voting:** At all meetings of the Association, there shall be no cumulative voting.

**2.10 Good Standing:** Any Member shall not be in "good standing" if such person or entity is: (a) in violation of any portion of the Declaration, these By-Laws, and/or any portion of the zoning ordinances in effect; or (b) "Delinquent" in the full, complete, and timely payment of any Assessment, special assessment, or any other fee, charge, or fine which is levied, payable or collectible pursuant to the provisions of the Declaration or these By-Laws.

**2.11 Transfer of Membership:** Membership in this Association is not transferable or assignable unless such Transfer is as a result of the sale of a Lot.

**2.12 Annual & Semi-Annual Meeting:** The Annual Meeting of the Association (hereinafter, the "Annual Meeting") shall be held at 10:00 a.m. on the fourth (4th) Saturday of April each year; and the Semi-Annual Meeting (hereinafter the "Semi-Annual Meeting" shall be held at 10 a.m. on the fourth (4th) Saturday of October each year (*see Notice requirements in 2.15*). The Annual and/or Semi-Annual Meeting can be rescheduled by the Board if needed.

**2.13 Special Meetings:** Special meetings of the Members may be called by: (i) the President, (ii) a majority of the current Board of Directors, or (iii) by twenty-five (25) or more Members in good standing.

**2.13.01 Duty of the President:** In the event twenty-five (25) or more Members in good standing wish to call a Special Meeting, they shall present a written request to the President of the Association that states the objective of the meeting, and it shall be the duty of the President to call and/or give notice of the Special Meeting. Finally, the written request in this 2.13.01 must include each of the requesting members printed name, signature, complete mailing address, and phone number.

**2.13.02 Notices for Special Meetings:** See paragraph 2.15.

**2.14 Place of Meeting:** Any and all Member meetings, Annual Meetings, Special Meetings, Board Meetings, and/or meetings of any committee designated by the Board shall be held in Burleson County, Texas.

If no designation is made, or if a Special Meeting be otherwise called, the meeting shall be held at the Association's registered office in Texas.

**2.15 Notice of Annual, Special, or Semi-Annual Meetings:** Except as otherwise provided herein, or in the Declaration, written notice stating the place, day, and hour of any meeting of Members shall be delivered, either personally, by mail, or by email, to each Member entitled to vote at such meeting, not less than fourteen (14) nor more than sixty (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 case of a Special Meeting or when required by statute or by these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. Further, the notice for a Special Meeting shall be sent by the Secretary or President not later than one (1) week after the receipt of the written request by the President, as provided in paragraph 2.13; 2.13.01; and 2.13.02.

**2.15.01** If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail and addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid.

**2.15.02** If sent via email, the notice of the meeting shall be deemed to be delivered when sent from an email address owned by the Association, to an email address belonging to a Member and designated or confirmed by the Member as his/her/its email address for Association correspondence and notices.

**2.15.03** It is the responsibility of the Member to update, change, and/or maintain the email address on file with the Association.

**2.15.04** In the event the Annual and/or Special Meeting will be for the purpose of an election or vote of the Association, the notice requirements found in section 209.0056 of the Texas Property Code shall be followed.

**2.16 Quorum:** Except as otherwise provided herein, or in the Declaration, the presence in person or by proxy of not less than fifteen (15) Members at any meeting of Members shall constitute a quorum at such meeting.

**2.17 Proxies:** At any meeting of Members, a Member may vote by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. Any proxy is only valid for the particular meeting held on a specific date as indicated on the proxy. Unless otherwise provided by the proxy, a proxy is revocable and expires eleven (11) months after the date of its execution. A proxy may not be irrevocable for longer than 11 months. Proxies must be submitted to and filed with the Secretary for verification purposes on or before 5 p.m. CST of the third (3rd) business day prior to the meeting (for example, if a meeting is to be held on Saturday, the proxy must be submitted to and filed with the Secretary on or before 5 p.m. CST of the Wednesday prior to the Saturday meeting).

**2.17.01 Person Authorized to Exercise Proxy:** Unless otherwise prohibited by law, the person authorized to exercise a proxy must be a Member of the Association.

**2.18 Manner of Acting:** Except as otherwise provided herein or in the Declaration, the votes of a Majority of Members on a matter to be voted upon by the Members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption thereof unless a greater proportion is required by law, the Declaration, or by these By-Laws.

**2.19 Voting by Mail or Proxy:** Where Directors and/or Officers are to be elected by Members, such election may be conducted by absentee ballot or proxy, in such a manner as approved by Members.

**2.20 Conduct of Meetings:** The President (or, in the absence of the President, the Vice-President) shall preside over all meetings of the Association; the Secretary or an Assistant Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat; and the Treasurer shall present a financial report at regular meetings, not special meetings.

**2.21 Powers and Duties of Members:** The Members shall have all the powers and duties as provided by law, and may do all acts and things as are directed to be done by the Members in the Declaration, Articles, or these By-Laws. In addition to the powers and duties reserved to the Members in the Declaration, Articles, or elsewhere in these By-Laws, the Members shall have the power to do, and shall be responsible for, the following, by way of explanation and not limitation:

**2.21.01** to make, establish, promulgate, adopt, and in their discretion amend or repeal and re-enact, such Association By-Laws, not in conflict with the Declaration, as they deem proper covering any and all aspects of the Associations functions (*see Article 11 below*).

**2.21.02** Only the Members have the right to increase the Assessment and the associated late charges. Voting to increase the annual Assessment can be done at any meeting of Members including the Annual Meeting, the Semi-Annual Meeting, and/or a Special Meeting called for this purpose, with notice given as provided herein. Increasing the Assessment requires an affirmative vote of the majority of the Members present. Proxy votes and absentee ballots/votes shall be accepted if Members are unable to attend the meeting of Members.

**2.21.03** Members of the Association have the right, at the Annual and/or Semi-Annual Meeting, to present plans and/or projects which when passed by a majority of the Members present shall be binding on the Association.

**2.21.04** See paragraph 3.16 regarding the removal of Directors and/or Officers.

### **ARTICLE 3 BOARD OF DIRECTORS & OFFICERS**

**3.01 Management of the Association:** The Board shall have the management and control of the affairs of this Association, provided, however, that the Members, twice a year, shall have the right to initiate resolutions, plans, policies, and projects as the By-Laws may direct.

**3.02 Powers:** The Board of Directors (or “Board”) shall be responsible for the affairs of the Association and shall have all the powers and duties necessary for the administration of the Association’s affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the Members. In addition to the duties imposed by these By-Laws or by any resolution of the Association that may be hereafter adopted, the Board of Directors shall have the power to do the following, by way of explanation, but not limitation:

**3.02.01** preparation of an annual budget that is to be approved by the Members;

**3.02.02** establishing the means and methods of collecting the Assessment;

**3.02.03** providing for the operation, care, upkeep, and maintenance of all the Common Property;

**3.02.04** collecting the Assessments, depositing the proceeds thereof in a depository which it shall approve, and using the proceeds to administer the Association;

**3.02.05** making and amending rules and regulations as approved by the membership;

**3.02.06** establishing and maintaining of bank accounts and/or banking-type accounts on behalf of the Association;

**3.02.07** making or contracting for repairs, additions, and improvements to or alterations of the Common Property in accordance with the other provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;

**3.02.08** enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Members concerning the Association;



- 3.02.09** require any Officer and/or employee of the Association who shall have custody of funds to give a proper surety bond for the faithful accounts of such funds, with surety or sureties satisfactory to the Board and with premium paid by the Association;
- 3.02.10** keeping books with reasonably detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expense incurred. These records shall be available for examination by the Members, and if an inspection is requested or required, the inspection shall take place at a mutually agreed on time during normal business hours, and the requesting party shall identify the books and records of the Association to copy and forward to the requesting party, in accordance with Texas Property Code 209.005;
- 3.02.11** filing all requisite forms, documents, and information with any taxing authorities;
- 3.02.12** suspend a Member's Common Property enjoyment rights and/or right to the use of any facilities or services provided by the Association during any period in which said member shall be Delinquent in the payment of any Assessment levied by the Association. Such rights may also be suspended for an infraction of the Declaration's restrictions, an infraction of the By-Laws, and/or an infraction of any other published rules and/or regulation of the Association. Where applicable, the Board shall follow the procedures for suspension of rights as laid out in Texas Property Code chapter 209.006 et seq.
- 3.02.13** maintain any and all landscaping and improvements along or in the medians that are located in the public streets, right-of-way's, and Common Property, throughout the Property; while also maintaining all signs that identify the Property and belong to the Association, and that are not otherwise already maintained by another entity;
- 3.02.14** to carry out and enforce all duties of the Association set forth in the Declaration and/or By-Laws;
- 3.02.15** to accept, own, operate, and maintain all facilities located on the Common Property, and to maintain in good repair and condition all Common Property (to the extent it is not already maintained by a Governmental Authority, or any other person or entity), improvements, and other property both real and personal owned by and/or leased to the Association;
- 3.02.16** at the discretion of the Board, declare the seat of a Director to be vacant in the event a Director shall be absent from three (3) consecutive Regular Meetings of the Board of Directors;

- 3.02.17** cause any Director, Officers, employees, managers, independent contractors, or anyone having fiscal responsibilities, to be bonded, as the Board may deem appropriate; and
- 3.02.18** adopt a policy in accordance with Texas Property Code chapter 209.0062 for an alternate payment schedule for Delinquent Assessments, allowing a Member to pay the Delinquent Assessment under a schedule that extends for between three and eighteen months, and the Board shall record said policy in the County Records (only the policy itself is to be recorded; and in no event shall a Member's payment schedule be recorded in the County Records).

**3.03 Number, Qualifications, and Tenure of Directors:** The Board of Directors shall be composed of five (5) Directors (herein referred to as "Directors") and four (4) Officers (herein referred to as "Officers"). Together, all nine (9) of these Directors and Officers will compose the Board of Directors (hereinafter, the Board of Directors is sometimes referred to as the "Board;" and both Officers and Directors are sometimes collectively referred to as "Board Members").

- 3.03.01** Each Director shall be elected for a two-year (2) term of office and shall serve until their respective successor is elected and qualified; in addition, each Director shall take office immediately following the Annual Meeting at which they were elected;
- 3.03.02** Each Officer shall be elected for a one-year (1) term of office and shall serve until their respective successor is elected and qualified; in addition, each Officer shall take office immediately following the Annual Meeting at which they were elected;
- 3.03.03** Except for the Treasurer and/or Secretary, any Director and/or Officer who is not elected or re-elected to serve as a Director or Officer shall immediately surrender all documents, keys, access codes, access combinations, books, papers, records, banking information, account information, full access to any and all accounts and records, all physical and intellectual property, and/or any other materials belonging to the Association by delivering them to the newly elected Board at the Annual Meeting at which the election took place; however, in the event that a change is required at a financial institution or post office in relation to items such as, but not limited to, account access, signatories, safe deposit box keys and access, and/or post office box keys and access, the outgoing Board member has five (5) business days following the election in order to make such a change and in no event shall the outgoing Board member be required to make this change before the current Board has satisfied all financial institution and/or post office requirements and paperwork, if any, for the change to occur;

This subsection 3.03.03 also applies to any and all Directors and/or Officers resign, retire, quit, are fired, terminated, removed, or otherwise stop serving (for any reason) as a Director and/or Officer of the Association; and in such an event,

any such Director and/or Officer shall immediately surrender the items stated above to the Board and/or the President.

In the event the Treasurer and/or Secretary are not elected or re-elected to serve as Treasurer and/or Secretary; or in the event that the Treasurer and/or Secretary resign, retire, quit, are fired, terminated, removed, or otherwise stop serving (for any reason) as the Treasurer and/or Secretary of the Association; this subsection 3.03.03 shall also apply to them in so far as they are also required to surrender the items stated above to the Board and/or President. However, due to the amount of items, documents, and paperwork under the control of the Treasurer and/or Secretary, the Treasurer and/or Secretary shall surrender said items stated above within five (5) business days following their last day serving in the position of Treasurer and/or Secretary regardless of whether they stopped serving due to loss of election, resignation, retirement, termination, removal, or any other reason. Additionally, as stated above, in the event that a change is required at a financial institution or post office in relation to items such as, but not limited to, account access, signatories, safe deposit box keys and access, and/or post office box keys and access, the outgoing Treasurer and/or Secretary shall have the same amount of time and procedure as outlined above.

**3.03.04** Directors and Officers must be Members of the Association.

**3.03.05 Officer Positions:** The four (4) Officer positions shall be: (i) President; (ii) Vice President; (iii) Secretary; and (iv) Treasurer (hereinafter, collectively referred to as “Officers”) (*see Article 4*).

**3.03.06 Assistant Secretary:** While all Officer positions are elected by the Membership, the Board may select one Board member who is not already serving in an Officer position, to act as “Assistant Secretary.”

**3.03.07 STAGGERED 2-YEAR DIRECTOR TERM:** In the event it is necessary to set-up staggered terms for the Directors, the five (5) Directors shall be divided into two (2) groups; with the first group consisting of two Directors and the second group consisting of three (3) Directors. The first group consisting of two (2) Directors shall serve only a one (1) year term following their election, while the second group consisting of three (3) Directors shall serve a term of two (2) years following their election. At the conclusion of the one-year term of the first group, the newly elected Directors that replace them shall serve a term of two-years thereafter (*see 3.03.01*) such that the two groups have staggered terms.

**3.04 Electing Directors and Officers:** A person who meets the qualifications for Director and/or Officer, and who has been duly nominated, may be elected as a Director and/or Officer. Each Director and/or Officer will be elected by the vote of a majority of Members present at the Annual Meeting of the Association. Voting shall be by written and signed ballot; and as otherwise directed herein. A Director or Officer may be elected to succeed himself or herself as Director or Officer.

*See also, "Election of Board Members", Texas Property Code section 209.00593.*

### **3.05 Vacancies:**

**3.05.01** Any vacancy which occurs in the Board, by reasons of death, resignation, removal, or otherwise, shall be filled by a majority vote of the remaining Board Members present at any meeting. Any Director or Officer elected to fill a vacancy on the Board shall serve until the next meeting of the Members at which point the Members of the Association shall vote to either: (i) allow the Board Member to remain in the position and fill the vacancy only until the expiration of the Director or Officer's term that they were elected to fill; or (ii) select a different qualified candidate to fill the vacancy until the expiration of the Director or Officer's term.

**3.05.02 Resignation:** Any Director or Officer may resign from the Board at any time by giving written notice to the Board. Such resignation shall take effect at the time specified therein; and unless otherwise specified therein the acceptance of such resignation shall not be necessary to be effective.

**3.06 Regular Meetings:** The Board may provide for Regular Meetings (herein "Regular Meetings") by resolution stating the time and place of such meetings, provided that such Regular Meetings shall occur at least quarterly during the Fiscal Year as defined in these By-Laws. Regular Meetings shall be held in Burleson County, Texas, and shall be held at the Association's registered office in Texas if the resolution does not specify the location of the Regular Meeting.

**3.06.01 Notice of Regular Meetings of the Board:** Written or printed notice of any Regular Meeting of the Board will be delivered to each of the Board Members in person, by mail, or email, not less than seven (7), nor more than sixty (60), days before the date of the meeting. The notice will state the place, date, and time of the meeting, and the purpose or purposes for which it is called.

**3.07 Special Meetings of the Board:** Special Meetings of the Board (herein "Special Meetings of the Board") may be called by, or at the request of, the President or any three (3) Board Members. In the event three (3) Board Members wish to call a Special Meeting of the Board, the three Board Members shall present a request in writing to the President and it shall be the duty of the President to call the Special Meeting of the Board. A person or persons authorized to call Special Meetings of the Board may fix any place within Burleson County, Texas, as the place for holding a Special Meeting of the Board. The person or persons calling a Special Meeting of the Board will inform the Secretary of the Association of the information to be included in the notice of the meeting. The Secretary of the Association will give notice to all of the Board Members as these By-Laws require.

**3.07.01 Notice of Special Meetings of the Board:** Written or printed notice of any Special Meeting of the Board will be delivered to all of the Board Members in person, by mail, or email, not less than seventy-two (72) hours before the start of the Special Meeting, nor more than sixty (60) days before the date of the Special

Meeting. The notice will state the place, date, and time of the meeting, and the purpose or purposes for which it is called.

**3.08 Notice to Members:** Notice to Members of Regular Meetings and Special Meetings of the Board shall be given in accordance with paragraph 11.07.01.

**3.09 Quorum:** A majority of the number of Board Members then in office constitutes a quorum for transacting business at any Board meeting. The Board Members present at a duly called or held meeting at which a quorum is present may continue to transact business even if enough Board Members leave the meeting so that less than a quorum remains. However, no action may be approved without the vote of at least a majority of the number of Board Members required for a quorum.

**3.10 Duties of Board Members:** Board Members will discharge their duties in good faith, with ordinary care, and in a manner that they reasonably believe to be in the Association's best interest. In this context, the term "ordinary care" means the care that ordinarily prudent persons in similar positions would exercise under similar circumstances. In discharging any duty imposed or power conferred on Board Members, Board Members may, in good faith, rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Association or another person that has been prepared or presented by a variety of persons, including officers and employees of the Association, professional advisors or experts such as accountants or legal counsel. A Board Member is not relying in good faith if such Board Member has knowledge concerning a matter in question that renders reliance unwarranted. Board Members are not deemed to have the duties of trustees of a trust with respect to the Association or with respect to any property held or administered by the Association, including property that may be subject to restrictions imposed by the donor or transferor of the property.

**3.11 Duty to Avoid Improper Distributions:** Board Members who vote for or assent to improper distributions are jointly and severally liable to the Association for the value of the improperly distributed assets, to the extent that, as a result of the improper distribution or distributions, the Association lacks sufficient assets to pay its debts, obligations, and liabilities. Any distribution made when the Association is insolvent, other than in payment of corporate debts, or any distribution that would render the Association insolvent, is an improper distribution. A distribution made during liquidation without payment and discharge of, or provision for payment and discharge of, all known debts, obligations, and liabilities is also improper. Board Members present at a Board meeting at which the improper action is taken are presumed to have assented, unless they dissent in writing. The written dissent can be filed with the Secretary of the Association before adjournment of the meeting in question or mailed to the Secretary by registered mail immediately after adjournment; alternatively, a Board Member is allowed to give his or her reason for dissent verbally, during the meeting, and any verbal dissent shall be reflected in the minutes.

A Board Member is not liable if, in voting for or assenting to a distribution, the Board Member: (1) relies in good faith and with ordinary care on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more officers or employees of the Association, legal counsel, public accountants, or other persons as to matters the Board Member reasonably believes are within the person's professional or expert

competence; (2) while acting in good faith and with ordinary care, considers the Association's assets to be at least that of their book value; or (3) in determining whether the Association made adequate provisions for paying, satisfying, or discharging all of its liabilities and obligations, relied in good faith and with ordinary care on financial statements or other information concerning a person who was or became contractually obligated to satisfy or discharge some or all of these liabilities or obligations. Furthermore, Board Members are protected from liability if, in exercising ordinary care, they acted in good faith and in reliance on the written opinion of an attorney for the Association.

Board Members held liable for an improper distribution are entitled to contribution from persons who accepted or received the improper distribution knowing they were improper. Contribution is in proportion to the amount received by each such person.

**3.12 Interested Board Members:** Contracts or transactions between Board Members who have a financial interest in the matter are not void or voidable solely for that reason. Nor are they void or voidable solely because the Board Member is present at or participates in the meeting that authorizes the contract or transaction, or solely because the interested party's votes are counted for the purpose. (*See the Texas Business and Organizations Code section 22.230 and By-Laws section 5.05*).

**3.13 Actions of Board:** The Board will try to act by consensus. However, if a consensus is not available, the vote of a majority of Board Members present and voting at a meeting at which a quorum is present is enough to constitute the act of the Board, unless the act of a greater number is required by law or by some other provision of these By-Laws.

**3.14 Proxies:** In no event shall a Board Member vote, or be represented, by proxy at a Board meeting.

**3.15 Compensation:** No Board Member shall receive compensation for any service he may render to the Association; provided, however, a Board Member may be reimbursed for the actual expenses incurred in the performance of his duties in so long as the Board Member seeking reimbursement submits: (i) adequate documentation to the Board demonstrating the expenses incurred, and (ii) adequate documentation showing the Board Member obtained prior approval from the Board to make the expenditure for which they are seeking reimbursement. In no event shall a Board Member be reimbursed for any amount that he does not have adequate documentation and approval for.

**3.16 Removing Board Members:** The Members may vote to remove a Board Member without cause. A meeting to consider removing a Board Member must state that the issue of removing the Board Member will be on the agenda.

At the meeting, the Board Member may present evidence of why he or she should not be removed and may be represented by an attorney, at their own expense, at and before the meeting. Also, at the meeting, the Association will consider possible arrangements for resolving the problems that are in the mutual interest of the Association and the Board Member.

A Board Member may be removed by the affirmative vote of the majority of the Members present at the meeting, provided a quorum is present.

**3.17 Conduct of Meetings:** The President (or, in the President's absence, a Vice-President) shall preside over all meetings of the Board; the Secretary or an Assistant Secretary shall keep a minute book of the Board meeting, recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings. The Treasurer shall present a financial report at all regular meetings.

In the event that both the President and Vice-President are absent, any other Board member may be designated to preside over the meeting.

Further, the President may appoint a "Sergeant of Arms" to assist him in maintaining order at all meetings.

**3.18 Rights of the Association:** With respect to the Common Properties, and the facilities and services provided by the Association, and in accordance with the Declaration and to the maximum extent permitted by applicable law, the Association shall have the right to contract with any person for the performance of various duties and functions, as approved by the Board.

## **ARTICLE 4 OFFICERS**

**4.01 President:** The President is the Association's chief executive officer. The President will supervise and control all the Association's business and affairs and will preside at all meetings of the Board. The President may execute any deeds, mortgages, bonds, contracts, or other instruments that the Board authorizes to be executed. However, the President may not execute instruments on the Association's behalf if this power is expressly delegated to another Officer or agent of the Association by the Board, these By-Laws, or statute. The President will perform other duties prescribed by the Board and all duties incident to the office of President.

The President shall sign checks, along with the Treasurer, in order to disburse funds and discharge the Association's obligations as approved by the Board; as funds may not be drawn from the Association or its accounts without the signature of both: (i) the Treasurer, AND (ii) the President and/or Vice President.

The President shall give written authorization, along with the Treasurer, in order to disburse funds and discharge the Association's obligations as approved by the Board, via the use of the Association's debit card; as the Association's debit card may not be used to draw funds from the Association or its accounts, without Board approval and the written authorization of both: (i) the Treasurer, AND (ii) the President and/or Vice President.

**4.01.01 Treasurer Review Committee:** The President shall appoint a committee made up of at least two (2) Members, and said committee shall review any and all records, books, and/or bank statements held and maintained by the Treasurer.

Such review shall take place at least once per quarter, with a report of the committee's findings being delivered to the Board. Upon the request of any Member, the committee's findings and/or quarterly report shall be made available to any Member and presented at the next meeting of Members.

**4.02 Treasurer:** The Treasurer will have charge and custody of, and be responsible for, all the Association's funds and securities. The Treasurer shall receive and give receipts, upon request, for moneys due and payable to the Association from any source. The Treasurer shall deposit all moneys in the Association's name in the banks, or other depositories, as these By-Laws provide or as the Board of Directors or President directs. The Treasurer may write checks in order to disburse funds and discharge the Association's obligations as approved by the Board; however, funds may not be drawn from the Association or its accounts without the signature of both: (i) the Treasurer, AND (ii) the President and/or Vice President (see also paragraph 5.02). The Treasurer shall maintain the Association's financial books and records; and prepare financial reports for all regularly scheduled Board meetings, Annual Meetings of the Members, and Semi-Annual Meetings of the Members. The Treasurer shall also provide information to the Board for the creation of a budget. The Treasurer shall also Perform other duties as assigned by the President or the Board of Directors; and perform all duties incident to the office of Treasurer.

Treasurer shall keep, possess, and maintain any and all debit cards in relation to any and all Association bank accounts. Any and every use of the debit card shall be approved by the Board and shall have written authorization from both the Treasurer and President or Vice-President.

**4.03 Secretary:** The Secretary shall give all notices as provided in the By-Laws, Declaration, or as required by law. The Secretary shall take minutes of the meetings of the Members and the Board and keep the minutes as part of the corporate records. The Secretary shall keep a register of the mailing address and email address of each Director, Officer, and Member of the Association. The Secretary shall perform the duties as assigned by the President or the Board; and shall perform all duties incident to the office of Secretary.

**4.04 Vice-President:** The Vice President will aid the President in the performance of his duties; and perform other duties as assigned by the President or the Board;

The Vice-President shall sign checks, along with the Treasurer, in order to disburse funds and discharge the Association's obligations as approved by the Board; as funds may not be drawn from the Association or its accounts without the signature of both: (i) the Treasurer, AND (ii) the President and/or Vice President.

The Vice-President shall give written authorization, along with the Treasurer, in order to disburse funds and discharge the Association's obligations as approved by the Board, via the use of the Association's debit card; as the Association's debit card may not be used to draw funds from the Association or its accounts, without Board approval and the written authorization of both: (i) the Treasurer, AND (ii) the President and/or Vice President.



**4.05 Assistant Secretary:** If an Assistant Secretary is selected by the Board, the Assistant Secretary will aid the Secretary in the performance of his or her duties. In no event is the Assistant Secretary entitled to an additional vote.

## **ARTICLE 5 TRANSACTIONS OF ASSOCIATION**

**5.01 Contracts:** The Board may authorize any Board Member or agent of the Association to enter into a contract or execute and deliver any instrument in the name of, and on behalf of, the Association. This authority may be limited to a specific contract(s) or instrument(s), or it may extend to any number and type of possible contract(s) or instrument(s). (*See Section 3.18*).

**5.02 Agreements, Contracts, Deeds, Leases, Checks:** Notwithstanding paragraph 4.02 which requires that all checks be signed by both the Treasurer and the President or Vice-President and 4.02 which requires that all uses of the debit card have written authorization from the Treasurer and the President or Vice-President; all agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) Officers, or by such other person or persons as may be designated by resolution of the Board; however, when possible, all available Board Members shall execute the document in question.

**5.03 Deposits:** All the Association's funds will be deposited to the credit of the Association in banks, or other depositories that the Board selects.

**5.04 Gifts:** The Board may accept, on the Association's behalf, any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Association. The Board may make gifts and give charitable contributions not prohibited by these By-Laws, the Articles of Incorporation, Declaration, state law, and provisions set out in federal tax law that must be complied with to maintain the Association's federal and state tax exempt status.

**5.05 Potential Conflicts of Interest:** The Association may not make any loan to a Board Member of the Association. A Board Member of the Association may lend money to, and otherwise transact business with, the Association except as otherwise provided by these By-Laws, the Articles of Incorporation, and applicable law. Such a person transacting business with the Association has the same rights and obligations relating to those matters as other persons transacting business with the Association. The Association may not borrow money from, or otherwise transact business with, a Board Member of the Association unless the transaction is described fully in a legally binding instrument and is in the Association's best interest. The Association may not borrow money from, or otherwise transact business with, a Board Member of the Association without full disclosure of all relevant facts and without approval from the Board and Association Membership, not including the vote of any person having a personal interest in the transaction.

**5.06 Prohibited Acts:** As long as the Association exists no Board Member of the Association may:

- 5.06.01** Do any act in violation of these By-Laws, Declaration, or a binding obligation of the Association;
- 5.06.02** Do any act with the intention of harming the Association or any of its operations;
- 5.06.03** Do any act that would make it impossible or unnecessarily difficult to carry on the Association's intended or ordinary business;
- 5.06.04** Receive an improper personal benefit from the operation of the Association;
- 5.06.05** Use the Association's assets, directly or indirectly, for any purpose other than carrying on the Association's business;
- 5.06.06** Wrongfully transfer or dispose of Association property, including intangible property;
- 5.06.07** Use the Association's name (or any substantially similar name) or any trademark or trade name adopted by the Association, except on behalf of the Association in the ordinary course of its business;
- 5.06.08** Disclose any of the Association's business practices, trade secrets, or any other information not generally known to the business community to any person not authorized to receive it; or
- 5.06.09** Take out or obtain a loan in the name of, or on behalf of, the Association without first fully disclosing the purpose and terms of the loan, and obtaining approval from the Members.

## **ARTICLE 6 BOOKS & RECORDS**

**6.01 Required Books and Records:** The Association will keep correct and complete books and records of account. The books and records include, but are not limited to, the following:

- 6.01.01** A file-endorsed 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;
- 6.01.02** A copy of all bylaws, including these By-Laws, and any amended versions or amendments to them;

- 6.01.03** Approved minutes of the proceedings of the Board; as well as Approved Minutes from any meeting of the Association;
  - 6.01.04** A list of the names and addresses of the Members, Directors, and Officers of the Association;
  - 6.01.05** Annual financial reports containing an Income Statement reflecting all income and expense activity for the preceding twelve (12) months on a cash or accrual basis, as the Board may prescribe;
  - 6.01.06** Any other financial reports and/or documents that are required by law to be kept by the Association;
  - 6.01.07** All rulings, letters, and other documents relating to the Association's federal, state, and local tax status; and
  - 6.01.08** The Association's federal, state, and local tax information or income-tax returns for each of the Association's seven (7) most recent tax years; as well as any Franchise Reports.
- 6.02 Inspection and Copying:** Please see Texas Property Code section 209.005 and the Fee Table.
- 6.02.01** The President has the right to inspect the corporate books and records at any and all times; and without formal request as outlined in 6.02.

## **ARTICLE 7 FISCAL YEAR**

The Board may establish the Association's Fiscal Year by resolution; however, in the absence of a Board resolution, the Association's Fiscal Year is a calendar year beginning on the first day of January and ending on the last day in December of each year (herein "Fiscal Year").

## **ARTICLE 8 INDEMNIFICATION**

**8.01 Indemnification:** To the full extent permitted by applicable law, no Board Member of this Association shall be liable to this Association or its Members for monetary damages for an act or omission in such Board Member's capacity as a director and/or officer of this Association, except that this Article 8 does not eliminate or limit the liability of a Director or Officer of this Association for:

- 8.01.01** a breach of such Director's or Officer's duty of loyalty to this Association or its Members;
- 8.01.02** an act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law;
- 8.01.03** a transaction from which such Director or Officer received an improper benefit, whether or not the benefit resulted from an action taken within the scope of such director's or officer's office;
- 8.01.04** an act or omission for which the liability of such Director or Officer is expressly provided for by statute; or
- 8.01.05** an act related to an unlawful stock repurchase or payment of a dividend.

Any repeal or amendment of this Article 8 by the Members of this Association shall be prospective only, and shall not adversely affect any limitation on the personal liability of a Director or Officer of this Association existing at the time of such repeal or amendment. In addition to the circumstances in which a Director or Officer of this Association is not personally liable as set forth in the foregoing provision of this Article 8, a Director or Officer shall not be liable to the full extent permitted by any Amendment to the Texas Non-Profit Corporation Act as amended from time to time, or any successor act or statute, hereafter enacted that further limits the liability of a Director or Officer.

## **ARTICLE 9 NOTICES**

**9.01 Notice by Mail or Telegram:** Unless otherwise provided herein, any notice required or permitted by these By-Laws to be given to a Director or Officer may be given by mail, facsimile, telegram, or electronic mail (to an email address given and consented to by the Director or Officer).

**9.02 Signed Waiver of Notice:** Whenever any notice is required by law or under the Articles of Incorporation, or these By-Laws, a written waiver signed by the person entitled to receive such notice is considered the equivalent to giving the required notice. A waiver of notice is effective whether signed before or after the time stated in the notice being waived.

**9.03 Waiving Notice by Attendance:** A person's attendance at a meeting constitutes waiver of notice of the meeting unless the person attends for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

## **ARTICLE 10 AMENDING BY-LAWS**

**10.01 Board Resolution:** These By-Laws may be altered, amended, or repealed, and new By-Laws may be adopted; where the Board shall adopt a resolution setting forth the proposed amendment, amendments, and/or new By-Laws, and submitting it to a vote at an Annual Meeting, Semi-Annual Meeting, or Special Meeting of the Members.

**10.02 Member Approval:** The resolution to alter, amend, or repeal and adopt new By-Laws must be adopted and/or passed by an affirmative vote of a majority of the Members present at an Annual Meeting, Semi-Annual Meeting, or Special Meeting called for such purpose.

**10.03 Notice:** The notice of any meeting at which these By-Laws are altered, amended, or repealed, or at which new By-Laws are adopted will include the text of the proposed By-Law provisions as well as the text of any existing provisions proposed to be altered, amended, or repealed. Alternatively, the notice may include a fair summary of those provisions. In addition, the notice of any meeting at which these By-Laws are to be altered, amended, or repealed, or at which new By-Laws are to be adopted, must state that the altering, amending, repealing, or adopting of new By-Laws will be on the agenda.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**11.01 Legal Authorities Governing Construction of By-Laws:** These By-Laws will be construed under Texas law. All references in these By-Laws to statutes, regulations, or other sources of legal authority will refer to the authorities cited, or their successors, as they may be amended from time to time.

**11.02 Legal Construction:** To the greatest extent possible, these By-Laws shall be construed to conform to all legal requirements and all requirements for obtaining and maintaining all tax exemptions that may be available to nonprofit corporations. If any By-Law provision is held invalid, illegal, or unenforceable, the invalidity, illegality, or unenforceability will not affect any other provision, and the By-Laws will be construed as if they had not included the invalid, illegal, or unenforceable provision.

**11.03 Headings:** The headings used in these By-Laws are for convenience and may not be considered in construing the By-Laws.

**11.04 Numbers and Pronouns:** All singular words include the plural, and all plural words include the singular. Further, all masculine pronouns include the feminine, and all feminine pronouns include the masculine.

**11.05 Conflict with Declaration:** In the event of any conflict or ambiguity between these By-Laws and the Declaration, and unless otherwise required by law, the terms and conditions of the Declaration shall control.

**11.06 Parties Bound:** The By-laws will bind and inure to the benefit of the Directors, Officers, employees, Members, and agents of the Association and their respective heirs, executors, administrators, legal representatives, successors, and assigns except as the By-Laws otherwise provide.

**11.07 Open Meetings & Executive Sessions:** All Board meetings (including Regular Meetings and Special Meetings of the Board) shall be conducted in compliance with all laws, the Declaration, the Articles, and these By-Laws. More specifically, the requirements of open meetings and executive sessions as found in Texas Property Code chapter 209 (209.0051) shall be followed at all times.

**11.07.01 Notice to Members of Board Meetings:** Members shall be given notice of the date, hour, place, and general subject of a Regular or Special Meeting of the Board of Directors, including a general description of any matter to be brought up for deliberation in executive session.

Notwithstanding any other notice provisions herein; the notice to the Members shall be: (1) mailed to each Owner not later than the 10th day nor earlier than the 60th day before the date of the Regular or Special Meeting of the Board of Directors; OR (2) provided at least 144 hours before the start of a Regular Board Meeting and at least 72-hours before the start of a Special Meeting of the Board of Directors, by (A) posting the notice in a conspicuous manner reasonably designed to provide notice to Owners: (i) in a place located on the Association's Common Property, or with the property owner's consent, on other conspicuously located privately owned property within the Property or subdivision; or (ii) on any Internet website maintained by the Association or other Internet media; AND (B) sending the notice by e-mail to each owner who has registered an e-mail address with the association.

**11.08 All Payments:** The Association shall not accept cash for the payment of fees and/or Assessments, and shall only accept checks, cashier's checks, money orders, and/or credit/debit card payments (when made available at the discretion of the Board).