

SECOND AMENDED

AND RESTATED

BYLAWS

FOR THE

LANDING HOMEOWNERS' ASSOCIATION

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**SECOND AMENDED AND RESTATED BY-LAWS OF THE
LANDING HOMEOWNERS' ASSOCIATION, INC.**

ARTICLE I

NAME AND LOCATION

Section 1. Name. The name of the corporation is THE LANDING HOMEOWNERS' ASSOCIATION, INC., hereinafter referred to as the "Association".

Section 2. Principal office. The principal office of the Corporation shall be located at 9400 Mountain Lake, Fort Worth, Tarrant County, Texas, 76179. Meetings of the Owners and Directors shall be held at the principal office or at other locations as specified from time to time by the Board (as defined below).

ARTICLE II

DEFINITIONS

Section 1. "Applicable Law" means the statutes and public laws, codes, ordinances, and regulations in effect at the time a provision of the Governing Documents is applied and pertaining to the subject matter of the Governing Provision. Statutes and ordinances specifically referenced in the Governing Documents are "Applicable Law" on the date of the Governing Document and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

Section 2. "Board" shall mean the Board of Directors of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and as described in the Declaration.

Section 4. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions, and all amendments and restatements thereto, filed or to be filed in the Deed

Records of Tarrant County, Texas.

Section 5. “Dedictory Instrument” means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision, as provided by the Texas Residential Property Owners Protection Act in accordance with Texas Property Code 202.001.

Section 6. “Assessments” includes but is not limited to: interest, late charges, administrative fees, and collection costs on delinquent assessments; reimbursements for costs incurred in bringing an Owner or his Lot into compliance with the Governing Documents; fines for violations of the Governing Documents; insurance deductibles; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; reimbursement for damage or waste caused by willful or negligent acts; common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Lot basis; and "pass through" expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to benefit received.

Section 7. “Lot” shall mean and refer to numbered plots of land shown upon any recorded subdivision map of the Properties that is not designated as the Common Area, streets, alleyways or thoroughfares.

Section 8. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is situated in the Properties, including contract sellers, but excluding those holding an interest in a Lot merely as security for the performance of an obligation.

Section 9. “Properties” shall mean and refer to that certain real property described at “EXHIBIT A” to the Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions, which are hereby incorporated fully by reference for all purposes, and such additions

thereto as may hereafter be brought within the jurisdiction of the Association.

Section 10. "Association" shall mean and refer to THE LANDING HOMEOWNERS' ASSOCIATION, INC., its successors and assigns.

Section 11. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration and Articles of Incorporation.

ARTICLE III

MEETING OF OWNERS

Section 1. Annual Meetings. Regular annual meetings of the Owners shall be held on the first Monday of February of every year, at the hour of 7:30 o'clock p.m. at the principal office of the Association, or may be held by electronic communication methods. If the day of the annual meeting of the Owners is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday. At the annual meeting, the Owners shall elect directors and transact any other business that may come before the meeting.

If the Board does not call an annual meeting of the Owners, an Owner may demand that a meeting of the Association Members be called not later than the 30th day after the date of the Owner's demand. The Owner's demand must be made in writing and sent by certified mail, return receipt requested, to the registered agent of the Association and to the Association at the address for the Association according to the most recently filed management certificate. A copy of the notice must be sent to each property Owner who is a Member of the Association.¹

¹ See Tex. Prop. Code § 209.014.

Section 2. Special Meetings. Special meetings of the Owners may be called at any time by the president, or by a majority of the Board, or upon written request of one-fourth (1/4th) of all Owners of the Association who are entitled to vote.

Section 3. Notice of Meetings.² Owners shall be given written notice of the date, hour, place, and general subject of the meetings, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be:

(1) mailed to each Owner not later than the 10th day or earlier than the 60th day before the date of the meeting; 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 Board meeting by:

(A) posting the notice in a conspicuous manner reasonably designed to provide notice to Association Members:

(i) in a place located on the Association's common property or, with the property Owner's consent, on other conspicuously located privately owned property within the subdivision; or

(ii) on any Internet website available to Association Members that is maintained by the Association or by a management company on behalf of the Association; and

(B) sending the notice by e-mail to each Owner who has registered an e-mail address with the Association.

(3) For meetings held by electronic communications, the notice must include the

² See Tex. Prop. Code § 209.0051(e).

instructions to access the communication method required to be accessible.

(4) Owners have a duty to keep an updated e-mail address registered with the Association.

Section 4. Quorum. The presence at the meeting of Members entitled to cast, proxies entitled to cast, or delivered absentee ballots on items appearing on the ballot³ constituting twenty-five percent (25%) of the votes of those Members entitled to vote shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote there at shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Voting. At all meetings of Members, each Member may vote:

- (1) in person or by proxy at a meeting of the Association; and
- (2) by absentee ballot.⁴

Except for uncontested races, any vote cast in an election or vote by a Member must be in writing and signed by the Member. The Board may adopt rules to allow voting by secret ballot in accordance with section 209.0058 of the Texas Property Code.

Section 6.0. Proxies. All proxies shall be in writing and filed with the secretary prior to the vote. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her Lot.

³ See Tex. Prop. Code § 209.00592.

⁴ See Tex. Prop. Code § 209.00592(a-1).

Section 6.1. Absentee Ballots.⁵ An absentee or electronic ballot: (1) may be counted as an Owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot; (2) may not be counted, even if properly delivered, if the Owner attends any meeting to vote in person, so that any vote cast at a meeting by a property Owner supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal; and (3) may not be counted on the final vote of a proposal if the motion was amended at the meeting to be different from the exact language on the absentee ballot.

A solicitation for votes by absentee ballot must include: (1) an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action; (2) instructions for delivery of the completed absentee ballot, including the delivery location; and (3) the following language: “By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail.”⁶

6.2. Notice of Election or Vote at Meeting.⁷ For an election or vote taken at a meeting of the Members, not later than the 10th day or earlier than the 60th day before the date of the election or vote, the Board shall give written notice of the election or vote to:

- (1) each Owner of property in the Association, for purposes of an Association-wide

⁵ See Tex. Prop. Code § 209.00595(b).

⁶ See Tex. Prop. Code § 209.00592(c).

⁷ See Tex. Prop. Code § 209.0056(a).

election or vote; or

(2) each Owner of property in Association entitled under the Dedicatory Instruments to vote in a particular representative election, for purposes of a vote that involves election of representatives of the Association who are vested under the Dedicatory Instruments of the Association with the authority to elect or appoint Board members of the Association.

6.3. Notice of Election or Vote Not at Meeting.⁸ For an election or vote of Owners not taken at a meeting, the Board shall give notice of the election or vote to all Owners entitled to vote on any matter under consideration. The notice shall be given not later than the 20th day before the latest date on which a ballot may be submitted to be counted.

Section 7. Action of Membership. The vote of a majority of Members, present and entitled to vote at a meeting at which a quorum is present, shall be sufficient to constitute the act of the membership unless the vote of a greater number is required by law, the Articles of Incorporation, the Declaration , or by these Bylaws.

Section 8. Recount of Votes.⁹

Section 8.1. Demand. Any Owner may, not later than the 15th day after the later of the date of any meeting of Owners at which the election or vote was held or the date of the announcement of the results of the election or vote, require a recount of the votes. A demand for a recount must be submitted in writing either: (1) by verified mail or by the United States Postal Service with signature confirmation service to the Association's mailing address as reflected in the latest management certificate recorded in the Tarrant County real property records; or (2) in person to the Association's managing agent as reflected on the latest management certificate recorded in the

⁸ See Tex. Prop. Code § 209.0056(a-1).

⁹ See Tex. Prop. Code § 209.0057(b)-(d).

Tarrant County real property records or to the address to which absentee and proxy ballots are mailed.

Section 8.2. Estimation of Costs. The Association must estimate the costs for performance of the recount by a person qualified to tabulate votes under Subsection 8.6 and must send an invoice for the estimated costs to the requesting Owner at the Owner's last known address according to Association records not later than the 20th day after the date the Association receives the Owner's demand for the recount.

Section 8.3. Payment of Invoice. The Owner demanding a recount under this Section 8 must pay the invoice described by Subsection 8.2 in full to the Association on or before the 30th day after the date the invoice is sent to the Owner. If the invoice is not paid by the deadline, the Owner's demand for a recount is considered withdrawn and a recount is not required.

Section 8.4. Final Invoice or Refund. If the estimated costs under Subsection 8.2 are lesser or greater than the actual costs, the Association must send a final invoice to the Owner on or before the 30th business day after the date the results of the recount are provided. If the final invoice includes additional amounts owed by the Owner, any additional amounts not paid to the Association before the 30th business day after the date the invoice is sent to the Owner may be added to the Owner's account as an Assessment. If the estimated costs exceed the final invoice amount, the Owner is entitled to a refund. The refund shall be paid to the Owner at the time the final invoice is sent under this subsection.

Section 8.5 Retention. Following receipt of payment under Subsection 8.3, the Association shall, at the expense of the Owner requesting the recount, retain for the purpose of performing the recount the services of a person qualified to tabulate votes under this subsection. The Association shall enter into a contract for the services of a person who:

(1) is not a Member of the Association or related to a Member of the Association Board within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code; and

(2) is:

(A) a current or former:

- (i) county judge;
- (ii) county elections administrator;
- (iii) justice of the peace; or
- (iv) county voter registrar; or

(B) a person agreed on by the Association and each person requesting the recount.

Section 8.6. Recount and Results. On or before the 30th day after the date of receipt of payment for a recount in accordance with Subsection 8.3, the recount must be completed and the Association must provide each Owner who requested the recount with notice of the results of the recount. If the recount changes the results of the election, the Association shall reimburse the requesting Owner for the cost of the recount not later than the 30th day after the date the results of the recount are provided. Any action taken by the Board in the period between the initial election vote tally and the completion of the recount is not affected by any recount.

ARTICLE IV

BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of five (5) Directors. No more than one Director may be a non-Member of the Association.

Section 2. Term of Office. There shall be three Directors who shall be elected for a term of three years and two Directors who shall be elected for a term of one year. The Directors holding office for a term of three years shall be so elected that the terms of one of these Directors will expire annually and these positions shall be designated as Director A, Director B, and Director C. The term of the initial Director A will expire one year after his or her election and qualification, i.e., in 1993; the term of the initial Director B will expire two years after his or her election and qualification, i.e., in 1994; the term of the initial Director C will expire three years after his or her election and qualification, i.e., in 1994. Successive terms for all such Directors will expire three years after the Director's election and qualification.

Section 3. Removal.¹⁰ Any Director may be removed from the Board, with or without cause, by two-thirds (2/3) affirmative vote of Members of the Association who are entitled to vote. Directors may also be removed as provided in Article VII, Section 1. (d) of these Restated Bylaws. Directors may also be removed, with or without cause, by the affirmative vote of a simple majority of all the other Directors, taken at a regular or special meeting. A Director may also be removed if the person cohabits at the same primary residence with another Board member of the Association. A Director may also be removed if the person was convicted of a felony or crime involving moral turpitude not more than 20 years before the date the board is presented with the evidence of such conviction.

In the event of death, resignation or removal of a Director, his successor shall be appointed by the remaining Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he or she

¹⁰ See Tex. Prop. Code § 209.00591 (b).

may render to the Association. However, any Director may be reimbursed for his or her actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without A Meeting.¹¹ Except as provided by this subsection, a Board may take action outside of a meeting, including voting by electronic or telephonic means, without prior notice to Owners, if each Board member is given a reasonable opportunity to express the Board member's opinion to all other Board members and to vote. Any action taken without notice to Owners must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special Board meeting. The Board may not, unless done in an open meeting for which prior notice was given to Owners consider or vote on:

- (1) fines;
- (2) damage assessments;
- (3) initiation of foreclosure actions;
- (4) initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety;
- (5) increases in Assessments;
- (6) levying of special Assessments;
- (7) appeals from a denial of architectural control approval;
- (8) a suspension of a right of a particular Owner before the Owner has an opportunity to attend a Board meeting to present the Owner's position, including any defense, on the issue;
- (9) lending or borrowing money;
- (10) the adoption or amendment of a Dedicatory Instrument;

¹¹ See Tex. Prop. Code § 209.0051h)

- (11) the approval of an annual budget or the approval of an amendment of an annual budget;
- (12) the sale or purchase of real property;
- (13) the filling of a vacancy on the Board;
- (14) the construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or
- (15) the election of an officer.

ARTICLE V

NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board shall be made by a Nominating Committee. Nominations may also be made from the floor at the Annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members, and shall serve from the date of such appointment until the close of the annual meeting. The Nominating Committee shall make at least one nomination for each position to be filled on the Board, as it shall in its discretion determine, but no less nominations than the number of vacancies that are to be filled.

Section 2. Notice.¹² At least 10 days before absentee or other ballots are disseminated to Members for purposes of voting in a Board member election, the Board must provide notice to the Members soliciting candidates interested in running for a position on the Board. The notice must contain instructions for an eligible candidate to notify the Board of the candidate's request to be placed on the ballot and the deadline to submit the candidate's request, which may not be earlier

¹² See Tex. Prop. Code § 209.00593(a-1) (a-2).

than the 10th day after the date the notice is provided under this subsection. The notice required by this subsection must be:

(1) mailed to each Owner; or

(2) provided by:

(A) posting the notice in a conspicuous manner reasonably designed to provide notice to Association members:

(i) in a place located on the Association's common property or, with the property Owner's consent, on other conspicuously located privately owned property within the subdivision; or

(ii) on any Internet website maintained by the Association or other Internet media; and

(B) sending the notice by e-mail to each Owner who has registered an e-mail address with the Association.

Section 3. Election. Election to each position on the Board shall be by separate secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the majority of votes shall be elected. In the event that a majority decision is not reached on the first ballot, then a runoff election between the two nominees receiving the largest number of votes will be conducted. Each absentee or other ballot for a Board member election shall include the name of each eligible candidate from whom the Board received a request to be placed on the ballot in accordance with Section 2.¹³

¹³ See Tex. Prop. Code § 209.00593(a-3)

Section 4. Tabulation.¹⁴ A person who is a candidate or who is otherwise the subject of a vote, or a person related to that person within the third degree by consanguinity or affinity, as determined under Chapter 573, Texas Government Code, may not tabulate or otherwise be given access to the ballots cast in that election or vote except as provided by this section. An authorized person who tabulates such votes or who performs a recount may not disclose to any other person how an individual voted. Only a person authorized to tabulate votes or to perform a recount may be given access to the ballots cast in the election or vote.

Section 5. Eligibility.¹⁵ A person may not serve on the Board if the person cohabits at the same primary residence with another Board member of the Association. If the Board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a Board member was convicted of a felony or crime involving moral turpitude not more than 20 years before the date the Board is presented with the evidence, the Board member is immediately ineligible to serve on the Board of the Association, automatically considered removed from the Board, and prohibited from future service on the Board.

ARTICLE VI

BOARD MEETINGS

Section 1. Regular Meetings. Regular meetings of the Board shall be held at such place and hour as may be fixed from time to time by resolution of the Board.

Section 2. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two Directors, after not less than three (3) day notice

¹⁴ See Tex. Prop. Code § 209.00594.

¹⁵ See Tex. Prop. Code § 209.00591 (a-3).

to each Director. Notice may be waived by assent of all Directors recorded in the minutes of said meeting.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board, unless the act of a greater number is required by law, the Articles of Incorporation, these Bylaws or the Declaration. A duly held meeting does not include the gathering of a quorum of the Board at a social function unrelated to the business of the Association or the attendance by a quorum of the Board at a regional, state, or national convention, ceremonial event, or press conference, if formal action is not taken and any discussion of Association business is incidental to the social function, convention, ceremonial event, or press conference.¹⁶

Section 4. Open Board Meetings.¹⁷ Regular and special Board meetings must be open to Owners, subject to the right of the Board to adjourn a Board meeting and reconvene in closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the property Owners' Association's attorney, matters involving the invasion of privacy of individual Owners, or matters that are to remain confidential by request of the affected parties and agreement of the Board. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual Owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general

¹⁶ See Tex. Prop. Code § 209.0051(b)(2).

¹⁷ See Tex. Prop. Code § 209.0051(c).

explanation of expenditures approved in executive session.

Section 5. Location of Meetings. A Board meeting must be held in Tarrant County or an adjacent county, except that a Board meeting may be held by electronic or telephonic means, provided that:

- (1) each Board member may hear and be heard by every other Board member;
- (2) except for any portion of the meeting conducted in executive session:
 - (A) all Owners in attendance at the meeting may hear all Board members; and
 - (B) Owners are allowed to listen using any electronic or telephonic communication method used or expected to be used by a Board member to participate; and
- (3) the notice of the meeting includes instructions for Owners to access any communication method required to be accessible under Subdivision (2)(B).

Section 6. Records. The Board shall keep a record of each regular or special Board meeting in the form of written minutes of the meeting. The Board shall make meeting records, including approved minutes, available to a Member for inspection and copying on the Member's written request to the property Owners' Association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the Board.

Section 7. Notice of Meeting. Members shall be given notice of the date, hour, place, and general subject of a regular or special Board meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be:

- (1) mailed to each property Owner not later than the 10th day or earlier than the 60th day before the date of the meeting; 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 Board meeting by:

(A) posting the notice in a conspicuous manner reasonably designed to provide notice to Association Members:

(i) in a place located on the Association's common property or, with the property Owner's consent, on other conspicuously located privately owned property within the subdivision; or

(ii) on any Internet website available to Association Members that is maintained by the Association or by a management company on behalf of the Association; and

(B) sending the notice by e-mail to each Owner who has registered an e-mail address with the Association.

Section 8. Continuation of Meetings. If the Board recesses a regular or special Board meeting to continue the following regular business day, the Board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. If a regular or special Board meeting is continued to the following regular business day, and on that following day the Board continues the meeting to another day, the Board shall give notice of the continuation in at least one manner prescribed by Section 7(2)(A) within two hours after adjourning the meeting being continued.

Section 9. Action Outside of Meeting. Except as provided by this subsection, a Board may take action outside of a meeting, including voting by electronic or telephonic means, without prior notice to Owners under Section 7, if each Board member is given a reasonable opportunity to express the Board member's opinion to all other Board members and to vote. Any action taken without notice to Owners under Section 7 must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special Board meeting. The Board is still required to comply with

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board shall have the power to:

(a). Adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the Owner and their guests thereon, and to establish penalties for the infraction thereof;

(b). Suspend the right to the use of the recreational facilities of an Owner during any period in which such Owner shall be in default in the payment of any Assessment levied by the Association. Such rights may also be suspended after notice and hearing before the Board, for a period not to exceed 60 days for the infraction of published rules and regulations;

(c). Exercise for the Association of powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

(d). Declare the office of a Member of the Board to be vacant in the event such Member shall be absent from three (3) unexcused consecutive regular meetings of the Board;

(e). Retain the services of a manager, an independent contractor, attorneys, accountants or such other persons as they deem necessary, and to prescribe their duties which may include the authority to execute the duties of the Board;

(f). Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g). Charge, as deemed appropriate, reasonable admission and other fees for the use of any recreational facility situated upon the Common Area and restrict the use of the recreational

facilities situated upon the Common Area to resident Owners of the homes in the subdivision and those delegated the rights of enjoyment, if any, in the Declaration;

(h). Establish reasonable rules and regulations regarding the use of parking spaces in the Common Area;

(i). Establish users' fees for use of certain portions of the Common Areas, for example: the boat slips;

(j). Borrow money, in accordance with the Articles of Incorporation and the Declaration, for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property;

(k). Shall set forth and prescribe rules, applicable to all lots, for exterior maintenance of Lots, including improvements on the Lot, lawn and grounds located on each Lot and vacant Lots. In the event an Owner shall fail to maintain the premises and the improvements situated thereon, the Board shall have the right, in accordance with Article VI of the Declaration, to peacefully enter upon said Lot and to remove unapproved structures, repair, maintain and restore the Lot and any improvements erected thereon. The cost of such exterior maintenance shall be added to and become a part of the Assessment to which such Lot is subject, and the Assessment shall be secured by lien as provided in Article IV of the Declaration

(l). Suspend the right to use of the recreational facilities owned or operated by the Association of any Owner, or other tenant, agent, guest, or family member of an Owner who fail to comply with any of the restrictions described in Article VIII of the Declaration.

(m). Adopt a method that may be used by the Association to provide a notice from the Association to a property Owner in accordance with section 209.0042 of the Texas Property Code. Such alternative notice may be used to provide a notice for which another method is prescribed

only if the property Owner to whom the notice is provided has affirmatively opted to allow the Association to use the alternative method of providing notice.¹⁸

(n). Enter into contracts to effectuate these duties and establish bidding processes as required therefor.

Section 2. Duties. It shall be the duty of the Board to:

(a). Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Owners at the annual meeting of the Owners;

(b). Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c). As more fully provided in the Declaration to:

(1). Fix the amount of the annual Assessment against each Lot at least thirty (30) days in advance of each annual Assessment period;

(2). Send written notice of each Assessment to every Owner subject thereto at least thirty (30) days in advance of each annual Assessment period; and

(3). Consider legal action to foreclose the lien against any property for which Assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same.

(d). Issue, or to cause an appropriate officer to issue, upon demand by a person, a certificate setting forth whether or not any Assessment has been paid. A reasonable charge may be made by the Board of the issuance of these certificates. If a certificate states an Assessment has been paid, such certificate shall be conclusive evidence of such payment;

¹⁸ See Tex. Prop. Code §209.0042(a-b).

(e). Cause the Common Area and facilities to be maintained;

(f). Directors shall exercise ordinary business judgment in managing the affairs of the Association. In acting in their official capacity as Directors of the Association, Directors shall act in good faith and take actions they reasonably believe to be in the best interest of the Association and that are not unlawful. A Director shall not be liable if, in the exercise of ordinary care, the Director acts in good faith relying on financial and legal statements provided by an attorney or an accountant retained by the Association.

(g). Levy, in accordance with Article IV, **Section 6** of the Declaration, in any Assessment year, a special Assessment applicable to that year only for any purpose deemed necessary and advisable by the Board;

(h). Obtain and continue in effect blanket property insurance and comprehensive public liability insurance, in accordance with the Declaration.

(i). Prepare and distribute to developers and Owners an informational brochure informing potential purchasers and Owners about the Homeowners Association and the rights and obligations of Lot Owners. Specifically, the informational brochure shall contain the following information:

(a). Organizational structure of the Association;

(b). Ownership and voting rights of the homeowners and developer;

(c). Requirements for annexation, and dissolution, and an explanation that the total ownership of the Homeowners Association may be increased;

(d). The maximum amount and initial amount of Assessments, the Assessment lien, and the method of enforcement;

(e). The method of changing the maximum Assessment;

- (f). A definition of user fees, if any;
- (g). A complete description of all elements of the Common Property, including improvements;
- (h). The services to be provided by the Association;
- (i). Exterior maintenance and dwellings, if any; and
- (j). Architectural control.

(j). Issue, or to cause an appropriate officer to issue, management certificates and amendments to management certificates as required by law.¹⁹

Section 3. Association Contracts.²⁰ The Association may enter into an enforceable contract with a current Association Board member, a person related to a current Association Board member within the third degree by consanguinity or affinity, as determined under Chapter 573, Texas Government Code, a company in which a current Association Board member has a financial interest in at least 51 percent of profits, or a company in which a person related to a current Association Board member within the third degree by consanguinity or affinity, as determined under Chapter 573, Texas Government Code, has a financial interest in at least 51 percent of profits only if the following conditions are satisfied:

(1). the Board member, relative, or company bids on the proposed contract and the Association has received at least two other bids for the contract from persons not associated with the Board member, relative, or company, if reasonably available in the community;

(2). the Board member:

(A) is not given access to the other bids;

¹⁹ See Tex. Prop. Code § 209.004.

²⁰ See Tex. Prop. Code § 209.0052.

- (B) does not participate in any Board discussion regarding the contract; and
- (C) does not vote on the award of the contract;

(3). the material facts regarding the relationship or interest with respect to the proposed contract are disclosed to or known by the Association Board and the Board, in good faith and with ordinary care, authorizes the contract by an affirmative vote of the majority of the Board members who do not have an interest governed by this subsection; and

(4). the Association Board certifies that the other requirements of this subsection have been satisfied by a resolution approved by an affirmative vote of the majority of the Board members who do not have an interest governed by this subsection.

For a proposed contract for services that will cost more than \$50,000, the Association Board shall solicit bids or proposals using a bid process established by the Association Board. (See Texas Property Code 209.0052).

ARTICLE VIII

OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Association shall be a president, and vice president, who shall at all times be members of the Board, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election and Term of Officers. The officers of this Association shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the Owners. Each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise be disqualified to serve.

Section 3. Special Appointments. The Board may elect such other officers as the affairs of

the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 4. Resignation and Removal. Any officer may be removed from office with or without cause by a majority vote of the Board whenever in their judgment the best interest of the Association will be served thereby. Such removal will be effective as of the date of the Board resolution. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified in all respects valid if otherwise in conformity with the provisions of the Bylaws.

Section 5. Vacancies. A vacancy in any office may be filled by appointment by the Board and written acceptance of the office by the appointee filed with the Secretary. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 3 of this Article.

Section 7. Duties. The duties of the officers are as follows:

a) President

The President shall be the chief executive officer of the Association; shall preside at all meetings of the Members and Board; shall see that orders and resolutions of the Board are carried out; shall be an authorized signatory for all leases, mortgages, deeds and other written instruments and may co-sign all checks and promissory notes.

b) Vice President

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

c) Secretary

The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members and all other notices as required by law or these Bylaws; keep appropriate current records showing the Directors, Officers and Members of the Association together with their addresses, and shall perform such other duties as required by the Board or by the President.

d) Treasurer

The Treasurer shall have charge and custody of, and be responsible for all funds and securities of the Association; shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; is authorized, but not required, to sign all checks and promissory notes of the Association; shall maintain the financial books and records and keep proper books of account; shall cause and annual financial review of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the ownership at its regular annual meeting and deliver a copy of each to the Members, and perform other duties as assigned by the President or the Board. Provided that any of the above duties may be delegated to the Manager for the Association.

ARTICLE IX
COMMITTEES

The Board shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee as provided in these Bylaws. In addition, the Board shall appoint other committees as deemed appropriate in carrying out its purpose. The Board shall define the activities, scope of authority, term of office, compensation, and other procedural matters affecting the conduct of the committee by appropriate resolution.

A person may not be appointed or elected to serve on the Architectural Control Committee if the person is: (1) a current Board member; (2) a current Board member's spouse; or (3) a person residing in a current Board member's household.²¹

A decision by the Architectural Control Committee denying an application or request by an owner for the construction of improvements in the subdivision may be appealed to the Board. A written notice of the denial must be provided to the Owner by certified mail, hand delivery, or electronic delivery. The notice must: (1) describe the basis for the denial in reasonable detail and changes, if any, to the application or improvements required as a condition to approval; and (2) inform the Owner that the Owner may request a hearing hereunder on or before the 30th day after the date the notice was mailed to the Owner.

The Board shall hold a hearing under this section not later than the 30th day after the date the Board receives the Owner's request for a hearing and shall notify the Owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. Only one hearing is required under this subsection. During a hearing, the Board or the designated representative of the Association and the Owner or the Owner's designated representative will each be provided the

²¹ See Tex. Prop. Code § 209.00505.

opportunity to discuss, verify facts, and resolve the denial of the Owner's application or request for the construction of improvements, and the changes, if any, requested by the Architectural Control Committee in the notice provided to the Owner hereunder. The Board or the Owner may request a postponement of the hearing. If requested, a postponement shall be granted for a period of not more than 10 days. Additional postponements may be granted by agreement of the parties. The Association or the Owner may make an audio recording of the meeting. The Board may affirm, modify, or reverse, in whole or in part, any decision of the architectural review authority as consistent with the Declaration.

ARTICLE X

BOOKS AND RECORDS

Section 1. Open Records.²² The Association shall make its books and records, including financial records, open to and reasonably available for examination by an Owner, or a person designated in a writing signed by the Owner as the Owner's agent, attorney, or certified public accountant, in accordance with this Article. An Owner is entitled to obtain from the Association copies of information contained in the books and records. An attorney's files and records relating to the Association, excluding invoices requested by an Owner under Tex. Prop. Code § 209.008(d), are not records of the Association and are not subject to inspection by the Owner.

Section 2. Request.²³ An Owner or the Owner's authorized representative must submit a written request for access or information concerning the books and records of the Association, including financial records, by certified mail, with sufficient detail describing the Association's books and records requested, to the mailing address of the Association or authorized representative

²² See Tex. Prop. Code § 209.005.

²³ See Tex. Prop. Code § 209.005.

as reflected on the most current management certificate on file. The request must contain an election either to inspect the books and records before obtaining copies or to have the Association forward copies of the requested books and records and:

(1) if an inspection is requested, the Association, on or before the 10th business day after the date the Association receives the request, shall send written notice of dates during normal business hours that the Owner may inspect the requested books and records to the extent those books and records are in the possession, custody, or control of the Association; or

(2) if copies of identified books and records are requested, the Association shall, to the extent those books and records are in the possession, custody, or control of the Association, produce the requested books and records for the requesting party on or before the 10th business day after the date the Association receives the request, except as otherwise provided by this section.

Section 3. Response. If the Association is unable to produce the books or records requested under Subsection 2 on or before the 10th business day after the date the Association receives the request, the Association must provide to the requestor written notice that:

(1) informs the requestor that the Association is unable to produce the information on or before the 10th business day after the date the Association received the request; and

(2) states a date by which the information will be sent or made available for inspection to the requesting party that is not later than the 15th business day after the date notice under this subsection is given.

Section 4. Inspection. 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 for the Association to copy and forward to the requesting party.

Section 5. Format. The Association may produce books and records requested under this

section in hard copy, electronic, or other format reasonably available to the Association.

Section 6. Policy. The Board must adopt a records production and copying policy that prescribes the costs the Association will charge for the compilation, production, and reproduction of information requested under this section. The prescribed charges may include all reasonable costs of materials, labor, and overhead but may not exceed costs that would be applicable for an item under 1 T.A.C. Section 70.3. The policy required by this subsection must be recorded as a dedicatory instrument in accordance with Tex. Prop. Code § 202.006. The Association may not charge an Owner for the compilation, production, or reproduction of information requested under this section unless the policy prescribing those costs has been recorded as required by this subsection. An Owner is responsible for costs related to the compilation, production, and reproduction of the requested information in the amounts prescribed by the policy adopted under this subsection. The Association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the estimated costs are lesser or greater than the actual costs, the Association shall submit a final invoice to the Owner on or before the 30th business day after the date the information is delivered. If the final invoice includes additional amounts due from the Owner, the additional amounts, if not reimbursed to the Association before the 30th business day after the date the invoice is sent to the Owner, may be added to the Owner's account as an Assessment. If the estimated costs exceeded the final invoice amount, the Owner is entitled to a refund, and the refund shall be issued to the Owner not later than the 30th business day after the date the invoice is sent to the Owner.

Section 7. Cost Estimate. The Association must estimate costs under this section using amounts prescribed by the policy adopted under Subsection 6.

Section 8. Owner Information. Except as provided by this subsection and to the extent the

information is provided in the meeting minutes, the Association is not required to release or allow inspection of any books or records that identify the Dedicatory Instrument violation history of an individual Owner of the Association, an Owner's personal financial information, including records of payment or nonpayment of amounts due the Association, an Owner's contact information, other than the Owner's address, or information related to an employee of the Association, including personnel files. Information may be released in an aggregate or summary manner that would not identify an individual property Owner. The books and records described by this subsection shall be released or made available for inspection if:

(1) the express written approval of the Owner whose records are the subject of the request for inspection is provided to the Association; or

(2) a court orders the release of the books and records or orders that the books and records be made available for inspection.

Section 9. Retention Policy. The Association shall adopt and comply with a document retention policy that includes, at a minimum, the following requirements:

(1) certificates of formation, bylaws, restrictive covenants, and all amendments to the certificates of formation, bylaws, and covenants shall be retained permanently;

(2) financial books and records shall be retained for seven years;

(3) account records of current Owners shall be retained for five years;

(4) contracts with a term of one year or more shall be retained for four years after the expiration of the contract term;

(5) minutes of meetings of the Owners and the Board shall be retained for seven years;

and

(6) tax returns and audit records shall be retained for seven years.²⁴

ARTICLE XI
ASSESSMENTS

Section 1. Owners Obligation. As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special Assessments, which are secured by a continuing lien upon the property against which the Assessment is made. Any Assessments which are not paid when due shall be delinquent. If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest from the date of delinquency. The Association may refer delinquent Assessments to an attorney for collection or bring an action at law against the Owner, a Member, or any other persons personally obligated to pay the same, or foreclose the lien against the property. Interest, late charges, costs and reasonable attorney's fees of any such action shall be added to the amount of such Assessment. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or the facilities or the abandonment of his Lot.

Section 2. Purpose. The Assessments shall be based upon the cash requirements as determined by the Board in an amount sufficient to provide for payment of all estimated expenses growing out of or connected with the maintenance and operation of the general common elements and all other areas which are the obligation of the Association to maintain, which amount may include, without limitation, the following: Costs of management, taxes, assessments, fire insurance with extended coverage and vandalism and malicious mischief with endorsements attached, issued in such amount and to insure such common facilities as the Association may determine (or other

²⁴ See Tex. Prop. Code § 209.005(m).

insurance permitted hereunder, if the Association should elect to insure property other than common facilities), casualty and public liability and other insurance premiums, landscaping and care of grounds, common lighting, repairs and renovations, garbage collection (if applicable), wages, water charges, legal and accounting fees, management fees and liabilities incurred by the managing agent or Board under or by reason of these Bylaws, payment of deficits remaining from a previous period, creation of a reasonable reserve, as well as other costs and expenses relating to the general common elements and the operating expenses of the Association.

Section 3. Notice Required Before Enforcement Action.²⁵

(a) Before the Association may suspend an Owner's right to use a Common Area, file a suit against an Owner other than a suit to collect a regular or special Assessment or foreclose under an Association's lien, charge an Owner for property damage, levy a fine for a violation of the restrictions or bylaws or rules of the Association, or report any delinquency of an Owner to a credit reporting service, the Association or its agent must comply with Applicable Law including section 209.006 of the Texas Property Code.

Section 4. Credit Reporting Services.²⁶ Before the Association or its collection agent may report any delinquent fines, fees, or Assessments to a credit reporting service, the Association or its agent must comply with section 209.006 of the Texas Property Code.

Section 5. Hearing Before Board; Alternative Dispute Resolution.²⁷ If the Owner is entitled to an opportunity to cure the violation and unless the Association files a suit seeking a temporary restraining order or temporary injunctive relief or files a suit that includes foreclosure as a cause of action, the Owner has the right to submit a written request for a hearing to discuss and verify

²⁵ See Tex. Prop. Code § 209.006

²⁶ See Tex. Prop. Code § 209.0065

²⁷ See Tex. Prop. Code § 209.007

facts and resolve the matter in issue before the Board. In those circumstances, the Board shall follow the provisions and requirements of section 209.007 of the Texas Property Code.

Section 6. Alternative Payment Schedule. The Board shall adopt reasonable guidelines to establish an alternative payment schedule by which an Owner may make partial payments to the Association for delinquent Assessments or any other amount owed to the Association without accruing additional monetary penalties in accordance with Tex. Prop. Code § 209.0062. The guidelines shall be recorded in the real property records of Tarrant County.

ARTICLE XII

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: THE LANDING HOMOWNERS ASSOCIATION, INC.

ARTICLE XIII

AMENDMENTS

Section 1. Amendments. These Bylaws may be amended, at a regular or special meeting of the Owners, by an affirmative vote thereon of a majority of a quorum of Members entitled to vote whether present in person or by proxy.

Section 2. Conflicts. In the case of any conflict between the Articles of Incorporation, and these Bylaws, the Articles shall control; and in any case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XIV

INDEMNIFICATION

Section 1. Indemnification. When Indemnification is Required, Permitted and Not

Prohibited:

1) The Association shall indemnify a Director, officer, committee member, employee, or agent of the Association who was, is or may be named defendant or respondent in any proceeding as a result of his or her actions or omissions within the scope of his or her official capacity in the Association. For the purposes of this article, an agent includes one who is or was serving at the request of the Association as a Director, officer, partner, venturer, proprietor, trustee, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

2) However, the Association shall indemnify a person only if he or she acted in good faith and reasonably believed that the conduct was in the Association's best interests. In case of a criminal proceeding, the person may be indemnified only if he or she had no reasonable cause to believe that the conduct was unlawful.

3) The Association shall not indemnify a person who is found liable to the Association or is found liable to another on the basis of improperly receiving a personal benefit. A person is conclusively considered to have been found liable in relation to any claim, issue or matter, if the person has been adjudged liable by a court of competent jurisdiction and all appeals have been exhausted.

4) The termination of a proceeding by a judgment, order, settlement, conviction or on a plea of nolo contendere or its equivalent does not necessarily preclude indemnification by the Association.

5) The Association shall pay or reimburse expenses incurred by a Director, officer, Member, committee member, employee or agent of the Association in connection with the person's appearance as a witness or other participation in a proceeding involving or affecting the Association when the person is not named defendant or respondent in the proceeding.

6) In addition to the situation otherwise described in this paragraph, the Association may indemnify a director, officer, Owner, committee Member, employee or agent of the Association to the extent permitted by law. However, the Association shall not indemnify any person in any situation in which indemnification is prohibited by the terms of paragraph 3) above and paragraph 7) below.

7) Before the final disposition of a proceeding, the Association may pay indemnification expenses permitted by the Bylaws and authorized by the Association. However, the Association shall not pay indemnification expenses to a person before the final disposition of a proceeding if: the person is a named defendant or respondent in a proceeding brought by the Association or one or more Members; or the person is alleged to have improperly received a personal benefit or committed other willful or intentional misconduct.

8) If the Association may indemnify a person under the Bylaws, the person may be indemnified against judgments, penalties, excise and similar taxes, fines, settlements, and reasonable expenses (including attorney's fees) actually incurred in connection with the proceeding. However, if the proceeding was brought by or on behalf of the Association, the indemnification is limited to reasonable expenses actually incurred by the person in connection with the proceeding.

Section 2. Procedures Relating to Indemnification Payments.

1) Before the Association may pay any indemnification expenses (including attorney's fees), the Association shall specifically determine that indemnification is permissible, authorize indemnification, and determine that expenses to be reimbursed are reasonable, except as provided in this Section below. The Association may make these determinations and decisions by any one of the following procedures:

a) Majority vote of a quorum consisting of Directors who, at the time of the vote, are not named defendants or respondents in the proceeding.

b) If such a quorum cannot be obtained, by a majority vote of a committee of the Board, designated to act in the matter by a majority vote of all Directors, consisting solely of two or more Directors who at the time of the vote are not named defendants or respondents in the proceeding.

c) Determination by a special legal counsel selected by the Board by vote is provided in paragraph (a) or (b) above, or if such quorum cannot be established, by a majority vote of all Directors.

d) Majority vote of the Members, excluding Directors who are named defendants or respondents in the proceeding.

2) The Association shall authorize indemnification and determine that expenses to be reimbursed are reasonable in the same manner that it determines whether indemnification is permissible. If the determination that indemnification is permissible is made by a special legal counsel, authorization of indemnification and determination of reasonableness of expenses shall be made in the manner specified in this Section above, governing the selection of special legal counsel. A provision contained in the Articles of Incorporation, the Bylaws or a resolution of Members or the Board that requires the indemnification permitted by this Section constitutes sufficient authorization of indemnification even though the provision may not have been adopted or authorized in the same manner as the determination that indemnification is permissible.

3) The Association shall pay indemnification expenses before final disposition of a proceeding only after the Association determines that the facts then known would not preclude indemnification and the Association receives a written affirmation and undertaking from the

person to be indemnified. The determination that the facts then known to those making the determination would not preclude the indemnification and authorization of payment shall be made in the same manner as a determination that indemnification is permissible under paragraph 1) of this Section. The person's written affirmation shall state that he or she has met the standard of conduct necessary for indemnification under the Bylaws. The written affirmation shall provide for repayment of the amount paid or reimbursed by the Association if it is ultimately determined that the person has not met the requirements for indemnification. The undertaking shall be an unlimited general obligation of the person, but it need not be secured and it may be accepted without reference to financial ability to make repayment.

4) Any indemnification or advance of expenses shall be reported in writing to Members of the Association. The report shall be made with or before the notice or waiver of notice of the next membership meeting, or with or before the next submission to Members of a consent to action without a meeting. In any case, the report shall be sent within the 12-month period immediately following the date of the indemnification or advance.

ARTICLE XV

MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year.

Section 2. Checks. All checks of the Association must be signed by any two of the authorized signatories as determined by the Board of the Directors. The Manager of the Association may be authorized but is not required to sign all Association checks.

Section 3. Notices. Any notice required or permitted by the Bylaws to be given a Member, Director, officer or other person, may be given by regular, priority or certified mail to be delivered

when deposited in the United States Mail addressed to the person at his or her address as it appears on the records of the Association, with postage prepaid. A person may change his or her address by giving written notice to the Secretary of the Association. Whenever any notice is required to be given under the provisions of the Articles of Incorporation or Bylaws, a waiver signed by a person entitled to receive a notice shall be deemed equivalent to the giving of the notice. The attendance of a person at a meeting shall constitute a waiver of notice of the meeting unless the person attends for the express purpose of objecting to transaction of business because the meeting is not lawfully convened.

Section 4. Texas Law. These Bylaws shall be construed in accordance with the laws of the State of Texas.

Section 5. Legal Construction. If any Bylaw provision is held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability, shall not affect any other provision and the Bylaws shall be construed as if the invalid, illegal or unenforceable provision had not been included in the Bylaws.

Section 6. Parties Bound. These Bylaws shall be binding upon and inure to the benefit of the Owners, Directors, officers, employees, and agents of the Association, and their respective heirs, executors, administrators, legal representatives, successors and assigns except as otherwise provided by these Bylaws.