



**BYLAWS**  
**OF**  
**VIRIDIAN LUBBOCK HOMEOWNER ASSOCIATION**  
**(A Texas Property Owners Association)**

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CERTIFICATION & ACKNOWLEDGMENT



## BYLAWS

### OF

## VIRIDIAN LUBBOCK HOMEOWNER ASSOCIATION

(A Texas Property Owners Association)

### ARTICLE 1

#### INTRODUCTION

1.1. PROPERTY. These Bylaws provide for the governance of Viridian, a planned community located in the City of Lubbock, Texas, according to the map or plat thereof recorded under Document No. 2019011546, Official Public Records of Lubbock County, Texas (the "Property" and sometimes referred to in these Bylaws as "Viridian Addition").

1.2. DECLARATION. The Property is subject to a number of publicly recorded documents, including the Declaration of Covenants, Conditions and Restrictions for Viridian Addition, recorded in Document No. 204021033 of the Official Public Records of Lubbock County, Texas, and any additional amendments thereto (said Declaration and all amendments being herein referred to as the "Declaration").

1.3. ASSOCIATION. These Bylaws are one of the Governing Documents for VIRIDIAN LUBBOCK HOMEOWNER ASSOCIATION (the "Association"), the association of owners established by the Declaration for the Property.

1.4. DEFINITIONS. Words and phrases used in these Bylaws shall have the same meanings as defined in the Declaration.

1.5. DECLARANT CONTROL. **Many Sections of these Bylaws do not apply during the Declarant Control Period.** The Declaration reserves to Declarant during the Declarant Control Period and the Development Period certain rights related to the control of the Association and the development of Viridian Addition. Notwithstanding anything to the contrary in these Bylaws, a number of provisions in these Bylaws are modified by Declarant's rights and reservations under the Declaration during the Declarant Control Period and the Development Period, such as the number, qualification, appointment, removal, and replacement of Directors; classes of Members; and the weight of votes allocated to Lots owned by Declarant. If a provision in the Declaration overrides a provision of these Bylaws, the Bylaws provision will be construed to apply *after* the Declarant Control Period or the Development Period, as applicable. Declarant has reserved the Declarant Control Period and the Development Period, as set forth more fully in the Declaration, which reserved rights include: (i) a right to facilitate the development, construction, and marketing of Viridian Addition and the Property; and (ii) the right to direct the size, shape and composition of Viridian Addition and the Property. **By acceptance of a deed to a Lot, each Owner and each Member of the Association acknowledges and agrees that during the Declarant Control Period and the Development Period, Declarant has reserved rights of control over the Association and the Property that control over any provision in these Bylaws that addresses the same topic, subject to a superior provision (if any) in State law.**

1.6. APPLICABLE LAW. Any reference in these Bylaws to "Applicable Law" means the law then in effect for the Association, the Property, the parties, and the circumstances. These Bylaws are written in recognition of the fact that statutes and regulations will change. As initially drafted, these Bylaws do not recite all of the detailed statutory requirements of Applicable Law, which may change. Instead, these Bylaws anticipate that the Association will supplement these Bylaws with resolutions adopted by the Board from time to time to comply with the requirements of Applicable Law. Because of anticipated changes to



Applicable Law, the Board and Members of the Association are cautioned as follows:

- a. **Do not use any provision of these Bylaws “as is”** without knowing whether and how the provision is affected by Applicable Law.
- b. **Follow the law, not these Bylaws**, unless Applicable Law defers to these Bylaws.
- c. **Supplement these Bylaws**, from time to time, with policies and procedures adopted by the Board to comply with the requirements of Applicable Law.

1.7 **PARTIES TO BYLAWS**. All present or future Lot Owners and all other persons who use or occupy the Property in any manner (for example, “**Residents**”) are subject to these Bylaws, the Declaration, and the other Governing Documents as defined in the Declaration. The mere acquisition of a Lot will signify that these Bylaws are accepted, ratified, and will be strictly followed.

## **ARTICLE 2** **THE ASSOCIATION**

2.1. **TYPE OF ORGANIZATION**. The Association is created by the Declaration and these Bylaws. The Association is a nonprofit legal entity governed by the *Texas Business Organizations Code* (the “**Code**”), and may be incorporated or unincorporated. During any period in which the Association is not incorporated, it is an unincorporated nonprofit association subject to Chapter 252 of Title 6 of the Code, the *Texas Unincorporated Nonprofit Association Act*. During any period in which the Association is incorporated, it is a domestic nonprofit corporation subject to Chapter 22 of Title 2 of the Code, the Texas Nonprofit Corporation Law. If not incorporated, the Association, at its discretion, may use the Texas Nonprofit Corporation Law for guidance in governing itself. Sections of the Code that are cited in these Bylaws are incorporated herein by reference, whether or not the Association is incorporated.

2.2. **BUSINESS ORGANIZATIONS CODE**. The Association is a nonprofit legal entity governed by certain portions of the Code. During any period in which the Association is incorporated, it is a domestic nonprofit corporation subject to Chapter 22 of Title 2 of the Code, the Texas Nonprofit Corporation Law. During any period in which the Association is not incorporated, it is an unincorporated nonprofit association subject to Chapter 252 of Title 6 of the Code, the Texas Uniform Unincorporated Nonprofit Association Act. If not incorporated, the Association, at its discretion, may use the Texas Nonprofit Corporation Law for guidance in governing the Association. Sections of the Code that are cited in these Bylaws are incorporated herein by reference, whether or not the Association is incorporated.

2.3. **TAX STATUS**. The Association is a taxable entity in different contexts. For example, the Association may have income tax liability to the federal government, property tax liability to local governments, sales tax liability to local and state governments for goods and services purchased, and franchise tax liability when incorporated. From time to time, the Association may be eligible for an exemption from one or more tax liabilities. The sole purpose of this Section is to support any future application by the Association for tax-exempt status from the federal or state government. The Association may, but is not required to, apply for a continuing exemption from federal income tax under Section 501(c)(4) of the *Internal Revenue Code*, and from State sales tax under Section 171.082 *Texas Tax Code*. The nonprofit Association promotes social welfare as it operates for the benefit of all residents of Viridian Addition. The Association performs functions for the benefit of all of its Members that in a different location might be performed by local government or a municipality. Some of its activities also benefit the general public, such as the beautification and preservation of public property, which may include, but not be limited to rights-of-way and street islands in public streets, and drainage easements. The Declaration does not require the Association to engage in exterior maintenance of Structures, but does permit the Association to perform limited maintenance when necessary at the expense of the Lot Owner in event of



neglect. Common Properties and easements maintained by the Association may be open to the general public, as well as to Owners and Residents of Viridian Addition. During any period in which the Association deems it to be in the best interests of its Members to qualify for tax-exempt status under federal and/or state law, the Association will not engage in any activity that would disqualify the Association as a tax exempt organization, and will affirmatively perform functions that are required. The sole purpose of this Section is to assist the Association in qualifying for tax exemptions; and, nothing within this Section shall be construed to create obligations or liabilities for the Association, or to grant rights to the public or to any local government or agency.

2.4. GENERAL POWERS AND DUTIES. The Association, acting through the Board, has the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of the Property as may be required or permitted by the Governing Documents and Applicable Law. The Association may do any and all things that are lawful and which are necessary, proper, or desirable in operating for the best interests of its Members, subject only to limitations upon the exercise of such powers as may be contained in Applicable Law or the Governing Documents.

### ARTICLE 3 BOARD OF DIRECTORS

*Note: During the Declarant Control Period, many of the following Sections are not effective; and during the Declarant Control Period many of the rights of governance are reserved to Declarant as set forth more fully in the Declaration. Those provisions of the Declaration providing for governance by Declarant during the Declarant Control Period shall control and be superior to any conflicting provisions in these Bylaws, to the full extent permitted, or not prohibited, by Applicable Law.*

3.1. NUMBER. The Board of Directors of the Association (the “**Board**”) will consist of three (3) persons. The number of Directors may be changed by amendment of these Bylaws, but may not be less than three (3). During the Declarant Control Period, Declarant will appoint the three (3) Directors of the Board.

3.2. ELECTION. After the Declarant Control Period, Directors will be elected by the Members of the Association. The election of Directors will be conducted at the annual meeting of the Association, at any special meeting called for that purpose, or by any method permitted by Applicable Law.

3.3. QUALIFICATION. No Owner may be disqualified by the Association from running for the Board because of a delinquent account or rules violation. After the Declarant Control Period, the following qualifications apply to the election or appointment of persons to the Board to the extent candidates are available and qualified. The following qualifications may be waived or modified on an election by election basis only if an insufficient number of qualified candidates are available.

3.3.1. Owners. At least a majority of the Directors must be Members of the Association or the Owner of a Lot within the Property.

3.3.2. Criminal Conviction. A person who has been convicted of a felony or crime involving moral turpitude may not serve on the Board, unless the person's criminal record was disclosed to the Members within thirty (30) days before the date of election or appointment to the Board in a manner that is calculated to get the attention of the Members.

3.3.3. Entity Member. If a Lot is owned by a legal entity, such as a partnership or corporation, any officer, partner, agent, or employee of that entity Member is eligible to serve as a

Director and is deemed to be a Member for the purposes of this Section. If the relationship between the entity Member and the Director representing it terminates, that Directorship will be deemed vacant.

3.3.4. Additional Qualifications. The following qualifications apply to candidates who are not Owners (and apply to Owners only if and when a particular qualification is not prohibited by Applicable Law for Owners who are candidates for the Board; these qualifications do not apply to Directors appointed by Declarant during the Declarant Control Period):

- a. Affiliates. An affiliate of an Owner may not serve on the Board at the same time as the Owner to whom affiliated. As used in this Section, affiliation refers to persons having legal or economic relationships, such as family members, housemates, and business partners, and does not apply to merely social relationships, such as friends.
- b. Litigation. A person who is a party adverse to the Association, the Board, or a committee of the Association in pending litigation to which the Association, Board, or committee is a party, may not serve on the Board.
- c. Term Limits. A person may not serve more than six (6) consecutive years on the Board. A person who has served more than two (2) consecutive terms is not eligible to serve again for three (3) years.

3.4. TERM OF OFFICE. Upon election, each Director will serve a term of two (2) years, subject to the following provisions. A Director takes office upon the adjournment of the meeting or balloting at which he or she is elected or appointed. Absent death, ineligibility, resignation, or removal, a Director holds office until his or her successor is elected or appointed.

3.4.1. Exceptions. The following are exceptions to the two (2) year term:

- a. A person elected by the Members to complete the two (2) year term of a Director who has resigned or been removed will serve the remainder of the original two (2) year term.
- b. A person elected by the Board to fill a vacancy will serve until the next Association meeting at which Directors may be elected.
- c. A person elected to the initial Board or at an election to remove and replace the entire Board or to re-establish staggered terms may serve a term that is shorter or longer than two (2) years.
- d. An annual election may occur sooner or later than the exact two (2) year mark.
- e. If the meeting at which a Director is elected occurs at a time that does not coincide with the Association's annual meeting, the term of the elected Director will overlap the next annual meeting, although it may result in a longer term, unless the meeting notice states otherwise.

3.4.2. Staggered Terms. To maintain staggered terms, two (2) Directors will be elected in even-numbered years, and three (3) Directors will be elected in odd-numbered years. (If the number of Directors is increased or decreased, an even number will be elected in even-numbered years, and an odd number in odd-numbered years.)

3.5. VACANCIES. Subject to the exceptions below, vacancies on the Board caused by any reason are filled by a vote of the majority of the remaining Directors, even though less than a quorum, at any meeting of the Board (except however, during the Declarant Control Period, Declarant will appoint



Directors to fill such vacancies). Each Director so elected by the Board serves until the next meeting of the Association, at which time a successor will be elected to fill the remainder (if any) of the term that was vacated. The exceptions to Board-elected replacements are (i) the removal of a Director by a vote of the Association's Members, who will elect a replacement, and (ii) a vacancy occurring because of an increase in the number of Directors, which also will be filled by election of the Members.

### 3.6. REMOVAL OF DIRECTORS.

3.6.1. Removal by Members. At any annual meeting of the Association or at any special meeting of the Association called for the purpose of removing a Director, any one (1) or more of the Directors may be removed with or without cause by Members representing at least two-thirds (2/3) of the votes present in person or by proxy at the meeting, and a successor may then and there be elected by Members to fill the vacancy thus created. Any Director whose removal has been proposed must be given an opportunity to be heard at the meeting.

3.6.2. Removal by Directors. A Director may not be removed by the remaining Directors, except for the following limited reasons for which a Director may be removed by at least a majority of the other Directors at a meeting of the Board called for that purpose:

- a. Criminal Conviction. The Board receives documented evidence from a governmental law enforcement authority that a Board member has been convicted of a felony or crime involving moral turpitude.
- b. Additional Reasons. The following reasons for removal apply to Directors who are not Owners (and apply to Owners only if and when a particular reason is not prohibited by Applicable Law for Owners who serve on Boards of property owners associations):
  - (1) The Director is a party adverse to the Association, the Board, or committee of the Association in pending litigation to which the Association, Board or committee is a party, provided the Association did not file suit to effect removal of the Director.
  - (2) The Director has refused or failed to attend three (3) or more meetings of the Board during the preceding twelve (12) months, provided he or she was given proper notice of the meetings.

3.6.3. No removal by Officers. A Director may not be removed by officers of the Association, acting in their capacity of officers of the Association, under any circumstance.

### 3.7. MEETINGS OF THE BOARD.

3.7.1. Meetings. Upon conclusion of the Declarant Control Period, regular and special meetings of the Board are open to Members. After the Declarant Control Period, the Association must make notice of regular and special Board meetings available to the Members as required by Applicable Law. Under certain limited circumstances permitted by Applicable Law, the Board may act without a meeting, or in a closed executive session, or without giving prior notice to the Members. During the Declarant Control Period, open Board meetings will be conducted only for the following purposes (*and then only to the extent that Board approval is required by the Governing Documents or by Applicable Law, and nothing hereinafter stated will be construed to diminish rights reserved to Declarant during the Declarant Control Period*): (i) adopting or amending the Governing Documents; (ii) increasing the amount of regular Assessments or adopting

or increasing a Special Assessment; (iii) electing non-developer Board members or establishing a process by which those members are elected; or (iv) changing the voting rights of Members of the Association.

3.7.2. Types of Board Meetings. Regular meetings of the Board may be held at a time and place that the Board determines, from time to time, but at least one such meeting must be held each calendar quarter. Special meetings of the Board may be called by the president or, if he is absent or refuses to act, by the secretary, or by any two (2) Directors. In case of emergency, as described below, the Board may convene an emergency meeting for the purpose of dealing with the emergency after making a diligent attempt to notify each Director by any practical method.

3.7.3. Board Meeting to Elect Officers. As soon as possible after the annual meeting, the Directors will convene a special meeting for the purpose of electing officers. If the election of officers will occur upon adjournment of the annual meeting at the site of the annual meeting, notice of that possibility must be given to the Members with the notice of annual meeting. If the time and place for the election of officers is announced to the Members at the annual meeting, no further notice is required for that special meeting.

3.7.4. Place of Board Meetings. The Board will conduct its meetings at a location that is reasonably convenient for the greatest number of Directors, and at a place or facility that is sufficiently large to accommodate the number of Owners who typically attend Board meetings as observers. The decision of where to meet may be made on a meeting by meeting basis by the officer or Director who calls the meeting, by Board resolution, or by any other practice that is customary for property owners associations. The Board is not required (i) to conduct its meetings at the Property, (ii) to maintain a fixed place for its meetings, (iii) to select a location that is convenient to Owners, or (iv) to select a facility that accommodates a larger number of spectator Members than is customary. If required by Applicable Law, meetings of the Board must be held in Lubbock County, Texas.

3.7.5. Notice to Directors of Board Meetings. Notice to Directors is not required for regular meetings of the Board, provided all Directors have actual or constructive knowledge of the meeting date, time, and place. Notice of a special meeting must be given to all Directors. If notice is given to Directors, it may be given by any method or combination of methods that is likely to impart the information to the Directors.

3.7.6. Notice to Members of Board Meetings. **The content, timing, and method of delivery of notice to Members must comply with the requirements of Applicable Law.** The Board will inform Members of the date, time, place, and general purpose of each Board meeting as required by Applicable Law. The information may be imparted by any method or combination of methods that is likely to be available or communicated to most if not all Members in a timely manner, such as by posting on a website, by broadcast e-mail, by signs posted at the Property, or by hand-delivered fliers. On the written request of an Owner, the Association will provide the Owner with the date, time, place, and general purpose of the next regular or special meeting of the Board. The failure of the Association to disseminate and the failure of an Owner to receive timely or accurate information about the date, time, place, and general purpose of a meeting does not invalidate the meeting.

3.7.7. Conduct of Meetings. The president presides over meetings of the Board and the secretary keeps, or causes to be kept, a record of resolutions adopted by the Board and a record of transactions and proceedings occurring at meetings. When not in conflict with Applicable Law or the Governing Documents, the then current edition of Robert's Rules of Order governs the conduct of the meetings of the Board.



3.7.8. Quorum. At meetings of the Board, a majority of Directors constitutes a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present are the acts of the Board. If less than a quorum is present at a meeting of the Board, the majority of those present may adjourn the meeting from time to time until a quorum is attained.

3.7.9. Continuation. A meeting of the Board may be recessed and reconvened in compliance with Applicable Law.

3.7.10. Minutes. The written report of a Board meeting is not the minutes of the meeting until approved by the Directors at a future meeting. The minutes must report actions taken by the Board, but need not report the substance of discussion. An audio recording or transcription of a meeting does not constitute minutes of the meeting and should not be retained by the Association for longer than required to produce written minutes for the Board's approval. Upon an Owner's written request, the Board will make available to the Owner the approved minutes of a meeting and any other meeting records required by Applicable Law, subject to the record production and copying policies set forth in the Declaration.

3.7.11. Voting. A Director who is also an officer of the Association, even the presiding officer, is expected to participate and to vote in the manner of every other Director. The president of the Association is not prohibited from voting and is not limited to tie-breaking votes. Directors may not participate by proxy at meetings of the Board.

3.7.12. Meeting Conduct. Except during the Declarant Control Period, regular and special meetings of the Board are open to Members of the Association, subject to the following provisions to the extent permitted or required by Applicable Law:

- a. No audio or video recording of the meeting may be made, except by the Board or with the Board's prior express consent.
- b. Members who are not Directors may not participate in Board deliberations under any circumstances, and may not participate in Board discussions unless the Board expressly so authorizes at the meeting.
- c. Executive sessions are not open to Members who are not Directors, except by invitation of the Board.
- d. The Board may prohibit attendance by non-Owners.
- e. The Board may elect any Member in attendance who disrupts the meeting or interferes with the conduct of Board business.

3.7.13. Executive Session. The Board may adjourn any regular or special meeting of the Board and reconvene in executive session, subject to the following conditions. The nature of business to be considered in executive session will first be announced in open session. The limited purposes for which the Board may convene in executive session must comply with Applicable Law. At the end of the executive session, the Board must return to the open meeting and orally summarize any decision made in the executive session, including a general explanation of any expenditure approved in the executive session. The oral summary must be reported in the meeting minutes, and should be worded to avoid violating any privilege or privacy that may be protected by Applicable Law.

3.8. ACTION WITHOUT MEETING OR NOTICE. As permitted by Applicable Law, certain actions that could be taken by the Board at a meeting for which Owners have notice may be taken by the Board without a meeting, as provided by this Section. Any action taken by the Board pursuant to the following subsections must be orally summarized at the next meeting of the Board for which the Owners have notice. The oral summary must include an explanation of any known expenditures (actual or estimated) that were approved by the Board, and must be reported in the meeting minutes.

3.8.1. Prohibited Actions. The decision-making methods permitted by this Section may not be used for decisions for which Applicable Law requires that Owners be given prior notice.

3.8.2. Electronic Conferencing. Without giving prior notice to the Owners, the Directors may participate in and hold Board meetings by any method, or combination of methods, that allows all Directors participating in the meeting to hear and be heard by each other, but only for the limited purposes permitted by Applicable Law, such as to consider administrative matters and to deal with emergencies. Participation in such meeting constitutes presence in person at the meeting, except where a Director participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

3.8.3. Unanimous Consents. Without giving prior notice to the Owners, Directors may act by unanimous written consent, but only for the limited purposes permitted by Applicable Law, such as to consider administrative matters and to deal with emergencies.

3.9. POWERS AND DUTIES. The Board has all the powers and duties necessary for the administration of the Association and for the operation and maintenance of the Property. The Board may do all acts and things except those which, by Applicable Law or the Governing Documents, are reserved to the Members exclusively.

3.10. EMERGENCIES. In situations of emergency, it may be necessary for the Association, the Board or its committees to respond to the emergency without benefit of consulting these Bylaws. One purpose of this Section is to encourage Directors to do what is necessary under certain circumstances to protect health, life, and property within Viridian Addition. Another purpose is to insulate responsive Directors from later claims that they failed to adhere to the formalities for Board meetings and notices that are fundamental to decision-making within the Association.

3.10.1. Types. For purposes of these Bylaws, there are two (2) categories of emergencies: (i) public emergencies and (ii) private emergencies. As a general rule, if the Directors are divided or uncertain as to whether a circumstance arises to the level of an emergency, as defined below, the situation is not an emergency. The Board may not declare an emergency for the purpose of evading the meeting and notice requirements of these Bylaws.

- a. A "**public emergency**" is when a local, state, or national government or governmental entity declares a disaster, catastrophe, state of emergency, or state of war in the area in which the Property is located, or if imminent or actual conditions in the area in which the Property is located are of a type and magnitude for which a local, state, or national government or governmental entity may be expected to declare a disaster, catastrophe, or state of emergency, whether or not the declaration is made. To illustrate, a tornado that destroys or ruptures utility lines, makes roads impassable, and causes buildings to collapse is a public emergency.



- b. A "**private emergency**" is when a condition within or around the Property or a situation to which the Association is a party presents an imminent and substantial threat to health, life, or property of a magnitude that warrants immediate action, although the condition or situation does not rise to the level of a public emergency.

3.10.2. Emergency Board Meetings. For the sole purpose of responding to a public or private emergency, the Board may convene an emergency Board meeting after making a diligent attempt to notify each Director and officer by any practical method, without formal notice to the Directors or Members. At such emergency Board meeting, the Directors participating constitute a quorum. The Directors who participate in the emergency Board meeting must orally summarize their decisions at the next meeting of the Board for which the Owners have notice. The oral summary must include an explanation of any known expenditures (actual or estimated) that were approved by the Board, and must be reported in the meeting minutes.

3.10.3. Emergency Powers. In anticipation of, during, or in the aftermath of a public or private emergency, the officers, Directors, employees, and agents of the Association collectively or individually may take or authorize any action they deem necessary to protect health, lives, and property within Viridian Addition for so long as emergency conditions exist. A decision or action made in good faith under emergency conditions and for the sole purpose of dealing with the emergency may not be used to impose liability on an officer, Director, employee, or agent of the Association.

3.10.4. Emergency Plan. This Section may not be construed to prevent the Association from implementing policies and procedures previously approved by the Association for use in emergencies, such as an evacuation plan.

3.11. FIDELITY BONDS. The Board may require that any person handling or responsible for Association funds, including officers, agents, and employees of the Association, must furnish adequate fidelity bonds. The premiums on the bonds may be a common expense of the Association.

3.12. COMMITTEES OF THE BOARD. Whether referred to as a committee of the Board, or a committee of the Association, or an advisory committee or advisory board, each committee derives its authority solely from the Board, and serves at the pleasure of the Board. This Section may not be construed to require the Board to work with or through committees.

3.12.1. Advisory Committees During Declarant Control. During the Declarant Control Period, the Board may adopt a policy of delegating to the Association's manager (if a manager is employed) the responsibility for appointing and working with one or more groups of Members who are organized as an advisory committee or an advisory board. For such committees, the Board's duties under this Article are construed to mean "the Board or the Association's manager pursuant to a policy adopted by the Board."

3.12.2. Authority. By resolution, the Board may create, combine, divide, and disband one (1) or more standing or ad hoc committees, from time to time, to assist the Board with its functions. By resolution, the Board names each committee and identifies its responsibilities. The Board's delegation of authority to a committee does not relieve the Board, or any Director or officer, of a responsibility imposed by law or by the Governing Documents. All actions and decisions of a committee are subject to approval, disapproval, or modification by the Board, to whom the committee must report on a periodic basis and as requested by the Board. In event of conflict between the Board and its committees, the decision of the Board controls. The Board may not appoint a committee to act in its place in managing the affairs of the Association.

3.12.3. Term. For a standing or continuing committee, each committee member and chair continues to serve until removed by the Board, or until the member resigns. The Board may establish term limits for all committees, or for certain committees, and may require that a committee be re-appointed annually.

3.12.4. Removal. A committee member or chair may be removed, with or without cause, by the Board. A majority of committee members may recommend to the Board that a chair or committee member be removed. A committee chair or member whose removal has been proposed must be given an opportunity to be heard. A removed committee member must return any property or records belonging to the Association.

3.12.5. Action. An action by the committee must be approved by a majority of the committee's members who are present at a committee meeting at which a quorum is present. The chair must seek prior approval by the Board for the actions of the committee. Each committee may adopt rules for its own governance not inconsistent with the Governing Documents, rules adopted by the Board for committees, or the resolution by which the committee was authorized.

#### **ARTICLE 4** **OFFICERS**

4.1. DESIGNATION. The principal officers of the Association are the president, the vice-president, the secretary, and the treasurer. The Board may appoint one (1) or more vice-presidents and other officers and assistant officers as it deems necessary. The president and secretary must be Directors. Other officers may, but need not, be Members or Directors. Any two (2) offices may be held by the same person, except the offices of president and secretary. If an officer is absent or unable to act, the Board may appoint a Director or a committee to perform the duties of that officer and to act in place of that officer, on an interim basis.

4.2. ELECTION OF OFFICERS. The officers are elected no less than annually by the Directors at the organizational meeting of the Board and hold office at the pleasure of the Board. Except for resignation or removal, officers hold office until their respective successors have been designated by the Board.

4.3. REMOVAL AND RESIGNATION OF OFFICERS. A majority of Directors may remove any officer, with or without cause, at any regular meeting of the Board or at any special meeting of the Board called for that purpose. A successor may be elected at any regular or special meeting of the Board called for that purpose. An officer may resign at any time by giving written notice to the Board. Unless the notice of resignation states otherwise, it is effective when received by the Board and does not require acceptance by the Board. The resignation or removal of an officer who is also a Director does not constitute resignation or removal from the Board.

#### 4.4. DESCRIPTION OF PRINCIPAL OFFICES.

4.4.1. President. As the chief executive officer of the Association, the president: (i) presides at all meetings of the Association and of the Board; (ii) has all the general powers and duties which are usually vested in the office of president of an organization; (iii) has general supervision, direction, and control of the business of the Association, subject to the control of the Board; and (iv) sees that all orders and resolutions of the Board are carried into effect.

4.4.2. Vice-President. The vice-president acts in place of the president in event of the president's absence, inability, or refusal to act. The vice-president also exercises and discharges



any duty required of the vice-president by the Board.

4.4.3. Secretary. The secretary is responsible for ensuring that the duties incident to the office of secretary are performed, such as: (i) keeping the minutes of all meetings of the Board and of the Association; (ii) having charge of such books, papers, and records as the Board may direct; (iii) maintaining a record of the names and addresses of the Members for the delivery of notices; and (iv) in general, performs all duties incident to the office of secretary.

4.4.4. Treasurer. The treasurer is responsible for ensuring that the duties incident to the office of treasurer are performed, such as: (i) being responsible for Association funds; (ii) keeping full and accurate financial records and books of account showing all receipts and disbursements; (iii) preparing all required financial data and tax returns; (iv) depositing all monies or other valuable effects in the name of the Association in depositories as may from time to time be designated by the Board; (v) preparing the annual and supplemental budgets of the Association; (vi) reviewing the accounts of the managing agent on a monthly basis in the event a managing agent is responsible for collecting and disbursing Association funds; and (vii) performs all the duties incident to the office of treasurer.

4.5. AUTHORIZED AGENTS. Except when the Governing Documents require execution of certain instruments by certain individuals, the Board may authorize any person to execute instruments on behalf of the Association. In the absence of Board designation, the president and the secretary are the only persons authorized to execute instruments on behalf of the Association.

## **ARTICLE 5** **STANDARDS**

5.1. SEPARATE LIABILITY. The Association is a legal entity separate from its Members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort. Members, Directors, and officers of the Association are not personally and individually liable for the Association's breach of a contract or for the Association's tort or omission merely because they are Members, Directors, or officers of the Association. A Member has the right to assert a claim against the Association, and the Association has the right to assert a claim against a Member.

5.2. GENERAL STANDARDS. The general standards of duty for an officer or Director of the Association are the State's standards for officers and directors of a nonprofit corporation, as stated in the Code as it may be amended. On the date of this document, under Texas law, the officers and directors of a non-condominium property owners association are not fiduciaries of the association or its members. On the date of this document, Sections 22.221 and 22.235 of the Code provide the following standards:

- a. A director will discharge the director's duties: (i) in good faith, (ii) with ordinary care, and (iii) in a manner the director reasonably believes to be in the best interest of the association.
- b. An officer or director is not liable to the association, its members, or another person for an action taken or not taken as a director if the director acted in compliance with the above-stated standard for discharging duties. A person seeking to establish liability of an officer or director must prove that the officer or director did not act (i) in good faith, (ii) with ordinary care, and (iii) in a manner the officer or director reasonably believes to be in the best interest of the Association.

5.3 RELIANCE. An officer or Director may rely on information prepared or presented by (i) an officer or employee of the Association, (ii) an attorney licensed by the State of Texas, (iii) a certified

public accountant, (iv) an investment banker, or (v) a person whom the officer or Director reasonably believes to possess professional expertise in the matter, and (vi) in the case of a Director, a committee of the Association of which the Director is not a member. Such reliance must be exercised in good faith and with ordinary care. An officer or Director may not rely on such information if he has actual knowledge that makes the reliance unwarranted.

5.4. COMPENSATION. Except as permitted below, a Director, officer or Member is not entitled to receive financial or monetary profit from the operation of the Association, and no funds or assets of the Association may be paid as salary or compensation to, or be distributed to, or inure to the benefit of a Director, officer or Member. Nevertheless,

- a. Reasonable compensation may be paid to a Director, officer or Member for services rendered to the Association in other capacities.
- b. A Director, officer or Member may, from time to time, be reimbursed for his actual and reasonable expenses incurred on behalf of the Association in connection with the administration of the affairs of the Association, provided the expense has been approved by the Board.
- c. This Section does not apply to distributions to Lot Owners permitted or required by the Declaration, Applicable Law, or a court order.

5.5. LOANS. The Association may not loan money to or guaranty a loan for an officer or Director of the Association.

5.6. CONFLICT OF INTERESTS. If a contract or transaction is fair to the Association, it is not disallowed merely because an officer, Director, or Member of the Association has a financial interest in the transaction, provided (i) the "interested" officer, Director, or Member fully and accurately discloses the nature of his interest to the Board in a manner that is timely for the Board's consideration of the contract or transaction, and (ii) the "interested" officer or Director does not participate in the vote to approve the contract or transaction, although the "interested" Director may be counted toward a quorum at the meeting. Under Applicable Law on the date of these Bylaws, an officer, Director or Member is "interested" if he or his affiliate (i) is affiliated with the transacting party, (ii) has a financial interest in the transaction or the transacting party, (iii) or has a managerial position with the transacting party. Nothing in this Section may be construed to prevent the Board from adopting policies and procedures that are more stringent than the requirements of this Section, or of Applicable Law, such as Sections 1.003, 1.004, and 22.230 of the Code.

## **ARTICLE 6**

### **MEETINGS OF THE ASSOCIATION**

6.1. ANNUAL MEETING. After the Declarant Control Period, an annual meeting of the Association will be held during the second quarter of the calendar year quarter of each calendar year. If Applicable Law requires an annual meeting prior to the end of the Declarant Control Period, then such meeting will be held in accordance with this Section 6.1. At annual meetings, the Members will elect Directors in accordance with these Bylaws (subject to Declarant's rights to appoint Directors during the Declarant Control Period, as provided in the Governing Documents) and may transact such other business of the Association as may properly come before them. If a special meeting of the Association is being called for a different quarter of the calendar year, the annual meeting may be combined with the special meeting if (i) the Board deems it to be in the best interest of the Association (such as to economize on the costs of holding and noticing multiple meetings in a one year period), (ii) at least eight (8) months have elapsed since the previous annual meeting, and (iii) the notice of meeting identifies the dual or multiple purposes of the meeting, and identifies the reason why the annual meeting is being rescheduled for that year only.



6.2. SPECIAL MEETINGS. It is the duty of the president to call a special meeting of the Association if directed to do so by a majority of the Board or by one or more petitions signed by Owners of at least twenty percent (20%) of the Lots in the Property. If the petition process is used, petitions may be in any form that is customary for the time. The Board may not require a specific form of petition, nor require that the petition be offered to every Member of the Association. Signatures on petitions need not be notarized or witnessed. An electronic or faxed petition is acceptable if the "signer's" identity is reasonably discernible.

6.3. PLACE OF MEETINGS. Meetings of the Association may be held at the Property or at a suitable place convenient to the Members, as determined by the Board.

6.4. NOTICE OF MEETINGS. **The content, timing, and method of delivery of notice to Members must comply with the requirements of Applicable Law. The terms of this Section apply only to the extent not contrary to Applicable Law.** Subject to the provisions below, at the direction of the Board, written notice of meetings of the Association will be given to an Owner of each Lot at least ten (10) days but not more than sixty (60) days prior to the meeting. Notices of meetings will state the date, time, and place the meeting is to be held. Notices will identify the type of meeting as annual or special, and will state the particular purpose of a special meeting. Notices must state any additional requirements of Applicable Law, and may also set forth any other items of information deemed appropriate by the Board.

6.4.1. Notice Exception. Individual notice of the regular annual meeting of the Association is not required if (i) the time and place of the meeting is largely unchanged from year to year and (ii) information about the time and place is routinely available to all Members, such as by year-long posting on the Association's official website or repetitive announcements in the Association's newsletter. This exception does not apply to special meetings of the Association or to changes in the time and place of the regular annual meeting. If the Board fails or refuses to call the annual meeting in a timely manner, an ad hoc committee of Owners may call the annual meeting or an election meeting pursuant to Applicable Law.

6.4.2. Special Meeting Notice. Within thirty (30) days after the Board resolution or receipt of petition, the Board must give all Members notice of the special meeting. If the Board fails or refuses to call the special meeting in a timely manner, an ad hoc committee of Owners may do so provided the notice of meeting names the ad hoc committee and its individual Members, and further provided that the notice is delivered to an Owner of every Lot in accordance with these Bylaws. The notice of any special meeting must state the time, place, and purpose of the meeting. No business, except the purpose stated in the notice of the meeting, may be transacted at a special meeting.

6.5. RECORD DATE. Because the ownership of Lots may change during a year, the ownership as of the Record Date is used to produce the Membership list for use in connection with the meeting. Before each meeting or balloting of the Association, the Board will establish a list of all Members for purposes of receiving a meeting notice. These Membership lists are described in the Association Records Article below. The "cut off" date on which these lists are based is referred to in the Code as the "**Record Date**". The Record Date for an Association meeting for which notice is given is ten (10) calendar days before the date the notice is distributed or published to the Members. The Record Date for an Association meeting for which no notice is given is forty-five (45) calendar days before the meeting. The Record Date determination of Members entitled to vote at a meeting of the Association is effective for any adjournment of the meeting, provided the date of the adjourned meeting is not more than thirty (30) days after the original meeting.

6.6. ELIGIBILITY. Every Member is entitled to receive notice of Association meetings (one notice per Lot), to attend Association meetings, to be counted towards a quorum (one tally per Lot), to vote



on matters coming before the Membership (one vote per Lot), and to stand for election to the Board, with few exceptions.

6.7. QUORUM. At any meeting of the Association, the presence in person or by proxy of Owners of at least ten percent (10%) of the Lots in the Property constitutes a quorum. Members present at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal, during the course of the meeting, of Members constituting a quorum.

6.8. LACK OF QUORUM. If a quorum is not present at any meeting of the Association for which proper notice was given, Members representing at least a majority of the votes present at the meeting, although not constituting a quorum, may vote to recess the meeting for not more than twenty-four (24) hours in order to attain a quorum, provided the place of the meeting remains as stated in the notice. If the meeting is adjourned without attainment of a quorum, notice of a new meeting for the same purposes within fifteen (15) to thirty (30) days may be given to an Owner of each Lot, at which re-called meeting the quorum requirement is lowered to two-thirds (2/3) of the Lots required for the first call of the meeting.

6.9. VOTES. The vote of Members representing at least a majority of the votes cast at any meeting at which a quorum is present binds all Members for all purposes, except when a higher percentage is required by these Bylaws, the Declaration, or by Applicable Law. **Cumulative voting is prohibited.** Access to the ballots must comply with the requirements of Applicable Law.

6.9.1. Co-Owned Lots. If a Lot is owned by more than one Member, the vote appurtenant to that Lot is cast as follows. If only one of the multiple Owners of a Lot is present at a meeting of the Association, that person may cast the vote allocated to that Lot. If more than one of the multiple Owners is present, the vote allocated to that Lot may be cast only in accordance with the Owners' unanimous agreement. Multiple Owners are in unanimous agreement if one (1) of the multiple Owners casts the vote allocated to a Lot and none of the other Owners makes prompt protest to the person presiding over the meeting.

6.9.2. Entity-Owned Lots. If a Lot is owned by an entity, such as a corporation or partnership, the vote appurtenant to that Lot may be cast by any officer, manager, or partner of the entity in the absence of the entity's written appointment of a specific person to exercise its vote. The person presiding over a meeting or vote may require reasonable evidence that a person voting on behalf of an entity is qualified to vote.

6.9.3. Association-Owned Lots. Votes allocated to a Lot owned by the Association may be counted towards a quorum only, and may not be voted.

6.9.4. Lots Owned by Declarant. The Declaration may establish different voting rights for Owner Class Members and Declarant Class Members.

6.9.5. Tabulation and Recounts. The methods used by the Association to tabulate votes of Owners must comply with the requirements of Applicable Law, and with any additional requirements established by Board resolution. Any Owner may compel a recount of votes pursuant to Applicable Law.

6.10. PARTICIPATION. Members may participate in person or by proxy at meetings of the Association. A Member who participates is deemed "present" and may be counted towards a quorum unless the Member participates for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.



6.11. PROXIES. Voting Members may vote by written proxy. To revoke a proxy, the granting Member must give actual notice of revocation to the person presiding over the Association meeting for which the proxy is designated. Unless revoked, any proxy designated for a meeting which is adjourned, recessed, or rescheduled is valid when the meeting reconvenes.

6.12. CONDUCT OF MEETINGS. The president, or any person designated by the Board, presides over meetings of the Association. The secretary keeps, or causes to be kept, the minutes of the meeting which should record all resolutions adopted and all transactions occurring at the meeting, as well as a record of any votes taken at the meeting. The person presiding over the meeting may appoint a parliamentarian. The then current edition of Robert's Rules of Order governs the conduct of meetings of the Association when not in conflict with the Governing Documents.

6.13. ADJOURNMENT OF MEETING. At any meeting of the Association, a majority of the Members present at that meeting, either in person or by proxy, may adjourn the meeting to another time and place.

6.14. ACTION WITHOUT MEETING. Subject to Board approval and the requirements of Applicable Law for absentee or electronic ballots, any action which may be taken by a vote of the Members at a meeting of the Association may also be taken without a meeting by written consents. The Board may permit Members to vote by ballots delivered by any method allowed by Applicable Law, which may include hand delivery, mail, fax, e-mail, electronic balloting, or any combination of these. Written consents by Members representing at least a majority of votes in the Association, or such higher percentage as may be required by the Governing Documents, constitutes approval by written consent. This Section may not be used to avoid the requirement of an annual meeting.

6.15. MEETINGS BY REMOTE COMMUNICATIONS. Members of the Association may participate in and hold meetings of the Association by means of electronic town halls, conference telephone or similar communications equipment by means of which all persons participating in the meeting can communicate concurrently. Participation in the meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. By acquiring an interest in a Lot, each Owner automatically consents to the use of communication technology to effect meetings of the Association, provided the Owners of at least eighty-five percent (85%) of the Lots in the Property have access to the form of technology chosen by the Board, and further provided that the Association arranges a place or method of participation for those who do not have the technology.

## **ARTICLE 7** **RULES & POLICIES**

7.1. GENERAL. In addition to the core Governing Documents (a recorded plat of the Property, Declaration, these Bylaws, and the Articles of Association), the Association may have other Governing Documents that are typically referred to by names such as rules, regulations, standards, guidelines, specifications, policies, procedures, and resolutions (terms which may be used interchangeably in this context). Some are required by statute, some are customary for residential associations, and some arise over time as a result of unique circumstances and experiences. They are likely to require change over time in response to innumerable influences, such as changes in public policy, fashions, and community expectations, changes of technology or materials, aging infrastructure and organizational structure, and evolving demographics of the Residents.

7.2. EXEMPT RULES. The general requirement is that all Board-made rules and anything an Owner is expected to comply with must be in a publicly recorded Governing Document. The following exceptions to the general requirement are not in the nature of Governing Documents that require public



recording and are therefore exempt from the requirements of this Article in the absence of an express statutory requirement.

7.2.1. Administrative Policies and Procedures. This Article does not pertain to policies and procedures that are entirely administrative in nature, and which do not rise to the level of a provision that may be enforced against a Lot or a Member of the Association. Examples of administrative policies include (i) a Board resolution to change the Association's registered agent, (ii) procedures adopted by the Board for annually reviewing the manager's performance, and (iii) a policy adopted by the Board for investing the Association's funds.

7.2.2. Posted or Temporary Rules. The Association has the right to require compliance by Owners and Residents with rules on signs posted by the Association on the Property by the Association, such as hours of use of the Common Properties. The Association also has the right to require compliance by Owners and Residents with notices communicated by the Association, from time to time, in the nature of seasonal or temporary rules, or notice of a change affecting use of Common Properties. Temporary rules and rules on signs are not of a nature that requires a publicly recorded Governing Document as a prerequisite to enforcement, absent a statutory requirement. Therefore, this Article does not pertain to posted or temporary rules.

7.3. REQUIRED POLICIES. The Association, acting through its Board must adopt, and as necessary, amend and restate the policies required by Applicable Law, and which will serve to supplement these Bylaws. The Declaration authorizes the Board (and Declarant during the Development Period) to amend certain policies and provisions of the Declaration without the approval of the Owners or Members. Such amendment may take place by filing in the Official Public Records of Lubbock County, Texas, such amendments and modifications to the above-described policies as may be determined necessary by the Board (or Declarant during the Development Period) to better address the needs of the Association or to address the requirements of Applicable Law. All Owners and Members agree to abide by the above-stated policies, as set forth in the Declaration, and any amendments or modifications that may be filed in the future by the Board or Declarant.

7.4 OTHER POLICIES & RULES. From time to time, the Board may adopt, amend, restate, and repeal as many other policies and resolution as the Board deems necessary or desirable to more fully comply with Applicable Law, to improve the transparency of Association functions that directly affect Owners and Residents, or to better guide Owners and Residents in understanding the Association's operations. The Board also has the right to adopt, amend, restate, and repeal, from time to time, reasonable rules and regulations for any activity, function, or purpose for which the Board has express regulatory authority under a Governing Document or Applicable Law.

7.5. ADOPTION AND AMENDMENT. A policy or rule may be adopted, corrected, amended, supplemented, restated, or repealed by the Board, subject to the requirements of these Bylaws and any additional requirements of Applicable Law.

## **ARTICLE 8** **ENFORCEMENT**

8.1. ACTIONS REQUIRING NOTICE AND HEARING. Before taking any of the below-described actions, the Association must give written notice and an opportunity for a hearing according to the requirements of this Article and the notice and hearing requirements of Applicable Law, such as Chapter 209 *Texas Property Code*. The contents of the written notice and the method by which it is delivered must comply with the requirements of Applicable Law. An Owner's request for a hearing and the Association's conduct of the hearing must comply with the requirements of Applicable Law. The following actions by or with the approval of the Board, the Association, or the Architectural Review Committee, require notice and hearing as provided by this Article:



- a. Suspension of use of the Common Properties or any portion thereof.
- b. Imposition of a fine for violation of any provision of the Governing Documents, other than fines, interest, or collection fees charged for delinquent accounts.
- c. Charging an Owner or a Lot for property damage.
- d. Filing suit against an Owner other than a suit related to the collection of Assessments or foreclosure of the Association's Assessment Payment and Performance Lien.

8.2 ACTIONS EXEMPT FROM NOTICE AND HEARING REQUIREMENTS. As a general rule, every action other than the above-described actions requiring notice and hearing are impliedly exempt from the requirements of this Article. As permitted by Applicable Law, such as Section 209.007 of the *Texas Property Code*, the following actions are expressly exempt:

- a. A temporary suspension of a person's right to use all or any portion of the Common Properties if the temporary suspension is the result of a violation that occurred in or on the Common Properties and involved a significant and immediate risk of harm to others in the Property. The temporary suspension is effective until the Board makes a final determination on the suspension action after following the notice and hearing procedures prescribed by this Article.
- b. A lawsuit in which the Association seeks a temporary restraining order or temporary injunctive relief.
- c. A lawsuit filed by the Association that includes foreclosure as a cause of action.
- d. The collection of delinquent Assessments.

8.3. IMPOSITION OF FINE. Within thirty (30) days after levying the fine or authorizing the abatement, the Board must give the Owner notice of the levied fine or abatement action. If the fine or action is announced at the hearing at which the Owner is actually present, the notice requirement will be satisfied. Otherwise, the notice must be in writing.

8.3.1. Amount. The Board may set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effects of the violation. The Board may establish a schedule of fines for certain types of violations. The amount and cumulative total of a fine must be reasonable in comparison to the violation. If the Board allows fines to accumulate, it may establish a maximum amount for a particular fine, at which point the total fine will be capped.

8.3.2. Type of Fine. If the violation is ongoing or continuous, the fine may be levied on a periodic basis (such as daily, weekly, or monthly). If the violation is not ongoing, but is instead sporadic or periodic, the fine may be levied on a per occurrence basis.

8.3.3. Other Fine-Related. The Association is not entitled to collect a fine from an Owner to whom it has not given notice and an opportunity to be heard. The Association may not charge interest on unpaid fines. The Association may not foreclose its Payment and Performance Assessment Lien on a debt consisting solely of fines.

8.4. REIMBURSEMENT OF EXPENSES AND LEGAL FEES. This Section is subject to any Applicable Law that limits or conditions the amount or types of legal fees or collection costs that the

Association is entitled to recover against an Owner or a Lot, with which the Association must comply. In addition to any other rights set forth in the Governing Documents for violation of a provision of the Governing Documents, the Board may levy and collect Individual Assessments for reimbursement of reasonable fees and expenses, including without limitation legal fees, incurred by the Association to enforce the Governing Documents, including the collection of delinquent Assessments, subject to the following conditions:

8.4.1. Notice. The Association must give the Owner written notice that the Owner will be liable for reimbursement of any such fees and expenses incurred by the Association if the delinquency or violation continues after a date certain that is stated in the notice. This notice requirement does not apply to legal fees incurred by the Association in connection with the Association's counterclaim in a lawsuit to which an Owner is a plaintiff.

8.4.2. Hearing. If legal fees are incurred by the Association for an action requiring notice and hearing, the Owner is not liable for reimbursement of legal fees incurred (i) before the date by which the Owner must request a hearing, if the Owner does not request a hearing, or (ii) before conclusion of the hearing, if the Owner does request a hearing.

8.4.3. Records. By written request, an Owner may obtain from the Association copies of any invoices for charges, including legal fees, for which the Association seeks reimbursement.

8.5. ADDITIONAL ENFORCEMENT RIGHTS. Notwithstanding the notice and hearing requirement, the Board may take immediate and appropriate action, without giving the notices required in this Article, against violations of the Governing Documents which, in the Board's opinion, are (i) self-evident, such as vehicles parked illegally or in violation of posted signs; (ii) threatening to life or property; or (iii) repeat violations of the same provision by the same Owner to whom prior notices and demands have been given for the same violation. Further, the provisions of this Article do not apply to specific remedies provided in the Governing Documents for certain violations, such as nonpayment of Assessments.

## **ARTICLE 9**

### **OBLIGATIONS OF THE OWNERS**

9.1. CONTACT INFORMATION; OBLIGATION TO KEEP INFORMATION CURRENT. The Owner or the several Co-Owners of a Lot must register and maintain current and effective contact information with the Association to be used by the Association for notices, demands, and all other communications. The contact information must include the Owner's name, e-mail address, mailing address and phone number. An Owner must notify the Association within thirty (30) days after he or she has notice of a change in any information required by this Section, and must provide the information on request of the Association from time to time. If an Owner fails to maintain current and effective contact information with the Association, the address of the Owner's Lot is deemed to be the Owner's address for all purposes, even if the Association knows the property to be vacant or occupied by persons other than the Owner. In an effort to minimize the cost of communication, Owners agree to provide the Association with at least one current e-mail address for each Lot. Each Owner authorizes the Association to use the e-mail address to communicate with the Owner about the Association, specifically including the delivery of board meeting notices and verification of an electronic ballot (if available) submitted by the Owner. If the Owner has neither e-mail address nor access to an e-mail address, the Owner must so notify the Association in writing. Co-Owners of a Lot will designate one e-mail address as the primary e-mail address for the purpose of notices to the Co-Owners. The Association may provide a form to Owners for the purpose of providing contact information; and if such form is provided, the information on such form, until changed in writing by an Owner, will be the contact information utilized by the Association for notice purposes. Each Owner is responsible for ensuring that all contact information, including the Owner's e-mail address, is current. The Association shall not be required to search for alternate addresses if the Owner has failed to keep



current his or her contact information, and any failure by an Owner to provide current contact information shall constitute a waiver to the right to notice, except as may be prohibited by Applicable Law.

9.2. NOTICE OF SALE. Any Owner intending to sell or convey his Lot or any interest therein must give written notice to the Board of his intention, together with (i) the address or legal description of the Lot being conveyed, (ii) the name and address of the intended purchaser, (iii) the name, address, and phone number of the title company or attorney designated to close the transaction, (iv) names and phone numbers of real estate agents, if any, representing seller and purchaser, and (v) scheduled date of closing. An Owner will furnish this information to the Board at least ten (10) Business Days before the scheduled date of closing or conveyance. The requirements of this Section may be satisfied by giving the Association a copy of an accepted resale contract in connection with the Owner's request to the Association for a resale certificate.

9.3. PROOF OF OWNERSHIP. If requested by the Association, an Owner must furnish to the Board evidence of ownership in the Lot, which copy will remain in the files of the Association. A copy of the recorded deed is the customary evidence. If the Association is unsure about the ownership of a Lot, the Association may refuse to recognize a person as a Member unless this requirement is first met. This requirement may be satisfied by receipt of a Board-approved form that is completed and acknowledged by a title company or attorney at time of conveyance of the Lot or any interest therein.

9.4. REGISTRATION OF SENIOR AND JUNIOR LIEN HOLDERS. Because Applicable Law requires the Association to communicate with other lienholders for the ultimate benefit and protection of the Owner, the Association requires the Owner to report to the Association about deed of trust liens against the Owner's Lot. Within thirty (30) days after granting a lien against his Lot, the Owner must provide the Association with a copy of the recorded deed of trust against his Lot. The Owner must notify the Association within thirty (30) days after he has notice of a change in the information required by this Section. Also, the Owner will provide the information on request by the Association from time to time.

9.5. COMPLIANCE. By acquiring an interest in a Lot, each Owner agrees to comply with the provisions and terms of the Governing Documents, as adopted or amended from time to time, and with any Applicable Laws that impose duties on Owners. Each Owner also agrees to comply with the terms of any agreement negotiated by the Owner with the Association.

## **ARTICLE 10** **ASSOCIATION RECORDS**

10.1. OPEN BOOKS AND RECORDS. To the full extent required by Applicable Law, and subject to the provisions of Article III, Section 10 of the Declaration (providing for record production and copying), the books and records of the Association are open to and reasonably available for examination by an Owner or by a person designated by the Owner in writing. The Association will provide an Owner with copies of requested documents to the full extent required by Applicable Law. The Association hereby expressly reserves for itself every constraint against or limitation on the Owner's right of access that is permitted to the Association by Applicable Law.

10.2. AUDIT. The Association may, as determined necessary by the Board, obtain an annual independent audit of the Association's financial records. Copies of the audit will be made available to the Owners for inspection and copying. The audit need not be performed by a certified public accountant unless so required by the Board.

10.3. RESALE CERTIFICATES. Any officer may prepare, or cause to be prepared, Assessment estoppel certificates or resale certificates pursuant to Applicable Law, such as Chapter 207 of the *Texas Property Code*, titled "Disclosure of Information by Property Owners Association." The Association may



charge a reasonable fee for preparing such certificates, and may refuse to furnish such certificates until the fee is paid. Any unpaid fees may be assessed against the Lot for which the certificate is furnished. The Association may delegate the responsibility for a resale certificate to its managing agent, if any.

10.4. MANAGEMENT CERTIFICATE. As required by Applicable Law, such as Section 209.004 of the *Texas Property Code*, the Association will maintain a current management certificate in the Official Public Records of Lubbock County, Texas. When the Association has notice of a change in any information in the recorded certificate, the Association will prepare a restated or amended certificate and deliver it to the county clerk for filing. Absent gross negligence, the Association is not liable for a delay or failure to record a certificate. The Association may delegate the responsibility for a management certificate to its managing agent, if any.

10.5. MEMBERSHIP LIST. The Board must maintain a comprehensive list of Members for compliance with the Code as well as the Governing Documents. The Association must make the Membership list available to any Owner on written request, and may charge a reasonable fee for cost of copying and delivering the Owners list.

10.5.1. Types of Information. At a minimum, the Association must maintain for each Lot the name and mailing address of at least one (1) Owner, and a description of the Lot owned (if different from the mailing address). The Association may also maintain, as an Association record, additional contact information for Owners, such as phone numbers, fax numbers, e-mail addresses, places of employment, emergency contact information, mortgage information, and any other items of information provided by owners or obtained by the Association.

10.5.2. Source of Ownership Information. In compiling the Ownership or Membership list, the Association may rely on any combination of (i) public records, such as tax rolls, (ii) documentation provided by title insurance companies, (iii) self-reporting by Owners and Residents, and (iv) any other reasonably reliable and customary source of ownership information. The requirement of maintaining ownership records may not be construed to require the Association to affirmatively investigate or research title to a Lot.

10.5.3. Information Available to Members. Membership information to be maintained by the Association is similar to what is typically available to the public on the website of the appraisal district, and may not be considered confidential, private, or protected information as between the Association and its Members. Neither the Association nor a Member of the Association may sell or otherwise market the Association's Membership information without the express prior consent of the Owners. Each Owner, by acquiring an ownership interest in a Lot, acknowledges that the Owner's contact information is a record of the Association that is available to all Members of the Association.

10.5.4. Inspection List. In accordance with Applicable Law, the Association will prepare a list of Owners of all Lots in the Property for inspection by the Members prior to the meeting. The purpose of the list is to enable Members to communicate with each other about the meeting. The inspection list must be available for inspection by the Members from the second (2<sup>nd</sup>) Business Day after the date notice of the meeting is given until adjournment of the meeting for which it was prepared. The list may be inspected or copied by an Owner or the Owner's attorney or agent. The inspection list must have the following characteristics:

- a. The list must be in alphabetical order of Owners' surnames, or in numerical order of street addresses.



- b. The list must contain the name of at least one (1) Owner of each Lot, or an indication that the current ownership cannot be determined and the identity of the last known Owner.
- c. The list must contain an address for each Member.
- d. The list must identify how many Lots are owned by each Owner, if that cannot otherwise be determined from the list.
- e. If all Lots do not have uniform votes, such as Lots owned by Declarant during the Declarant Control Period, the list must identify the number or weight of votes attached to each Lot.

## **ARTICLE 11**

### **NOTICES**

11.1. **CO-OWNERS**. If a Lot is owned by more than one (1) person, notice to one (1) Co-Owner is deemed notice to all Co-Owners. Similarly, notice to one (1) Resident of a Lot is deemed notice to all Residents of the Lot.

11.2. **DELIVERY OF NOTICES**. Unless a specific method of delivery is required by Applicable Law or by a Governing Document, any written notice required or permitted by these Bylaws may be given personally, by mail, by fax, by e-mail, or by any other method permitted by Applicable Law. If mailed, the notice is deemed delivered when deposited in the U.S. mail addressed to the Member at the address shown on the Association's records. If transmitted by fax or e-mail, the notice is deemed delivered on successful transmission of the facsimile or electronic correspondence. The notice must be sent to the party's last known address as it appears on the records of the Association at the time of transmission. If an Owner fails to give the Association an effective address, the notice may be sent (i) to the address of the Owner's Lot and/or (ii) to the Owner's address for the Lot as published on the public access website maintained by the Lubbock Central Appraisal District. If the Association properly transmits the notice, the Owner is deemed to have been given notice whether or not he actually receives it.

11.3. **WAIVER OF NOTICE**. Whenever a notice is required to be given to an Owner, Member, or Director, a written waiver of the notice, signed by the person entitled to the notice, whether before or after the time stated in the notice, is equivalent to giving the notice. Attendance by a Member or Director at any meeting of the Association or Board, respectively, constitutes a waiver of notice by the Member or Director of the time, place, and purpose of the meeting. If all Members or Directors are present at any meeting of the Association or Board, respectively, no notice is required and any business may be transacted at the meeting.

## **ARTICLE 12**

### **INDEMNIFICATION**

12.1. **GENERAL**. The purpose of this Article is to mandate some of the permissive provisions of Chapter 8 of the Code, and to indemnify "**Association Leaders**" whether or not the Association is incorporated at the time indemnification is needed. The definitions of Chapter 8 of the Code are hereby incorporated by reference, without regard to the corporate status of the Association. As used in this Article, "**Association Leader**" means a person who is a current or former officer or Director of the Association, or a current or former committee chair or committee Member of the Association.

12.2. **MANDATORY INDEMNIFICATION**. The Association will indemnify an Association Leader who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was an Association Leader, if the following determinations are made.

12.2.1. Determinations. It must be determined that the person acted in good faith, and that:

- a. the person reasonably believed (i) in the case of conduct in the person's official capacity, that the person's conduct was in the Association's best interest, or (ii) in any other case, that the person's conduct was not opposed to the Association's best interests;
- b. in the case of a criminal proceeding, the person did not have a reasonable cause to believe the person's conduct was unlawful;
- c. with respect to expenses, the amount of expenses other than a judgment is reasonable; and
- d. indemnification should be paid.

12.2.2. Effect of Proceeding Termination. A person does not fail to meet the determination standard solely because of the termination of a proceeding by judgment, order, settlement, conviction, or a plea of nolo contendere or its equivalent.

12.2.3. How Determinations Are Made. If all of the Directors are disinterested and independent, as defined in the Code, the determinations required under this Section will be made by a special legal counsel selected by the Board. Otherwise, the determinations will be made by the Owners of a majority of Lots in the Property, other than Lots owned by persons who are not disinterested and independent as defined in the Code, or by a special legal counsel selected by those Owners.

12.3. EXCEPTIONS TO MANDATORY INDEMNIFICATION. A person who is found liable to the Association or is found liable because the person improperly received a personal benefit is not entitled to indemnification under this Article if, in a legal proceeding, the person has been found liable for (i) willful or intentional misconduct in the performance of the person's duty to the Association, (ii) breach of the person's duty of loyalty owed to the Association, or (iii) an act or omission not committed in good faith that constitutes a breach of a duty owed by the person to the Association. In all other instances, indemnification of a person who is found liable to the Association is limited to reasonable expenses actually incurred by the person in connection with the proceeding, excluding a judgment, a penalty, a fine, or any other type of sanction. A person indemnified by the Association is considered to have been found liable in relation to a claim, issue, or matter only if the liability is established by an order, including a judgment or decree of a court, and all appeals of the order are exhausted or foreclosed by Applicable Law.

12.4. EXPENSES. The indemnification provided by this Article covers reasonable expenses and costs, such as legal fees, actually and necessarily incurred by the indemnified person in connection with a qualified claim.

12.4.1. Advancement of Expenses. The Association may pay or reimburse reasonable expenses incurred by an indemnified person who was, is, or is threatened to be made a respondent in a proceeding in advance of the final disposition of the proceeding without making the determinations required under the Section above titled "**Mandatory Indemnification**", after the Association receives a written affirmation by the person of the person's good faith belief that the person has met the standard of conduct necessary for indemnification under this Article, and a written undertaking by or on behalf of the person to repay the amount paid or reimbursed if the final determination is that the person has not met that standard or that indemnification is prohibited by this Article. The required written undertaking must be an unlimited general obligation of the person but need not be secured and may be accepted by the Association without regard to the



person's ability to make repayment.

12.4.2. Witness Expenses. The Association may pay or reimburse reasonable expenses incurred by an Association Leader, Member, employee, agent, or other person in connection with that person's appearance as a witness or other participation in a proceeding at a time when the person is not a respondent in the proceeding.

12.5. INDEMNIFICATION OF OTHER PERSONS. Subject to the same limitations, determinations, and exceptions for Association Leaders, the Association may indemnify and advance expenses to a person who is not otherwise covered by this Article's indemnification as provided by (i) a provision in a Governing Document of the Association, (ii) a contract to which the Association is a party, (iii) common law, (iv) a Board resolution, or (v) a resolution approved by the Members. A person indemnified under this Section may seek indemnification or advancement of expenses from the Association to the same extent that an Association Leader may seek indemnification or advancement of expenses under this Article.

### **ARTICLE 13** **DECLARANT PROVISIONS**

13.1. CONFLICT; DECLARANT CONTROL PERIOD. The provisions of this Article control over any provision to the contrary elsewhere in these Bylaws. This Article may not be amended by the Association without the express consent of Declarant on the instrument of amendment. **Many Sections of these Bylaws do not apply during the Declarant Control Period, when governance of the Association is reserved to Declarant to the greatest extent allowed or not prohibited by Applicable Law.** During the Declarant Control Period the requirements of these Bylaws will be construed as permissive and not mandatory, and within the sole discretion of the Board, to the extent permitted and not prohibited by Applicable Law. The Declaration and the Articles of Association for the Association reserve to Declarant during the Declarant Control Period, certain rights of governance of the Association, and the provisions of the Declaration and Articles of Association reserving such rights of governance to Declarant shall override and control over conflicting provisions of these Bylaws until the Declarant Control Period has expired.

13.2. BOARD OF DIRECTORS. During the Declarant Control Period, the initial Directors will be appointed by Declarant and need not be Owners. Directors appointed by Declarant may not be removed by the Owners and may be removed by Declarant only. During the Declarant Control Period, Declarant has the right to fill vacancies in any Directorship vacated by a Declarant appointee.

13.3. TRANSITION MEETING. As provided by Article X, Section 3 of the Declaration, within one hundred and twenty (120) days after the end of the Declarant Control Period, or sooner at Declarant's option, Declarant will call a meeting of the Members of the Association for the purpose of electing Directors, by ballot of Members. Notice of the transition meeting will be given as if it were notice of an annual meeting.

### **ARTICLE 14** **AMENDMENTS TO BYLAWS**

14.1. AUTHORITY. Although the general authority for amending the Bylaws resides with the Members of the Association, certain amendments may be made by the Board or by Declarant, without a vote of the Members.

14.1.1. Amendments by Board. During the Declarant Control Period, the Board may amend these Bylaws unilaterally (without Member approval) for any purpose; subject only to Declarant's written consent. Thereafter, the Board may not unilaterally amend these Bylaws, except for the following limited purposes, which must be clearly identified in the instrument of

amendment, and then only to the extent necessary to achieve the permitted goal, and only with the unanimous written consents of all Directors, there being no vacancy on the Board:

- a. To qualify the Property or the Association for mortgage underwriting, tax exemption, insurance coverage, or any governmental or quasi-governmental program or benefit, if doing so is in the best interests of the Association and its Members.
- b. To correct an obvious error that affects the validity or enforceability of the document, if doing so is in the best interests of the Association and its Members.
- c. To conform the Bylaws to changes in controlling law applicable to any topic addressed in these Bylaws.
- d. To change the name of the Association.
- e. To restate previously amended Bylaws for the sole purpose of incorporating the amendments into the body of the Bylaws.

14.1.2. Amendments by Declarant. During the Development Period, Declarant may amend these Bylaws or adopt new Bylaws with or without approval by the Board or the Members, *for any purpose.*

14.1.3. Amendments by Members. All other amendments of these Bylaws must be approved by the Members according to the terms of this Article.

14.2. AMENDMENTS BY MEMBERS. Because this Section protects a fundamental Membership right, this Section may not be amended without the approval of Owners representing at least a majority of the total Lots in the Property. Other aspects of these Bylaws may be amended by the Members as follows:

14.2.1. Proposal. The Association will provide or make available to an Owner of each Lot a description, if not exact wording, of any proposed amendment. The proposed amendment, description of the proposed amendment, or instructions for obtaining a copy of the proposed amendment at no cost will be included in the notice of the meeting or balloting by which the proposed amendment is to be considered.

14.2.2. Consents. If considered at a meeting of the Association at which discussion of the amendment is permitted, the amendment must be approved by Members representing at least a majority of the votes present (in person or by proxy) at a properly called meeting of the Association for which a quorum is obtained. In other words, if a quorum is present (in person or by proxy) at an Association meeting, Owners who collectively represent a majority of the votes present at the meeting (in person or by proxy), even if less than a majority of the total Lots, may approve an amendment to these Bylaws. If balloting is done without a meeting, such as by mail or electronic means, the amendment must be approved by Members representing at least a majority of the total votes in the Association.

14.3. EFFECTIVE. To be effective, an amendment must be in the form of a written instrument (i) referencing the name of the Property, the name of the Association, the name of the platted subdivision, and the recording data of these Bylaws and any amendments hereto; (ii) signed and acknowledged by at least one (1) officer of the Association, certifying the requisite authority and/or approvals; and (iii) recorded in the Official Public Records of Lubbock County, Texas. An amendment may be effective immediately if



15.6. FISCAL YEAR. The fiscal year of the Association is any twelve (12) month period that is set by resolution of the Board, and is subject to change from time to time as the Board determines. In the absence of a resolution by the Board, the calendar year is the fiscal year.

15.7. WAIVER. No restriction, condition, obligation, or covenant contained in these Bylaws may be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

**CERTIFICATION & ACKNOWLEDGMENT**

As Declarant of Viridian Addition, I certify that the foregoing Bylaws of VIRIDIAN LUBBOCK HOMEOWNER ASSOCIATION were adopted for the benefit of VIRIDIAN LUBBOCK HOMEOWNER ASSOCIATION by Declarant and by the Declarant-appointed Board of Directors of VIRIDIAN LUBBOCK HOMEOWNER ASSOCIATION, and that these Bylaws are one of the initial Governing Documents of Viridian Addition.

SIGNED this 5<sup>th</sup> day of June, 2019.

**DECLARANT:**

**1585 DEVELOPMENT, LLC,**  
a Texas limited liability company

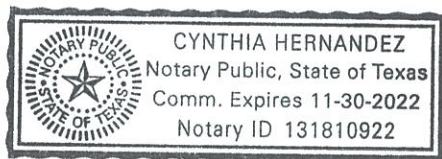
By: \_\_\_\_\_  
Name: Thomas K. Payne  
Title: Manager

THE STATE OF TEXAS        { }

COUNTY OF LUBBOCK        { }

Before me, the undersigned authority on this 5<sup>th</sup> day of June, 2019, personally appeared THOMAS K. PAYNE, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the instrument as the act of 1585 DEVELOPMENT, LLC, a Texas limited liability company, and that he executed the instrument on behalf of the limited liability company for the purposes and consideration expressed, and in the capacity hereinabove stated.

Cynthia Hernandez  
Notary Public, State of Texas





# FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



*Kelly Pinion*

Kelly Pinion, County Clerk  
Lubbock County, TEXAS  
06/06/2019 12:48 PM  
FEE: \$146.00  
2019021034