

Denton County  
Juli Luke  
County Clerk

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AMENDMENT

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Dallas, TX 75201

Cross References:  
Denton County Reference to Amended and Restated Charter - Instrument No: 139823

**AMENDMENT TO  
AMENDED AND RESTATED COMMUNITY CHARTER  
FOR  
BROOKSIDE AT FIELDS RESIDENTIAL PROPERTIES**

THIS AMENDMENT TO AMENDED AND RESTATED COMMUNITY CHARTER FOR BROOKSIDE AT FIELDS RESIDENTIAL PROPERTIES ("**Amendment**") is made by FHQ DEVELOPMENT PARTNERS LP, a Delaware limited partnership ("**Founder**").

**W I T N E S S E T H**

**WHEREAS**, Founder recorded that certain instrument entitled "Amended and Restated Community Charter for Brookside at Fields Residential Properties," on September 29, 2022 under Denton County Clerk's Instrument No. 139823 in the Official Public Records of Denton County, Texas (as may be amended and supplemented from time to time, the "**Charter**"); and

**WHEREAS**, Founder established the Fields Residential Association, Inc., a Texas nonprofit corporation (the "**Association**") to own, operate, and/or maintain various common areas and community improvements and to administer and enforce the Charter and the other "Governing Documents" referenced in the Charter; and

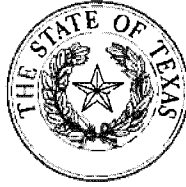
**WHEREAS**, the Board of Directors, through a resolution approved by unanimous consent, approved a name change of the Association to "Brookside at Fields Residential Association, Inc." pursuant to Section 22.107 of the Texas Business Organization Code; and

**WHEREAS**, the Association's name change amendment, with the requisite consent of the Founder, was submitted to the Texas Secretary of State and approved effective as of January 11, 2023; and

**WHEREAS**, pursuant to Section 21.2(a) of the Charter, Founder, until termination of the Founder Control Period, may unilaterally amend the Charter for any purpose and, until termination of the Development and Sale Period, may unilaterally amend the Charter if such amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; and

**WHEREAS**, pursuant to Section 10.6(a) of the "Amended and Restated By-Laws of Fields Residential Association, Inc.," attached as Exhibit "E" to the Charter (as may be amended from time to time, the "**By-Laws**"), Founder, until termination of the Founder Control Period, may unilaterally amend the By-Laws for any purpose and, until termination of the Development and Sale Period, may unilaterally





**Office of the Secretary of State**

**CERTIFICATE OF FILING  
OF**

**Brookside at Fields Residential Association, Inc.  
803964758**

[formerly: Fields Residential Association, Inc.]

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

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

Dated: 01/11/2023

Effective: 01/11/2023



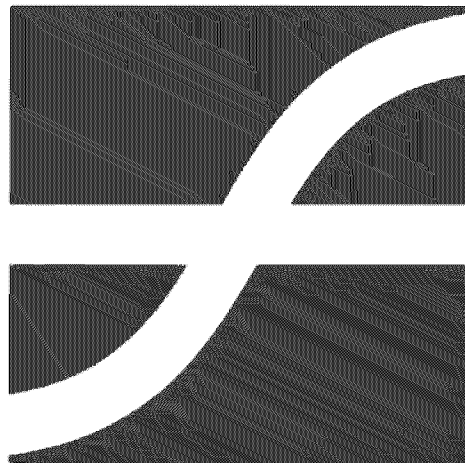
A handwritten signature in black ink, appearing to read "Jose A. Esparza".

Jose A. Esparza  
Deputy Secretary of State

**EXHIBIT "E"**

**By-Laws of Brookside at Fields Residential Association, Inc.**

**AMENDED AND RESTATED BY-LAWS**  
**OF**  
**BROOKSIDE AT FIELDS RESIDENTIAL ASSOCIATION, INC.**



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**AMENDED AND RESTATED BY-LAWS  
OF  
BROOKSIDE AT FIELDS RESIDENTIAL ASSOCIATION, INC.**

**Article 1  
Name, Principal Office, and Definitions**

**1.1. Name.**

The name of the corporation is Brookside at Fields Residential Association, Inc. (the "**Association**").

**1.2. Principal Office.**

The Association may have such offices in the Dallas-Fort Worth, Texas metropolitan area as the Board may determine or as the Association's affairs may require.

**1.3. Definitions.**

The words used in these Amended and Restated By-Laws of Brookside at Fields Residential Association, Inc. ("**By-Laws**"), shall be given their normal, commonly understood definitions. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Amended and Restated Community Charter for Brookside at Fields Residential Properties recorded by FHQ DEVELOPMENT PARTNERS LP, a Delaware limited partnership (the "**Founder**") in the Office of the County Clerk of Denton County, Texas, as it may be amended (the "**Charter**"). The term "**majority**," as used in these By-Laws, means those votes, Members, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

**Article 2  
Membership: Meetings, Quorum, Voting, Proxies**

**2.1. Membership.**

The Association shall have two classes of membership: Owner Membership and Founder Membership, as more fully described in the Charter. Each Owner of a Unit automatically becomes a Member of the Association upon accepting title to a Unit. Additional provisions of the Charter pertaining to membership are incorporated by this reference.

**2.2. Place of Meetings.**

The Association shall hold meetings at the Association's principal office or at such other suitable place the Board may designate.

### 2.3. Membership Meetings.

(a) **General.** Association meetings shall be of the Voting Delegates unless the Board otherwise specifies or Texas law otherwise requires; however, any Member may attend a Association meeting. The first Association meeting, whether an annual or special meeting, shall be held within one year after the Association's incorporation.

(b) **Annual Meetings.** The Board shall schedule regular annual meetings of the Members to occur within 90 days before the close of the Association's fiscal year, on such date and at such time and place as the Board shall determine.

(c) **Special Meetings.** The President may call special meetings of the Members. In addition, the President or the Secretary shall call a special meeting if so directed (i) by Board resolution, (ii) upon the request of the Founder during the Development and Sale Period, or (iii) within 30 days after receipt of a petition stating the purpose of the meeting and signed by at least 10% of the Voting Delegates or by Members holding at least 10% of the total votes in the Association.

### 2.4. Notice of Meetings.

(a) At least 10 but not more than 60 days before any meeting of the membership, the President, the Secretary, or the officers or other persons calling the meeting shall deliver or cause to be delivered to each Voting Delegate and alternate Voting Delegate a written notice stating the place, day, and hour of the meeting and the items on the agenda for such meeting, including the general nature of any proposed amendment to the Charter or By-Laws, any proposed budget changes, any proposal to remove a director, and any other matter required by Texas Business Organizations Code Sections 22.253 and 22.303, as it may be amended or any successor Texas statute thereof. If proxies are permitted, the notice shall also state the procedures for appointing proxies. If the meeting is to be held solely by electronic communications or if participation in the meeting is permitted by electronic communications, as described in Section 2.5 below, the notice shall state the form of communications system to be used for the meeting and the means of accessing the communications system. No business shall be transacted at a special meeting except as stated in the notice. Such notice shall be delivered by such means as permitted under Section 10.5 except as otherwise specified in the Charter, these By-Laws, or by Texas law.

(b) The Board shall set a record date for determining who is entitled to receive notice of a meeting, which shall not be earlier than the 60<sup>th</sup> day before the meeting date, and shall prepare an alphabetical list of the names of all Persons entitled to vote, indicating (i) the address of each Person, and (ii) the number of votes each Person is entitled to cast at the meeting. Not later than the second business day after the date notice of the meeting is given, and continuing through the meeting, the list shall be made available at the Association's principal office or at a reasonable place in the municipality in which the meeting will be held, as identified in the notice of the meeting, for inspection and copying by Members and/or Voting Delegates entitled to vote at the meeting, or their agents, for the purpose of communication with other Members and/or Voting Delegates concerning the meeting. The Association shall also make the list available at the meeting for inspection at any time during the meeting or any adjournment of the meeting.

### 2.5. Electronic Participation in Meetings.

The Association may hold Association meetings and/or allow Voting Delegates or Members to participate in any Association meeting by conference telephone or similar communications equipment or another suitable electronic communications system, including videoconferencing technology or the Internet,

if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting. If voting is to take place at the meeting, the Association must implement measures to verify that every Voting Delegate voting at the meeting by means of remote communication is sufficiently identified.

## 2.6. Waiver of Notice.

Waiver of notice of a Association meeting shall be deemed the equivalent of proper notice. Any Voting Delegate or alternate may waive, in writing, notice of any Association meeting, either before or after such meeting. A Voting Delegate or alternate's attendance at a meeting shall be deemed a waiver by such Voting Delegate and alternate of notice of the time, date, and place thereof, unless the Voting Delegate or alternate specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

## 2.7. Adjournment of Meetings.

If any Association meeting cannot be held because a quorum is not present, persons entitled to cast a majority of the votes represented at such meeting may adjourn the meeting to a time at least 5 but not more than 30 days from the scheduled date of the original meeting. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Board shall provide notice of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

Voting Delegates or their alternates present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Voting Delegates to leave less than a quorum; however, at least a majority of the votes required to constitute a quorum, or such larger percentage as may be required under the Charter or applicable law for specific actions, must approve any action taken.

## 2.8. Voting.

(a) ***Voting Rights.*** Members shall have such voting rights as are set forth in the Charter, which provisions are specifically incorporated by this reference. Until such time as the Board first calls for election of a Voting Delegate for any Neighborhood, the Owners within such Neighborhood shall be entitled personally to cast the votes attributable to their respective Units on any issue as to which the Voting Delegate representing their Unit would be entitled to vote under the Governing Documents.

(b) ***Voting Procedures.*** Not later than the tenth (10<sup>th</sup>) day or earlier than the sixtieth (60<sup>th</sup>) day before the date of any election or vote, the Association shall give written notice of the election or vote to:

(i) each Owner, in the case of any election or vote on which all Owners or Voting Delegates are entitled to vote; or

(ii) each Owner of a Unit within a Neighborhood, for purposes of electing of a Voting Delegate or alternative Voting Delegate to represent that Neighborhood.

A membership vote on any matter shall be conducted by written ballot signed by the Member or Voting Delegate entitled to vote, which ballot may be cast in person at a meeting, by mail or electronic transmission (including facsimile transmission, electronic mail, or posting on an Internet website), or by any combination of those methods; provided, any ballot submitted by electronically must be submitted in a manner that permits confirmation of the identity of the Member casting the vote and allows the Member to receive a receipt evidencing the transmission and receipt of the ballot. A ballot cast at a meeting shall revoke and supersede any ballot casting the same vote submitted by other means. A ballot cast prior to a meeting may not be counted if the motion was amended at the meeting so as to deviate from the exact language on the ballot previously cast.

A ballot to be submitted by mail or electronic transmission (an "**Absentee Ballot**") shall:

(i) describe each proposed action and providing an opportunity to vote for or against each proposed action; and

(ii) include the following language or such other language as may be authorized in lieu of the following language by future amendment of Texas Property Code Chapter 209, as it may be amended or any successor Texas statute thereof:

"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."

Any solicitation of votes to be cast by Absentee Ballot shall include instructions for delivery of the completed ballot, including the delivery location. If the Absentee Ballot is posted on an Internet website, a notice of posting shall be sent to each Member entitled to vote on the matter with instructions for obtaining access to the website and casting such ballot.

The person who tabulates votes on any matter shall not disclose to any other person how any particular Member's votes were cast. No person who is a candidate for election or is the subject of any other Association vote, nor any person related to such person within the third degree of consanguinity or affinity, as determined under Texas Government Code Chapter 573, as it may be amended or any successor Texas statute thereof, may tabulate ballots cast in any election or vote hereunder. No person other than a person designated to tabulate the votes shall be given access to the ballots cast except as part of a recount process authorized by law.

Not later than the 15<sup>th</sup> 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, any Owner may demand a recount of the votes in accordance with Texas Property Code Section 209.0057, as it may be amended or any successor Texas statute thereof.

(c) ***Election of Voting Delegates.*** The Owner Members, other than the Founder, owning Units within each Neighborhood shall elect a Voting Delegate to cast all votes attributable to their Units on all Association matters requiring a membership vote, except as otherwise specified in the Charter or these By-Laws. In addition, each Neighborhood shall elect an alternate Voting Delegate who shall be responsible for casting such votes in the absence of the Voting Delegate. The Founder shall be the Voting Delegate for all Units that the Founder owns.

If Neighborhoods have been established, the Board shall call for the first election of a Voting Delegate and alternate Voting Delegate from each Neighborhood then existing not later than the time that Owners other than the Founder or Builders own 1,500 Units within the Community and for each Neighborhood thereafter established not later than the first annual meeting after 51% of the Units in such Neighborhood are owned by Persons other than Builders. The first Voting Delegates elected shall serve until the close of the annual meeting following the first anniversary of their election. Thereafter, the Board shall call for an election of Voting Delegates and alternates on an annual basis to coincide with the annual meeting, with Voting Delegate's terms to commence upon the close of such annual meeting and expire upon the close of the next annual meeting following their election.

Voting Delegate elections shall be conducted by ballots cast by mail, computer, or at a meeting of the Owner Members within such Neighborhood, as the Board determines. Upon written petition signed by Owner Members holding at least 20% of the votes attributable to Units within any Neighborhood, the election for such Neighborhood shall be held at a meeting. Candidates for election as Voting Delegates may be nominated by the Board, a nominating committee the Board may appoint, or from the floor at any meeting at which such election is to be held. In addition or in the alternative, any person may submit his or her name for consideration.

The presence, in person or by proxy, or the filing of ballots of Owner Members representing at least 20% of the total votes attributable to Units in the Neighborhood shall constitute a quorum for any Neighborhood meeting or election. In the event of a failure to obtain a quorum or vacancy in such positions for any Neighborhood, the Board may appoint a Voting Delegate or alternate Voting Delegate to represent such Neighborhood until a successor is elected.

Subject to the above quorum requirement, in any election of Voting Delegates the candidate who receives the greatest number of votes shall be elected as the Voting Delegate and the candidate receiving the next greatest number of votes shall be elected as the alternate Voting Delegate. In the event of a tie vote among the leading candidates, the Voting Delegate shall be determined by drawing names from a hat, with the first person drawn being the Voting Delegate and the second being the alternate Voting Delegate. The Voting Delegate and the alternate Voting Delegate shall serve a term of one year or until their successors are elected, whichever is longer.

(d) ***Removal of Voting Delegates.*** Any Voting Delegate may be removed, with or without cause, upon the vote or written petition of Owner Members representing a majority of the total number of Units in the Neighborhood that the Voting Delegate represents.

## **2.9. Proxies.**

Voting Delegates may not vote by proxy but only in person or through their designated alternates; however, any Voting Delegate who is entitled to cast only the vote(s) for his own Unit(s) pursuant to the Charter, these By-Laws, or Texas law may cast such vote(s) in person or by proxy. Likewise, if a Member is entitled personally to cast the vote for his or her Unit on any matter, he or she may vote in person or by proxy, subject to the limitations of Texas law and subject to any specific provision to the contrary in the Charter or these By-Laws. Every proxy shall be in writing, shall identify the Unit for which it is given, shall be signed by the Member or the Member's duly authorized attorney-in-fact, and shall be dated and filed with the Association's Secretary prior to the meeting for which it is to be effective. Unless the proxy specifically provides otherwise, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same

voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

A proxy is effective only for the specific meeting for which it was originally given, as such meeting lawfully may be adjourned and reconvened, and automatically expires 90 days after the date of the meeting for which it was originally given. Every proxy shall be revocable and shall automatically cease (a) if the Member attends the meeting and votes in person, (b) upon conveyance of any Unit for which it was given, or (c) upon the Secretary's receipt of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person.

#### **2.10. Quorum.**

(a) Prior to the election of Voting Delegates, except as these By-Laws or the Charter otherwise provide(s), the presence of Members or their proxies entitled to cast at least 20% of the total votes in the Association shall constitute a quorum at any membership meeting, and the casting of ballots representing at least 20% of the total votes in the Association shall constitute a quorum for any membership vote conducted by means other than at a meeting; provided, if a quorum is not established at any meeting when initially called or for any membership vote when initially conducted, then the quorum for any subsequent attempt to convene such meeting or conduct such membership vote shall be reduced to 10%. A ballot cast by mail or electronically may be counted for purposes of establishing a quorum only as to those action items appearing on the ballot.

(b) After the election of Voting Delegates, except as these By-Laws or the Charter otherwise provide(s), the presence of Voting Delegates or their alternates representing at least a majority of the total number of Voting Delegates and a majority of the total votes in the Association shall constitute a quorum at all membership meetings, and the casting of ballots representing a majority of the total votes in the Association shall constitute a quorum for any membership vote by Voting Delegates conducted by means other than at a meeting.

#### **2.11. Conduct of Meetings.**

The President or a Board-approved designee shall preside over all Association meetings. The Secretary shall ensure that minutes of the meetings are prepared, reflecting all resolutions adopted and all other transactions occurring at such meetings. The minutes shall be kept with the Association's books and records.

#### **2.12. Action Without a Meeting.**

In accordance with the Certificate of Formation, any action that is required or that may be taken at a meeting of the Members or Voting Delegates may be taken without a meeting if:

(a) the Association mails or delivers to every Person entitled to vote on the action:

(i) an Absentee Ballot meeting the requirements of Section 2.8(b), or

(ii) notice of the posting of such a ballot on an Internet website, with instructions for obtaining access to such website and casting the ballot; and

(b) the number of votes cast equals or exceeds the quorum required for a meeting to consider such action; and

(c) the number of votes cast in favor of the proposed action equals or exceeds the number of votes required to approve such action if the vote were conducted at a meeting.

Voting instructions or solicitations for any vote conducted in a manner other than at a meeting must indicate the deadline for casting the ballot in order to be counted. The period for submitting ballots to the Association shall not be more than 60 days. Each ballot cast must be signed and dated by the Voting Delegate or Member, as applicable. A signed ballot may not be revoked once submitted to the Association, except as provided in Section 2.8(a). The Board shall notify the Members of the results of the vote within 30 days after the expiration of the voting period.

## Article 3

### Board of Directors: Selection, Meetings, Powers

#### A. Composition and Selection.

##### 3.1. **Governing Body; Qualifications.**

The Board shall govern the Association's affairs. Each director shall have one vote. Except with respect to directors appointed by the Founder Member, directors shall be Owners or residents. However, no Owner and resident representing the same Unit may serve on the Board at the same time other than directors appointed by the Founder Member. A "**resident**" shall be any natural person 21 years of age or older whose principal residence is a Unit within Brookside at Fields.

If an Owner is not an individual, any officer, director, partner, or any trust officer of such Owner shall be eligible to serve as a director unless a written notice to the Association signed by the Owner specifies otherwise. However, no Owner may have more than one such representative on the Board at a time, except in the case of directors that the Founder Member appoints.

No individual who has been convicted of a felony or crime involving moral turpitude not more than 20 years before seeking election to the Board, as evidenced by written, documented evidence from a database or other record maintained by a governmental law enforcement authority, shall be eligible to serve on the Board. If such evidence is discovered while such individual is already serving on the Board, that individual is immediately ineligible to serve and shall automatically be removed from the Board.

##### 3.2. **Number of Directors.**

The Board shall consist of three to seven directors, as provided in Section 3.3.

##### 3.3. **Selection of Directors; Term of Office.**

(a) ***Initial Board.*** The initial Board shall consist of the three directors identified in the Certificate of Formation, who shall serve until their successors are appointed or elected as provided in this section.

(b) ***Directors During Founder Control Period.*** Except as otherwise provided in this subsection (b) and in Section 3.5, the Founder Member may appoint, remove, and replace Board members until termination of the Founder Control Period. During such period, the Voting Delegates other than the

Founder shall be entitled to elect a minority of the total number of directors according to the following schedule (directors elected by the Voting Delegates are referred to as "**Owner Directors**"):

(i) Within 60 days after the time that Owners other than the Founder, Founder Affiliates, or Builders own 30% of the Maximum Number of Units or whenever the Founder earlier determines, the President shall call for an election by which the Voting Delegates other than the Founder shall be entitled to elect one of the three directors. The remaining directors shall be appointees of the Founder. The Owner Director shall be elected for a term of two years or until the happening of the event described in subsection (b)(ii) below, whichever is shorter. If such Owner Director's term expires prior to the happening of the event described in subsection (b)(ii), a successor shall be elected for a like term.

(ii) Within 60 days after the time that Owners other than the Founder, Founder Affiliates, or Builders own 60% of the Maximum Number of Units permitted by the Charter or whenever the Founder earlier determines, the Board shall be increased to five directors and the President shall call for an election by which the Voting Delegates other than the Founder shall be entitled to elect two of the five directors, who shall be elected at large. The Founder shall appoint the remaining three directors. The Owner Directors shall be elected for a term of two years or until the happening of the event described in subsection (c) below, whichever is shorter. If such Owner Directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) ***Directors After the Founder Control Period.*** Not later than termination of the Founder Control Period, the Board shall be increased to seven directors. The President shall call for an election by which the Voting Delegates shall be entitled to elect five of the seven directors. Three Owner Directors shall be elected to serve until the second annual meeting following their election and two Owner Directors shall be elected to serve until the third annual meeting following their election, as such Owner Directors determine among themselves. The Founder shall be entitled to continue to appoint one director to serve until the second annual meeting following such election and one director to serve until the third annual meeting following such election.

Thereafter, upon expiration of the term of office of each director, the Voting Delegates (including the Founder in its capacity as the Voting Delegate for Units which it owns) shall be entitled to elect a successor to serve a term of two years. Owner Directors shall hold office until their respective successors have been elected. Directors may serve no more than three consecutive terms.

The diagram below illustrates the concept of transition of control of the Board during and after the Founder Control Period.



TRANSITION OF CONTROL OF BOARD OF DIRECTORS					
Initial Board	30% of Maximum Number of Units	60% of Maximum Number of Units	Termination of Founder Control Period	2 <sup>nd</sup> Annual Meeting After Election in 3.3(c)	3 <sup>rd</sup> Annual Meeting After Election in 3.3(c)
Founder	Owner	Owner	Owner	Owner	Owner
Founder	Founder	Owner	Owner	Owner	Owner
Founder	Founder	Founder	Owner	Owner	Owner
		Founder	Owner	Owner	Owner
		Founder	Owner	Owner	Owner
			Founder	Owner	Owner
			Founder	Founder	Owner

**3.4. Nomination and Election Procedures.**

(a) ***Nomination of Candidates.*** At least 45 days prior to any election of directors by the Voting Delegates, the Board shall appoint a Nominating Committee consisting of a chairman, who shall be a Board member, and three or more Owners or representatives of Owners. The Nominating Committee shall serve until the close of the election for which they were appointed. The names of the Nominating Committee members shall be announced in the notice of each election.

In preparation for each election, the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Voting Delegates at such election. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates. Nominations shall also be permitted from the floor at the meeting at which any election is held or, if the election is to be held without a meeting pursuant to Section 2.12, the Board shall establish a reasonable procedure by which any Owner may declare his or her candidacy for election to the Board prior to the solicitation of ballots under that section. All candidates shall have a reasonable opportunity to communicate their qualifications to the Voting Delegates and to solicit votes.

(b) ***Solicitation of Candidates.*** Prior to disseminating ballots for the election of Owner Directors, the Board shall provide notice to all Owners soliciting candidates interested in running for a director position as required by and in accordance with Texas Property Code Section 209.00593, as it may be amended or any successor Texas statute thereof.

(c) ***Election Procedures.*** At each election, voting shall be by ballot, which may be cast in any manner authorized by the Board consistent with Section 2.8. Each Voting Delegate entitled to vote in such election under Section 3.3 may cast all votes assigned to the Units it represents for each position to be filled by such election. Notwithstanding this, if the number of candidates equals the number of positions to be filled and there are no nominations from the floor, any Voting Delegate may move to accept the slate of candidates nominated by the Nominating Committee, and, if approved, no balloting shall be required. Under no circumstances shall cumulative voting be permitted in any election of directors.

In the event of a tie vote, the Voting Delegates shall be informed of the tie vote and given the opportunity to discuss the candidates among themselves in an effort to resolve the tie before another vote is

taken. If the second vote again results in a tie, then the Board shall call for election of the director(s) by the Members. Such election shall be held by mail, with ballots to be sent by first class mail to each Member entitled to vote within 10 days after the meeting at which the original election was held.

### **3.5. Removal of Directors and Vacancies.**

Any Owner Director may be removed, with or without cause, by the vote of Voting Delegates holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director by the Voting Delegates, the Voting Delegates shall elect a successor for the remainder of the term of such director.

At any meeting at which a quorum is present, a majority of the directors may remove any Owner Director who has three consecutive unexcused absences from Board meetings. The Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of an Owner Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Voting Delegates shall elect a successor for the remainder of the term.

The Founder shall have no unilateral right to remove or replace Owner Directors, and neither the Voting Delegates nor the Board shall have any right to remove or replace directors that the Founder appoints. The Founder may appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by the Founder.

## **B. Meetings.**

### **3.6. Organizational Meetings.**

The Board shall hold an organizational meeting within 10 days following each annual meeting of the membership, at such time and place (subject to Section 3.10) as the Board shall fix.

### **3.7. Regular Meetings.**

The Board shall hold regular meetings at such time and place (subject to Section 3.10) as a majority of the directors shall determine, but the Board shall meet at least four times during each fiscal year with at least one meeting per quarter.

### **3.8. Special Meetings.**

The President, Vice President, or any two directors may call a special meeting of the Board.

### **3.9. Notice; Waiver of Notice.**

(a) Notices of Board meetings shall specify the time and place of the meeting. Notice of any meeting which is conducted or which may be attended by conference telephone or other remote communications system in accordance with Section 3.10 shall specify the form of communications system to be used for the meeting and the means of accessing the communications system. The Board shall notify each director of meetings by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication,

either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Association's records. Notices sent by first class mail shall be deposited into a United States mailbox at least five business days before the day of the meeting. Notices sent by personal delivery, telephone, or electronic communication shall be delivered at least 72 hours before the time set for the meeting. No notice shall be required for regular meetings conducted in accordance with a published schedule, provided notice of the schedule was delivered to each director in accordance with this subsection (a).

(b) Notice of all Board meetings, setting forth the date, hour, place, and general subject of the meeting, including a general description of any matter to be brought up for deliberation in executive session, shall be given as follows:

(i) by mail to each Owner, not later than the 10th day or earlier than the 60th day before the date of the meeting; or

(ii) least 144 hours before the start of a regular board meeting and at least 72 hours before the start of a special board meeting, sending the notice by e-mail to each Owner who has registered an e-mail address with the Association and either:

(A) posting the notice in a conspicuous manner reasonably designed to provide notice to the Members, either on the Common Area or on other property within the Community, with the permission of the owner of such property; or

(B) posting on any Internet website maintained by the Association or other Internet media.

(c) If the Board recesses a Board meeting until 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 the requirements of this Article III, Part B. If a 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 subsection (b)(ii)(A) or (B) within two hours after adjournment of the meeting being continued.

(d) Except as otherwise specifically provided in subsection (e), the Board may meet by any means of communication, including electronic and telephonic communication pursuant to Section 3.10(b) without prior notice to the Owners, or the Board may take action by unanimous written consent pursuant to Section 3.14, without prior notice to the Owners, to consider routine and administrative matters or a reasonably unforeseen emergency or urgent necessity that requires immediate Board action. Any action taken without notice to Owners under subsection (b) 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 Board meeting.

(e) The Board may not, without prior notice to the Owners under subsection (b), consider or vote on fines, damage assessments, initiation of foreclosure actions, initiation of enforcement actions (other than temporary restraining orders or violations involving a threat to health or safety), increases in assessments; levying of special assessments, appeals from a denial of architectural control approval; lending or borrowing money; the adoption or amendment of a dedicatory instrument; the approval of an annual

budget or the approval of an amendment to the annual budget by more than 10 percent; the sale or purchase of real property; the filling of a vacancy of the Board; the construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or the election of an officer. In addition, the Board may not consider or vote on 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.

(f) Subsections (b) through (e) of this section shall not apply to a Board meeting during the Development and Sale Period unless the meeting is conducted for the purpose of:

- (i) adopting or amending the Governing Documents;
- (ii) increasing the amount of the Base Assessment or adopting or increasing a Special Assessment;
- (iii) electing non-developer directors or establishing or modifying the process for their election; or
- (iv) changing the voting rights of Members.

Nothing in this subsection (f) shall authorize the Board to take action on any matter listed in clauses (i) through (iv) in contravention of the approval that would otherwise be required under the Governing Documents or Texas law.

(g) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

### **3.10. Place of Meetings; Telephonic Participation in Meetings; Remote Meetings.**

(a) Except as otherwise authorized in this Section 3.10, all Board meetings shall be held within Denton County, Texas or an adjacent county.

(b) Members of the Board or any committee the Board designates may participate in a Board or committee meeting by conference telephone or similar communications equipment through which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence at such meeting.

(c) A meeting of the Board, or of any committee designated by the Board, may be held by means of a remote electronic communications system, including videoconferencing technology or the Internet, but only if: (i) each person entitled to participate in the meeting consents to the meeting being held by means of that system; and (ii) the system provides access to the meeting in a manner or using a method by which each person participating in the meeting can communicate concurrently with each other participant.

### **3.11. Quorum of Board; Voting.**

(a) At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless Texas law, these By-Laws, or the Charter specifically provide otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting without further notice other than an announcement at the original meeting. At the reconvened meeting, if a quorum is present the Board may transact, without further notice, any business it might have transacted at the original meeting.

(b) Board members may not vote by proxy. Voting may be conducted at a meeting or by written consents without a meeting in accordance with Section 3.14.

### **3.12. Conduct of Meetings.**

The President or any designee the Board approves by resolution shall preside over all Board meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions and all transactions occurring at such meetings are included in the Association's records.

### **3.13. Open Meetings; Executive Session.**

(a) Subject to the provisions of subsection 3.13(b) and Section 3.14, all Board meetings shall be open to attendance by all Members or their representatives, but only directors may participate in any discussion or deliberation unless a director requests that attendees be granted permission to speak. In such case, the President may limit the time any such individual may speak. The Board shall make agendas for its meetings reasonably available for examination by all Members or their representatives prior to the meeting.

(b) Notwithstanding the above, any Board meeting may be adjourned and reconvened in executive session, and attendance at such meeting restricted to directors and such other persons as the Board may specifically invite and announce during the open portion of the Board meeting, to discuss pending or threatened litigation, personnel matters, contract negotiations, enforcement actions, confidential communications with the Association's attorney, matters involving the invasion of privacy of 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 any 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 explanation of expenditures approved in executive session.

### **3.14. Action Without a Formal Meeting.**

Subject to Section 3.9, any action to be taken or which may be taken at a Board meeting may be taken without a meeting if a written consent or consents setting forth the action so taken is signed by all of the directors, dated, and filed with the minutes of Board meetings. Such consent shall have the same force and effect as a unanimous vote at a meeting.

**C. Powers and Duties.**

**3.15. Powers.**

The Board shall have the power to administer the Association's affairs, perform the Association's responsibilities, and exercise the Association's rights as set forth in the Governing Documents and as provided by law. The Board may do, or cause to be done on the Association's behalf, all acts and things except those which the Governing Documents or Texas law require(s) to be done and exercised exclusively by the Owners, Voting Delegates, or the membership generally.

**3.16. Duties.**

The Board's duties shall include, without limitation:

- (a) preparing and adopting, in accordance with the Charter, an annual budget establishing each Owner's share of the Common Expenses and any Service Area Expenses;
- (b) levying and collecting assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;
- (d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and, where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) opening bank accounts on the Association's behalf and designating the signatories required;
- (f) depositing all funds received on the Association's behalf in a bank depository which it shall approve and using such funds to operate the Association; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;
- (g) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents; provided, if the Association proposes to contract for services that will cost more than \$50,000.00, it shall solicit bids or proposals for such services using a bid process established by the Board as required by Texas Property Code Section 209.0052(c);
- (h) determining when action to enforce the Governing Documents is appropriate and the nature of any sanctions to be imposed, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; however, the Association's obligation in this regard shall be conditioned in the manner provided in the Charter and Section 3.18 below;
- (i) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Charter, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (j) paying the cost of all services rendered to the Association;

(k) keeping a detailed accounting of the Association's receipts and expenditures;

(l) making available upon request to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 10.4; and

(m) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Texas law, the Certificate of Formation, or these By-Laws.

### **3.17. Conflicts of Interest.**

Unless otherwise approved by a majority of the other directors, no Owner Director may transact business with the Association or any Association contractor during his or her term as director or within two years after the term expires. A director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the director relative to his or her performance as a director. A director's failure to make such disclosure shall be grounds for removal by a majority vote of the other Board members.

Notwithstanding the above, directors appointed by the Founder may be employed by or otherwise transact business with the Founder or Founder Affiliates, and the Founder may transact business with the Association or its contractors.

## **Article 4**

### **Transition from Founder to Owner Control**

#### **4.1. Transition Process.**

Transition is a process by which control of the Board gradually shifts from the Founder to the Owners, as described in Section 3.3. The process concludes upon termination of the Founder Control Period, when the Voting Delegates will elect the entire Board. At that time, the Owners, through their newly-elected Board, will take responsibility for fulfilling the Association's responsibilities and exercising the Association's authority under the Governing Documents without the direct guidance or involvement of the Founder or Founder-appointed directors.

#### **4.2. Education and Communication.**

In anticipation of termination of the Founder Control Period, the Founder Member shall communicate with the Owners regarding the transition process, the anticipated timeline for transition, what to expect during and after the transition, and opportunities for Owner participation. Such communication shall be in writing and through one or more "town hall" meetings at which Owners have the opportunity to ask and obtain answers to questions in order to gain a better understanding of the transition process.

#### **4.3. Transition Committee.**

The Founder Member may, but shall not be required to, establish a Transition Committee comprised of five to seven members, all of whom shall be Owners, to (i) involve the Owners in facilitating a smooth transition of control of the Board from directors appointed by the Founder Member to directors

elected by the Voting Delegates, and (ii) help prepare the Board and the Owners to assume responsibility for carrying on Association operations once the Founder and its representatives are no longer directly involved.

If a Transition Committee is appointed, the Board may, as a Common Expense, retain industry professionals, including association managers, attorneys, engineers, and accountants, as it deems necessary or appropriate to assist the Board in preparing for transition and to assist the Transition Committee in conducting its review.

## **Article 5**

### **Officers**

#### **5.1. Officers.**

The Association's officers shall be a President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not, be Board members. The Board may appoint such other officers, including one or more Vice-Presidents, Assistant Secretaries and Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

#### **5.2. Election and Term of Office.**

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Association, to serve until their successors are elected.

#### **5.3. Removal and Vacancies.**

The Board may remove any officer whenever in its judgment the Association's best interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

#### **5.4. Powers and Duties.**

The Association's officers shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Treasurer shall have primary responsibility for preparing the Association's budgets as provided for in the Charter, and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

#### **5.5. Resignation.**

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 the receipt of such notice or at a later time specified therein. Unless the resignation specifies, acceptance of such resignation shall not be necessary to make it effective.



## Article 6 Committees

### 6.1. General.

In addition to any Transition Committee appointed pursuant to Article 4 and such committees as the Founder or Board may appoint pursuant to the Charter, the Board may appoint such other committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution. Members of any committee serve at the pleasure of the Board and have no authority to take action on behalf of the Association or the Board. Committees serve to inform and make recommendations to the Board. In the conduct of its duties and responsibilities, each committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.9, 3.10, and 3.11 of these By-Laws. Except as otherwise provided by Board resolution or the Governing Documents, a committee may meet by unanimous written consent of its members in lieu of a meeting.

### 6.2. Covenants Committee.

In addition to any other committees that the Board may establish pursuant to Section 6.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Owners. Acting in accordance with the provisions of the Charter, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article 9 of these By-Laws. The Covenants Committee shall have no responsibility for seeking out violations of the Governing Documents.

### 6.3. Service Area Committees.

The Owners within any Service Area which has no formal organizational structure or association may elect a Service Area Committee to determine the nature and extent of services, if any, which it desires to have the Association provide to the Service Area, over and above those services which the Association provides to all Units in the Community. A Service Area Committee, if elected, shall consist of three Owners of Units in the Service Area; however, if approved by the vote of Owners representing at least 51% of the Owners of Units within the Service Area, the number may be increased to five.

Elections of Service Area Committees may be held by written ballot sent to all Owners of Units within the Service Area, or at a meeting of the Owners of Units within the Service Area, as the Board determines. The Board or any Owner of a Unit in the Service Area may nominate candidates for election to the Service Area Committee. That number of candidates equal to the number of positions to be filled receiving the most votes shall be elected. Service Area Committee members shall be elected for a term of one year or until their successors are elected. Any director elected to the Board from a Service Area shall be an *ex officio* member of the Service Area Committee. The members of the committee shall elect a chairperson from among themselves, who shall preside at its meetings and shall be responsible for transmitting any and all communications to the Board.

In the conduct of its duties and responsibilities, each Service Area Committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.9, 3.10, and 3.11. Meetings of a Service Area Committee shall be open to all Owners of Units in the Service Area and their representatives. Members of a Service Area Committee may act by unanimous written consent in lieu of a meeting.

#### **6.4. Lifestyle Committee.**

In addition to such other committees as the Board may establish pursuant to this Article 6, the Board may appoint or allow the Voting Delegates to elect a Lifestyle Committee to make recommendations to the Board regarding the use of Community Enhancement Fees collected pursuant to the Charter, consistent with the purposes for such fees set forth in the Charter. Any such committee shall be composed of that number of persons determined by Board resolution, who shall be selected and serve for such terms as set forth in the Board resolution establishing such committee.

## **Article 7**

### **Standards of Conduct; Liability, and Indemnification**

#### **7.1. Standards for Directors and Officers.**

Board determinations of the meaning, scope, and application of Governing Document provisions shall, in the absence of an adjudication by a court of competent jurisdiction to the contrary, be final and binding as to all persons or property benefitted or bound by the provisions of the Governing Documents. The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under Texas law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under Texas law.

#### **7.2. Liability.**

(a) A director or officer shall not be personally liable to the Association, any Member, or any other Person for any action taken or not taken as a director or officer if he or she has acted in accordance with Section 7.1.

(b) Pursuant to the business judgment rule, a director also shall not be personally liable for any action taken or not taken as a director if the director:

(i) acts within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*;

(ii) affirmatively undertakes to make decisions which the director reasonably believes are necessary for the Association's continued and successful operation and, when decisions are made, makes them on an informed basis;

(iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which he has

a conflict of interest (beyond that which all directors have by virtue of their ownership or occupancy of a Unit or relationship to the Founder or a Founder Affiliate); and

(iv) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

(c) The Association's officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for any action taken or omitted in such capacities, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or directors may also be Members).

### **7.3. Indemnification.**

Subject to the limitations of Texas law, the Association shall indemnify every present and former officer, director, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under Texas law; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Association; or

(ii) intentional misconduct or knowing violation of the law; or

(iii) an unlawful distribution to members, directors or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

### **7.4. Advancement of Expenses.**

In accordance with the procedures and subject to the conditions and limitations set forth in Texas law, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

#### **7.5. Board and Officer Training.**

The Board may conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. Such programs may include instruction on applicable Texas corporate and fiduciary law principles, other issues relating to administering community affairs, and upholding and enforcing the Governing Documents. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose. Each newly elected officer and director shall be encouraged to complete a training seminar within the first six months of assuming such position. The seminar may be live, video or audiotape, or in other format. The cost of such seminar shall be a Common Expense.

The Board may also provide, or provide for, Owner and resident education designed to foster a better understanding of Brookside at Fields's governance and operations, and leadership training classes designed to educate Voting Delegates and Owners as to the nomination, election, and voting processes and the duties and responsibilities of directors and officers.

The Board may apply for and maintain, as a Common Expense, membership for the Association, its officers and directors, in the Community Associations Institute or any similar nonprofit organization that provides educational opportunities for Association directors, officers and managers in operation and management of Associations.

## **Article 8 Management and Accounting**

#### **8.1. Compensation of Directors and Officers.**

The Association shall not compensate directors and officers for acting as such unless Voting Delegates representing a majority of the total votes in the Association approve such compensation at a Association meeting. The Association may reimburse any director or officer for expenses he or she incurs on the Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association. However, such director must make known his or her interest to the Board prior to entering into such contract, and a majority of the Board, excluding any interested director, must approve such contract.

#### **8.2. Right of Founder Member to Disapprove Actions.**

So long as there is a Founder Membership, the Founder Member shall have a right to disapprove any action, policy, or program of the Association, the Board and any committee which, in the Founder Member's sole judgment, would tend to impair rights of the Founder or Builders under the Charter or these By-Laws, interfere with development or construction of any portion of Brookside at Fields, or diminish the level of services the Association provides. The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein until and unless the requirements of this section have been met.

(a) **Notice.** The Association shall give the Founder Member written notice of all meetings of the membership, the Board, and committees, and any actions proposed to be taken by any of them by written consent in lieu of a meeting. The Association shall give such notice by certified mail, return receipt requested, or by personal delivery at the address the Founder Member has registered with the Association. Such notice shall comply, as to Board meetings, with Section 3.9, and shall, except in the case of regular Board meetings pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) **Opportunity to be Heard.** At any such meeting, the Association shall give the Founder Member the opportunity to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Founder Member, its representatives, or its agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

The Founder Member, acting through any officer or director, agent, or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action.

The Founder Member may use this right to disapprove to block proposed actions but shall not use it to require any action or counteraction of any committee, the Board, or the Association. The Founder Member shall not use its right to disapprove to reduce the level of services the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

### **8.3. Management Certificate and Managing Agent.**

The Association shall record a management certificate as required by Texas Property Code Section 209.004 and amend the same within 30 days of any change in the information required to be set forth therein. In addition, within seven days after recording an initial or amended management certificate, the Association shall electronically file a copy of the same with the Texas Real Estate Commission.

The Board may employ for the Association professional management agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.16. The Board may employ the Founder or Founder Affiliates as managing agent or manager.

The Board may delegate to one of its members the authority to act on its behalf on all matters relating to the duties of the managing agent or manager which might arise between Board meetings.

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Founder Control Period unless such contract contains a right of termination which may be exercised by the Association, with or without cause and without penalty, at any time after termination of the Founder Control Period upon not more than 90 days' written notice.

The managing agent shall not accept remuneration from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association. The managing

agent shall promptly disclose to the Board any financial or other interest that it may have in any firm providing goods or services to the Association.

#### **8.4. Accounts and Reports.**

(a) The Board shall follow the following accounting standards unless the Board by resolution specifically determines otherwise:

(i) accounting and controls should conform to generally accepted accounting principles;  
and

(ii) the Association's cash accounts shall not be commingled with any other accounts.

(b) Commencing at the end of the Association's first full fiscal year, the following financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless the Board specifies otherwise by resolution).

(c) An annual report consisting of at least the following shall be made available for Members' review within 180 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.

(d) The Board shall report in writing to the Members any indemnification of or advancement of legal expenses to any officer, director, or committee member in accordance with Texas Business Organizations Code Section 8.152, as it may be amended or any successor Texas statute thereof.

#### **8.5. Borrowing.**

The Association shall have the power to borrow money for any legal purpose. However, the Board shall obtain Voting Delegate approval in the same manner provided in the Charter for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year.

**8.6. Right to Contract.**

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhood and other owners or residents associations, within and outside Brookside at Fields.

**8.7. Agreements, Contracts, Deeds, Leases, Checks, Etc.**

All Association agreements, contracts, deeds, leases, checks, and other instruments shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

## **Article 9 Enforcement Procedures**

The Association shall have the power, as provided in the Charter, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Charter or Texas law, the Board shall comply with the following procedures prior to imposition of sanctions.

**9.1. Notice and Response.**

The Board or its delegate shall serve the alleged violator and/or the Owner with written notice, by "verified mail," as such term is defined in Texas Property Code Section 209.002(13), as it may be amended or any successor Texas statute thereof,

(a) describing the alleged violation or property damage which is the basis of the proposed sanction or amount due to the Association, as applicable;

(b) describing the proposed sanction to be imposed; and

(c) informing the alleged violator and/or Owner that:

(i) he or she has 30 days after receipt of the notice to present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Article 6;

(ii) he or she may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if serving on active military duty;

(iii) attorneys fees and costs may be charged if the delinquency or violation continues after a certain date; and

(iv) if the violation is of a curable nature and does not pose a threat to public health or safety, he or she may avoid the proposed sanction by curing the violation within a reasonable cure period stated in the notice. Notwithstanding the preceding, the Association shall have no obligation to provide notice or a cure period if the alleged violator has been given notice of a similar violation within the preceding six months. If the hearing is to be held before a Covenants Committee, the notice shall also state that the alleged violator has the right to appeal the decision of the Covenants Committee to the Board. A viola-

tion shall be deemed "uncurable" in accordance with Texas Property Code Section 209.006, as it may be amended or any successor Texas statute thereof.

The alleged violator shall respond to the notice of the alleged violation in writing within such 30-day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction, or the proposed sanction shall be imposed. If the alleged violator cures the alleged violation and notifies the Board in writing of such cure within such 30-day period the Board may not assess a fine for such violations and may, but shall not be obligated to, waive or suspend the imposition of others sanctions. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person. If a timely request for a hearing is not made, the sanction stated in the notice may be imposed without further action. Notwithstanding any suspension of proceedings hereunder, subject to Texas law, if the same or similar violation is reported within six months after the date of the notice of the original violation, the Association may pursue any and all sanctions described in the original notice without further notice to the alleged violator.

Prior to the effectiveness of sanctions imposed pursuant to this Article, proof of proper notice shall be placed in the minutes of the Board or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

## **9.2. Hearing.**

If a hearing is requested within the allotted 30-day period, the hearing shall be held before the Covenants Committee, or if one has not been appointed, then before the Board in executive session within 30 days after receipt of the alleged violator's request. Either the Board or the alleged violator may request a postponement of up to 10 days, and such postponement shall be granted. Additional postponements may be granted upon agreement of both the Association and the alleged violator. The Board shall notify the alleged violator at least 10 days prior to the hearing of the time, date, and place of the hearing and provide the Owner with a packet containing all documents, photographs, and communications relating to the matter the Association intends to introduce at the hearing. If the Association does not provide such packet at least 10 days prior to the hearing, the Owner is entitled to an automatic 15-day postponement of the hearing. At the hearing, a member of the Board or the Association's designated representative shall first present the Association's case against the Owner. The alleged violator shall be afforded a reasonable opportunity to be heard and both the Association and the Owner shall be entitled to make an audio recording of the hearing. If the alleged violator fails to appear, a hearing may be held in his or her absence. The Board may adopt rules for the conduct of such hearings that may include, without limitation, rules that govern the presentation of evidence and witnesses and the ability of an alleged violator to question adverse witnesses. The minutes of the meetings of the Board or Covenants Committee, as applicable, shall contain a written statement of the results of the hearing (*i.e.*, the Board's or Committee's decision) and the sanction, if any, to be imposed. Written notice of the decision shall be mailed to the violator within three days after the hearing.

If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed unless the violation is cured within the cure period stated in the notice.



### 9.3. Appeal.

Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, the violator must deliver a written notice of appeal to the Association's manager, President, or Secretary within 10 days after the hearing date.

## Article 10 Miscellaneous

### 10.1. Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

### 10.2. Parliamentary Rules.

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Texas law or the Governing Documents.

### 10.3. Conflicts.

If there are conflicts among the provisions of Texas law, the Certificate of Formation, the Charter, and these By-Laws, the provisions of Texas law, the Charter, the Certificate of Formation, and these By-Laws (in that order) shall prevail.

### 10.4. Books and Records.

(a) ***Document Retention.*** The Board shall be responsible for compliance with the following document retention policy relating to the Association's books and records:

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

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

(iii) account records of current owners shall be retained for five years;

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

(v) minutes of meetings of the owners and the board shall be retained for seven years; and

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

(b) ***Turnover of Books and Records.*** Within 60 days after termination of the Founder Control Period, the Founder shall deliver to the Association all property, books and records of the Association in the Founder's possession.

(c) ***Inspection by Members and Mortgagees.*** The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the membership register, books of account, the minutes of meetings of the Members, the Board, and committees, and other records of the Association, to the extent required by Texas Property Code Section 209.005, as it may be amended or any successor Texas statute thereof, or other provisions of Texas law. The Board shall provide for such inspection to take place at the Association's office or at such other place within Brookside at Fields as the Board shall designate. The Association shall not be required to make available for inspection or copying any records that identify:

(i) a particular Owner's violation history, personal financial information, history of payments or delinquencies in paying amounts due to the Association, or contact information other than address; or

(ii) information related to an Association employee, including personnel files;

unless the Owner or employee whose records would be disclosed has given his or her prior written approval to release such information or a court orders such records to be released or made available to the requesting Owner or his or her representative.

(d) ***Rules for Inspection.*** An Owner or the Owner's authorized representative must submit to the Association a written request for access to inspect or copies of books and records under subsection (b), identifying the specific books and records or information desired. Such request shall be mailed by certified mail to the Association's mailing address or that of its authorized representative as reflected on the most current management certificate filed under Texas Property Code Section 209.004, as it may be amended or any successor Texas statute thereof. 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:

(i) if an inspection is requested, then on or before the 10th business day after the date the Association receives the request, the Association shall send written notice to the Owner of dates during normal business hours that the Owner or its authorized representative 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

(ii) if copies of identified books and records are requested, then the Association shall produce the requested books and records, to the extent required under subsection (c) and in the possession, custody, or control of the Association, on or before the 10th business day after the date the Association receives the request, except as otherwise provided by Texas Property Code Section 209.005, as it may be amended or any successor Texas statute thereof.

The Board shall establish a records production and copying policy that prescribes the charges to be paid by the Owner for compilation, production, and reproduction of information requested by such Owner or its authorized representative under this section, which 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, as it may be amended or any successor Texas statute thereof ("**Authorized Charges**"). No charge shall be made pursuant to such policy until the policy has been recorded as required by Texas Property Code Section 209.005, as it may be amended or any successor Texas statute thereof and Section 202.006, as it may be amended or any successor Texas statute thereof. The Association may require ad-

vance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the Authorized Charges vary from the estimate, the Association shall submit a final invoice to the Owner on or before the 30th business day after the date the information is delivered reflecting the variance and any balance or refund due. Any balance due which is 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. Any amount paid in excess of Authorized Charges shall be refunded to the Owner not later than the 30th business day after the date the invoice is sent to the Owner.

(e) **Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties owned or controlled by the Association. A director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

#### 10.5. Notices.

(a) **Form of Notice and Method of Delivery.** Except as otherwise provided in the Charter or these By-Laws or by Texas law, all notices, demands, bills, statements, or other communications under the Charter or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile or electronic mail with written confirmation of transmission. It is the responsibility of each Member to give notice to the Association of any change in the Member's address, facsimile number, or email address. Where the Governing Documents or applicable law require notice to an Owner or Member, notice given to any co-Owner of a Unit shall be deemed notice to all co-Owners of such Unit.

(b) **Delivery Address.** Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Member or Voting Delegate, at the mailing address, telephone facsimile number, or e-mail address which the Member or Voting Delegate has designated by notice to the Secretary in accordance with this Section 10.5 or, if no such address or number has been designated, at the address of the Unit of such Member or Voting Delegate;

(ii) if to the Association, the Board, or a committee of either, at the mailing address, facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association has designated by notice to the Members in accordance with this Section 10.5; or

(iii) if to the Founder, at the Founder's principal address as it appears on the Secretary of State's records, or at such other address as the Founder has designated by notice to the Association in accordance with this Section 10.5.

(c) **Effective Date.** Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U. S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iii) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

#### 10.6. Amendment.

(a) **By Founder.** Until termination of the Founder Control Period, the Founder may unilaterally amend these By-Laws for any purpose. Thereafter, until termination of the Development and Sale Period, the Founder may unilaterally amend this Charter at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; or (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units.

(b) **By Owner Members Generally.** Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Delegates representing at least 67% of the total votes in the Association, and the consent of the Founder Member, if such exists. Notwithstanding the above, no amendment to these By-Laws may conflict with the Charter and the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment shall be prepared and signed by the President or Vice President and by the Secretary or Treasurer of the Association certifying that the requisite approval was obtained.

(c) **Validity and Effective Date of Amendments.** Amendments to these By-Laws shall become effective upon recordation in the Office of the County Clerk of Denton County, Texas, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its adoption, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Founder or the Founder Member without the written consent of Founder, the Founder Member, or the assignee of such right or privilege.

**CERTIFICATION**


I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Brookside at Fields Residential Association, Inc., a Texas nonprofit corporation;

That the foregoing By-Laws constitute the Amended and Restated By-Laws of Brookside at Fields Residential Association, Inc., as duly adopted by resolution of the Board of Directors thereof on the 24th day of January, 2023.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 24th day of January, 2023.

[SEAL]

  
Secretary