

# **Bylaws**

**BYLAWS**

**\*\*\*\*\***

**THE AVIARY HOMEOWNERS ASSOCIATION, INC.**

**\*\*\*\*\***

**ADOPTED: MARCH 8, 2001**

CERTIFICATE OF SECRETARY

I hereby certify that the Bylaws of The Aviary Homeowners Association, Inc. attached hereto were adopted by the Board of Directors of The Aviary Homeowners Association, Inc. effective as of March 8, 2001.



Tamara Miguez,  
Secretary

THE AVIARY HOMEOWNERS ASSOCIATION, INC.

\* \* \* \* \*

BYLAWS

\* \* \* \* \*

ARTICLE I

DEFINITIONS

The following words when used in these Bylaws, unless a different meaning or intent clearly appears from the context, shall have the following meanings.

(a) "Articles" shall mean and refer to the Articles of Incorporation of the Association, as amended or restated, filed in the office of the Secretary of State of the State of Texas.

(b) "Association" shall mean The Aviary Homeowners Association, Inc., a non-profit corporation organized pursuant to the Texas Non-Profit Corporation Act.

(c) "Board of Directors" or "Board" shall mean the governing body of the Association, elected pursuant to the Bylaws of the Association.

(d) "Common Area" shall mean Common Area as defined in the Declaration.

(e) "Declaration" shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions applicable to the Subdivision and recorded or to be recorded in the Real Property Records of Collin County, Texas, and as the same may be amended or supplemented from time to time as therein provided.

(f) "Development Period" shall mean a period commencing on the date of the recording of the Declaration in the Real Property Records of Collin County, Texas, and continuing thereafter and ending on the earliest to occur of: (i) substantial completion of all development within the Subdivision, as determined by the Developer; or (ii) the tenth (10th) anniversary of the recording of the Declaration in the Real Property Records of Collin County, Texas; or (iii) Developer's recording in the Real Property Records of Collin County, Texas, of an instrument specifying the end of the Development Period at an earlier date, in Developer's sole and absolute discretion.

(g) "Developer" or "Declarant" shall have the same meaning as the term "Declarant" as defined in the Declaration.

(h) "Member" shall mean and refer to every person or entity who holds a membership in the Association.

(j) "Mortgage" shall mean a first lien deed of trust, as well as a first lien mortgage on one or more Tracts.

(k) "Mortgagee" shall mean a beneficiary under or holder of a Mortgage who has given to the Association written notice that it is the beneficiary under or holder of a Mortgage affecting all or any part of the Subdivision.

(l) "Owner" shall mean and refer to the record owner of fee simple title to any Tract situated in the Subdivision or to the purchaser under a contract for a Tract subject to a purchase contract with Developer, whether one or more persons or entities, but, notwithstanding any applicable theory of mortgages, shall not mean or refer to any Mortgagee unless and until such Mortgagee has acquired title to one or more Tracts pursuant to foreclosure or any proceeding in lieu of foreclosure.

(m) "Subdivision" shall mean and refer to the real property described on Exhibit A attached hereto, commonly known as The Aviary Addition, together with such additions as may hereafter be made thereto in accordance with the Declaration.

(n) "Tract" shall mean and refer to a Tract as defined in the Declaration.

## ARTICLE II

### OFFICES

Section 1. Principal Office. The principal office of the Association shall be located in Dallas County, Texas.

Section 2. Other Offices. The Association may also have offices at such other places, within and without the State of Texas, as the Board of Directors may from time to time determine or as the business of the Association may require.

## ARTICLE III

### MEMBERSHIP; ASSESSMENTS

Section 1. Membership. Every Owner of a fee or undivided fee interest in a Tract holds a membership in the Association. The foregoing is not intended to include persons or entities who hold an interest in a Tract merely as security for the performance of an obligation. Membership is appurtenant to and may not be separated from ownership of a Tract, except as to a lessee. Any Mortgagee who acquires title to any Tract through judicial or non-judicial foreclosure will be a Member of the Association, as a result of such Mortgagee's status as the Owner of such Tract.

Section 2. Payment of Assessments. The rights of membership are subject to the payment of annual and special assessments levied by the Association, the obligation of which assessments is imposed against the Owner of and becomes a lien upon each Tract against which such assessments are made as provided by Article III of the Declaration (incorporated herein and made a part hereof for all purposes).

Section 3. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments or charges which are not paid when due are delinquent. If an annual assessment is not paid by March 1 of the year in which it is due or if any other assessment or charge is not paid within thirty (30) days after the due date, such assessment shall bear interest from the due date at the rate of eighteen percent (18%) per

annum or the maximum non-usurious rate, whichever is less, and the Association may bring an action at law against the Member personally obligated to pay the same, or foreclose the lien herein retained against the Tract. Interest, court costs and reasonable attorneys' fees incurred in any such action may be added to the amount of such assessment or charge. Each Member, by his acceptance of a deed to a Tract, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Member personally for the collection of such assessments and charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a non-judicial foreclosure on real property covered by the then current State Bar of Texas deed of trust promulgated form, and such Member expressly grants to the Association a power of sale and non-judicial foreclosure in connection with said lien, with any one of the then officers of the Association serving as the trustee empowered to conduct the sale. Alternatively, the Association may resort to other legal and equitable relief with respect to enforcement of the liens securing the payment of assessments as may be provided by applicable law, including suit for judicial foreclosure. No Member may waive or otherwise avoid liability for the assessments provided for herein or in the Declaration by non-use of the Common Area or abandonment of his Tract.

#### ARTICLE IV

##### PROPERTY RIGHTS; RIGHTS OF ENJOYMENT

Each Member, his tenants, and the individuals who reside with either of them in any improvements located on any Tract owned by such Member, shall be entitled to the use and enjoyment of the Common Area in accordance with and subject to the terms and conditions set forth in the Declaration, the Bylaws, and the rules and regulations adopted from time to time by the Board of Directors. The rights and privileges of any such tenant or other individual are subject to suspension to the same extent as those of the Member. Any Member may also delegate the aforementioned rights of enjoyment to his guests, subject to the provisions of the Declaration and any applicable rules and regulations that may be adopted from time to time by the Board of Directors of the Association.

#### ARTICLE V

##### BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

Section 1. Number; Qualifications. The affairs of the Association shall be managed by a Board of Directors. The Board of Directors of the Association shall consist of not less than three (3) nor more than five (5) members. The initial Board of Directors shall consist of three (3) members elected by the Class B Members; however, beginning with the fourth (4th) annual meeting of the Members of the Association and continuing thereafter, the Board shall be expanded to consist of five (5) members, three (3) of whom shall be elected by the Class B Members and if there are no Class B Members, then by the Declarant, and two (2) of whom shall be elected by the Class A Members. Directors need not be residents of the State of Texas. During the Development Period, Directors need not be Members. Except during the Development Period, members of the Board of Directors shall be Owners or spouses of Owners. If an Owner is a partnership or corporation, any partner or officer thereof shall qualify as an Owner and may be a member of the Board.

Section 2. Term. Directors shall serve for a term of two (2) years and until their respective successors are elected, or until their death, resignation or removal; provided, that if, after the Development Period, any director ceases to be an Owner or the spouse of an Owner, his membership on the Board shall thereupon terminate.

**Section 3. Death, Resignation and Removal; Filling Vacancies.** Any director may resign at any time by giving written notice to the other directors, and any director may be removed from membership on the Board by the vote of Members entitled to cast a majority of the votes represented in a meeting of the Members at which a quorum is present. Any vacancy in the Board shall be filled by the other directors, provided that the Members, acting at a meeting called within thirty (30) days after the occurrence of the vacancy, may fill the vacancy.

**Section 4. Compensation.** Directors shall serve without pay unless expressly approved by the Members entitled to cast a majority of the votes in each class of membership in the Association. However, a director may be reimbursed for his actual expenses incurred in the performance of his duties.

**Section 5. Action Taken Without a Meeting.** The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the Board.

## ARTICLE VI

### MEETINGS OF DIRECTORS

**Section 1. Place of Meetings.** Meetings of the Board of Directors, regular or special, may be held either within or without the State of Texas.

**Section 2. First Meeting.** The first meeting of each newly elected Board of Directors shall be held at such time and place as shall be fixed by the vote of the Members at the annual meeting and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, providing a quorum shall be present. In the event of the failure of the Members to fix the time and place of such first meeting of the newly elected Board of Directors, or in the event such meeting is not held at the time and place so fixed by the Members, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meeting of the Board of Directors, or as shall be specified in a written waiver signed by all of the directors.

**Section 3. Regular Meetings.** Regular meetings of the Board of Directors (in addition to the first meeting provided in Section 2 above) may be held without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should the day so fixed be a legal holiday, then the meeting shall be held at the same time on the next day not a legal holiday.

**Section 4. Special Meetings.** Special meetings of the Board of Directors may be called by the president and shall be called by the secretary on the written request of two (2) directors of the Board. Written notice of special meetings of the Board of Directors shall be given to each director at least three (3) days before the date of the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

**Section 5. Quorum.** A majority of the directors shall constitute a quorum for the transaction of business and the act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless a greater number is required by the Articles. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

## ARTICLE VII

### NOMINATION AND ELECTION OF DIRECTORS

**Section 1. Nomination.** Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members in which directors are to be elected, to serve from the close of such annual meeting until the close of the next annual meeting in which directors are to be elected, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

**Section 2. Election.** Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast as many votes as they are entitled to exercise.

## ARTICLE VIII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

**Section 1. Powers and Duties.** The affairs of the Association shall be conducted by the Board of the Association which shall be selected in accordance with the Articles of Incorporation and Bylaws of the Association. The Board, for the benefit of the Common Area and the Owners, shall provide, and shall pay out of the assessments provided for in Article III of the Declaration, the following:

(a) Care and preservation of the Common Area and the furnishing and upkeep of any desired personal property for use in the Common Area. Expenditures for the repair or installation of capital improvements, not included in the annual maintenance budget, may be paid from any reserve fund as specifically provided in Section 5 hereof.

(b) Care and maintenance of the landscaping, masonry screening walls and/or ornamental metal fence and entry features which may be constructed by the Association on the Common Area or on private property. Maintenance includes all repair or rebuilding required and cleaning as required to remove graffiti or obscenities.

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

(d) Legal and accounting services.

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



(f) To execute all declarations of ownership for tax assessment purposes and to pay all taxes with regard to the Common Area.

(g) To enter into agreements or contracts with insurance companies, taxing authorities and the holders of mortgage liens on the individual Tracts with respect to: (i) taxes on the Common Area, and (ii) insurance coverage of the Common Area, as they relate to the assessment, collection and disbursement process envisioned by the Declaration.

(h) To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Members, if the Board sees fit.

(i) To enter into contracts, maintain one or more bank accounts, and generally, to have all the powers necessary or incidental to the operation and management of the Association and the Common Area.

(j) If, as, and when the Board, in its sole discretion, deems necessary it may take action to protect or defend the Common Area from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements.

(k) To make reasonable rules and regulations for the operation and use of the Common Area and to amend them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Members, or, with respect to a rule applicable to less than all of the Property, by a majority of the Members in the portions affected.

(l) To make available to each Member, within one hundred twenty (120) days after the end of each year, an annual report.

(m) To adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency.

(n) If, as and when the Board, in its sole discretion, deems necessary it may take action to enforce the provisions of the Declaration and any rules made hereunder and to enjoin and/or seek damages from any Member for violation of such provisions or rules.

**Section 2. Board Powers.** From and after the date on which the title to or any easement or other interest in the Common Area has been conveyed to the Association, the Board shall have the exclusive right to contract for all goods, services and insurance, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein. The Board shall be responsible for the affairs of the Association and shall have all the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, the Articles or these Bylaws directed to be done and exercised exclusively by the Members. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may be hereafter adopted, the Board shall have the power to and be responsible for preparation and adoption of an annual budget for the Association. The Board shall keep books with reasonable detailed accounts of the receipts and expenditures effecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred.

**Section 3. Maintenance Contracts.** The Board, on behalf of the Association, shall have full power and authority to contract with any Member for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.

**Section 4. Liability Limitations.** Neither any Member nor the Board of the Association (or any of them) nor the officers (if any) of the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether such other Member was acting on behalf of the Association or otherwise. Neither the Association, its directors, officers, agents nor employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. The Association or any other person, firm or corporation liable to make such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof.

**Section 5. Reserve Fund.** The Board may establish reserve funds, for such purposes as may be determined by the Board, which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and are not net income to the Association. Expenditures from any such fund will be made at the direction of the Board. The reserve fund provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Members and occupants of the properties, and maintaining the Common Area and improvements therein, all as may be more specifically authorized from time to time by the Board of the Association. Capital expenditures from this fund may include by way of example, but not limited to, repair of major damage to the Common Area, not covered by insurance.

## ARTICLE IX

### COMMITTEES

**Section 1. General.** The Board of Directors, by resolution adopted by a majority of the Board, may designate two (2) or more Members of the Association to constitute special committees, which committees, to the extent provided in such resolution, shall have and may exercise all of the authority of the Board of Directors within its field of responsibility except when the action of the Board of Directors is required by statute. Vacancies in the membership of the committee shall be filled by the Board of Directors at a regular or special meeting of the Board. The committees shall keep regular minutes of their proceedings and report the same to the Board when required.

**Section 2. Architectural Committee.** Notwithstanding the foregoing, the Architectural Committee (as defined in the Declaration) shall be appointed or elected in accordance with Article VII of the Declaration.

## ARTICLE X

### MEETINGS OF MEMBERS

**Section 1. Place of Meetings.** Meetings of the Members shall be held at the offices of the Association, in Dallas County, Texas, or at such other location within or without the State of Texas as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

**Section 2. Annual Meeting.** A regular annual meeting of Members shall be held on the first Monday of February in each year commencing with the year 2002. The date of the annual meeting may be changed from time to time by the resolution duly adopted by the Board of Directors of the Association.

**Section 3. Special Meetings.** Special meetings of the Members shall be called by the secretary upon written request of (a) two (2) members of the Board of Directors, or (b) Members entitled to cast one-fourth of the votes in the Association.

**Section 4. Notice.** Written notice of the organizational meeting, each annual meeting, and each special meeting of the Members, specifying the date, hour and place of the meeting, shall be delivered to each Member (and, upon request to each Mortgagee, which shall be permitted to designate a representative to attend all such meetings) not less than ten (10) nor more than fifty (50) days prior to the date fixed for said meeting. Notices of special meetings shall in addition specify the general nature of the business to be transacted at the meeting.

**Section 5. Purposes.** Business transacted at any special meeting shall be confined to the purposes stated in the notice thereof.

**Section 6. Quorum.** Except as otherwise provided in the Declaration, the quorum required for any action referred to in this Article III shall be as follows:

(a) At any meeting of Members called by the Board of Directors or Members of the Association, the presence at the meeting of Members, or of their proxies, entitled to cast fifty-one percent (51%) of all of the votes of the Association shall constitute a quorum. Any action taken at such meeting shall require approval by Members holding at least fifty-one percent (51%) of the votes represented at such meeting of the Members at which a quorum is present, in person or by proxy. Any partial number of membership votes shall be rounded down to the next full number.

(b) As an alternative to the procedure set forth immediately above, any action of the Members may be taken without a meeting if a consent in writing, approving the action to be taken, shall be signed by Members holding more than fifty-one percent (51%) of the outstanding votes of the Association.

**Section 7. Majority Vote.** The vote of Members entitled to cast a majority of the votes thus represented at a meeting at which a quorum is present shall be the act of the Members' meeting, unless the vote of a greater number is required by law, the Declaration, the Articles, or these Bylaws.

**Section 8. Voting Rights.** There are two classes of membership entitled to voting rights in the Association, as follows:

(a) **Class A.** All Members of the Association, other than Declarant, are considered Class A Members, and for each Tract owned are entitled to one vote on each matter coming before the Members at any meeting or otherwise, unless their voting rights have been suspended by the Board of Directors as provided in Section 2.02(c) of the Declaration. When a Tract is owned by more than one Class A Member, all the individuals or entities holding an ownership interest in that Tract are considered Class A Members; however, for such Tract they are entitled to a total of no more than one vote on each matter coming before the Members at any meeting or otherwise. The vote for such Tract is to be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to such Tract.

(b) **Class B.** Class B Members are those individuals or entities who are herein defined as Declarant and the owners of any land added to the scheme of restrictions imposed by the Declaration in accordance with Article XI of the Declaration (including the original partners or joint venturers individually comprising Declarant or such owners), and for each Tract owned they are entitled to five (5) votes on each matter coming before the Members at any meeting or otherwise. When a Tract is owned by more than one Class B Member, all such individuals or entities holding an ownership interest in that Tract will be Class B Members; however, for such Tract they are entitled to a total of no more than five (5) votes on each matter coming before the Members at any meeting or otherwise. The five votes for such Tract are to be exercised as they among themselves determine, but in no event shall more than five (5) votes be cast with respect to such Tract. In the event a Tract owned by a Class B Member is sold to a Member who would be classified as a Class A Member, the Class B membership ceases as to such Tract, and the Member automatically is entitled to one vote for such Tract as a Class A Member. All Class B memberships cease and automatically convert into Class A memberships on the happening of either of the following events, whichever occurs earlier:

(i) When the total number of votes entitled to be cast by the Class A Members at any meeting of the Members equal the total number of votes entitled to be cast by the Class B Members;  
or

(ii) Ten (10) years from the date the Declaration is filed with the County Clerk of Collin County, Texas, for recordation in the Deed Records of Collin County, Texas.

In the event subsequent to the conversion of all Class B memberships to Class A memberships a portion of the Subdivision is platted pursuant to a plat recorded in the map, plat or official records of Collin County, Texas, Declarant or the owner of any land added to the scheme of restrictions imposed by the Declaration in accordance with Article XI of the Declaration, as the case may be, shall become a Class B Member with regard to the Tracts created by such map or plat and shall have the voting rights described above in this Section 2.02(b) with regard to such Tracts owned by Declarant or such owner of such additional land, as the case may be.

**Section 9. Proxies.** Any Member may attend and vote at any meeting of Members in person or by an agent duly appointed by an instrument in writing signed by the Member and filed with the Board of Directors. Whenever there is more than one record Owner of a Tract, any designation of an agent to act for such record owners must be signed by all such record Owners Unless otherwise provided in writing, any designation of an agent to act for a Member may be revoked at any time by written notice to the Board of Directors and shall be deemed revoked when the Board shall receive actual notice of the death or judicially declared incompetency of such Member or the conveyance by such Member of his Tract. Upon the death of a Member, the legal representative of the Member's estate shall have the right to vote for that Member and the legally appointed guardian of a Member who has been judicially declared to be incompetent shall have the right to vote for the Member.

**Section 10. List of Members.** The officer or agent having charge of the corporate books shall make, at least ten (10) days before each meeting of Members, a complete list of the Members entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of each, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the principal office of the Association and shall be subject to inspection by any Member at any time during the usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any Member during the whole time of the meeting.

**Section 11. Record Date.** The Board of Directors may fix in advance a date, not exceeding fifty (50) days preceding the date of any meeting of Members, as a record date for the determination of the Members entitled to notice of, and to vote at, any such meeting, and any adjournment thereof, and in such case such Members and only such Members as shall be Members of record on the date so fixed shall be entitled to such notice of, and to vote at, such meeting and any adjournment thereof, notwithstanding any change of membership on the books of the Association after any such record date fixed as aforesaid.

**Section 12. Action Without Meeting.** Any action required by the statutes to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all Members entitled to vote with respect to the subject matter thereof.

## ARTICLE XI

### NOTICES

**Section 1. Delivery.** Any notice to a director or Member shall be in writing and delivered personally or mailed to the director or Member addressed to the director or Member at the address of his Tract, or at such other address as may be given in writing to the Board of Directors by the director or Member. Notice by mail shall be deemed to be given at the time when deposited in the United States mail addressed to the Member or directors, with postage thereon prepaid. Notice to directors may also be given by telegram and shall be deemed to be given when given to the telegraph company.

**Section 2. Waivers.** Whenever any notice is required to be given to any Member or director by law, the Declaration, the Articles, or the Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

**Section 3. Attendance at Meetings.** Attendance of any Member or director at a meeting shall constitute a waiver of notice of such meeting, except when a director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

## ARTICLE XII

### OFFICERS AND THEIR DUTIES

**Section 1. Enumeration of Offices.** The officers of the Association shall be a president (who shall at all times be a member of the Board of Directors), a vice president, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

**Section 2. Election of Officers.** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

**Section 3. Term.** The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

**Section 4. Special Appointment.** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

**Section 5. Resignation and Removal.** Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 6. Vacancies.** A vacancy in any office may be filled in the manner prescribed for regular election. The officer elected to such vacancy shall serve for the remainder of the term of the officer he replaces.

**Section 7. Multiple Offices.** Any two (2) or more offices may be held by the same person, except the offices of president and secretary.

**Section 8. Duties.** The duties of the officers are as follows:

#### **The President**

(a) The president shall be the chief executive officer of the Association, shall preside at all meetings of the Members and the Board of Directors, shall have general and active management of business of the Association, and shall see that all orders and resolutions of the Board of Directors are carried into effect. He shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the Association, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Association.

#### **The Vice Presidents**

(b) The vice presidents in the order of their seniority, unless otherwise determined by the Board of Directors, shall, in the absence or disability of the president, perform the duties and exercise the powers of the president. They shall perform such other duties and have such other powers as the Board of Directors shall prescribe.

#### **The Secretary and Assistant Secretaries**

(c) The secretary shall attend all meetings of the Board of Directors and all meetings of the Members and record all the proceedings of the meeting of the Association and of the Board of Directors in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the Members and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or president under whose supervision he shall be. He shall keep in safe custody the seal of the Association and, when authorized by the Board of Directors, affix the same to any instrument requiring it and, when so affixed, it shall be attested by his signature or by the signature of the treasurer or an assistant secretary.

(d) The assistant secretaries in the order of their seniority, unless otherwise determined by the Board of Directors, shall, in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary. They shall perform such other duties and have such powers as the Board of Directors may from time to time prescribe.

### The Treasurer and Assistant Treasurers

(e) The treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association and shall deposit all moneys and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors.

(f) The treasurer shall disburse the funds of the Association as may be authorized by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the president and the Board of Directors at its regular meetings or when the Board of Directors so required an account of all his transactions as treasurer and of the financial condition of the Association.

(g) If required by the Board of Directors, the treasurer shall, at the expense of the Association, give the Association a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Association, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Association.

(h) The treasurer shall cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare (i) an annual budget and (ii) a statement of income and expenditures, to be presented to the membership at its regular annual meetings, a copy of each of which shall be made available to each Member upon request.

(i) The assistant treasurers in the order of their seniority, unless otherwise determined by the Board of Directors, shall, in the absence or disability of the treasurer, perform the duties and exercise the powers of the treasurer. They shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

## ARTICLE XIII

### BOOKS AND RECORDS

The Declaration, the Articles, the Bylaws, and the books, records and financial statements of the Association shall at all times, upon request during normal business hours and under other reasonable circumstances, be subject to inspection by any Member. Copies of the Declaration, the Articles and the Bylaws of the Association may be purchased at reasonable cost at the principal office of the Association.

## ARTICLE XIV

### AMENDMENTS

These Bylaws may be amended, at a regular or special meeting of the Members or directors, by a vote of the Members or directors, as the case may be, entitled to cast a majority of the votes of a quorum of the Members or directors present in person or by the Members present by proxy; provided, that no amendment shall be made which would cause these Bylaws to be in conflict with the terms or provisions of the Declaration. During the Development Period, any such amendments shall require the prior written approval of Declarant.

## ARTICLE XV

### CONFLICTS

In the case of any conflict between the Articles and these Bylaws, the Articles shall control. For convenience, several of the provisions of the Declaration have been repeated or summarized within these Bylaws. The other terms and provisions of these Bylaws are intended to complement and supplement the Declaration. In the event of any conflict between the Declaration and these Bylaws, and unless otherwise required by law, the terms and provisions of the Declaration shall control and govern.

## ARTICLE XVI

### FISCAL YEAR

The fiscal year of the Association shall be fixed by resolution of the Board of Directors.