

AFTER RECORDING, RETURN TO:  
JOSHUA D. BERNSTEIN, ESQ.  
GREENBERG TRAURIG, LLP  
300 WEST 6<sup>TH</sup> STREET, SUITE 2050  
AUSTIN, TEXAS 78701

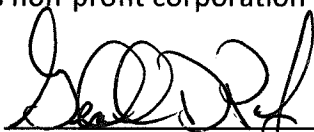


**BERRY CREEK (AUSTIN) HOMEOWNERS ASSOCIATION, INC.  
NOTICE OF DEDICATORY INSTRUMENTS  
AND POLICY MANUAL**

**BERRY CREEK (AUSTIN) HOMEOWNERS ASSOCIATION, INC.  
NOTICE OF DEDICATORY INSTRUMENTS AND POLICY MANUAL**

Berry Creek, a single-family community located in Williamson County, Texas (the "Community"), and is subject to the Declaration of Covenants, Conditions and Restrictions for Berry Creek Section Five, Phase Two, recorded under Document No. 2014061857, Official Public Records of Williamson County, Texas, as amended (the "Declaration"). Berry Creek (Austin) Homeowners Association, Inc., a Texas non-profit corporation (the "Association"), is the homeowners association established pursuant to the terms of the Declaration. This instrument, which has been adopted and approved by the Board of Directors of the Association (the "Board"): (1) causes previously unrecorded dedicatory instruments of the Association to be recorded as required by Section 202.006 of the Texas Property Code (the "Code"); and (2) sets forth certain policies and guidelines adopted by the Board in accordance with the requirements of applicable law and its authority under the Declaration, and causes such policies and guidelines to be recorded as required by Section 202.006 of the Code. Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Declaration.

**BERRY CREEK (AUSTIN) HOMEOWNERS ASSOCIATION, INC.,**  
a Texas non-profit corporation

By:   
Gerry Poe, Director

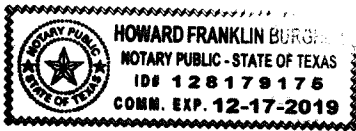
By:   
April Miertschin, Director

By:   
John Zinsmeyer, Director

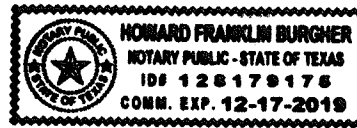
THE STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 2<sup>nd</sup> day of MAY, 2016, by Gerry Poe, member of the Board of Directors of Berry Creek (Austin) Homeowners Association, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.

(seal)



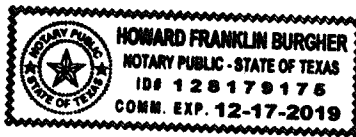
HF. Burgher  
Notary Public Signature



THE STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 2<sup>nd</sup> day of MAY, 2016, by April Miertschin, member of the Board of Directors of Berry Creek (Austin) Homeowners Association, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.

(seal)

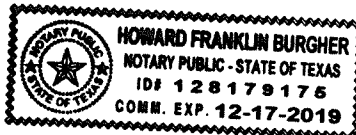


HF. Burgher  
Notary Public Signature

THE STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 2<sup>nd</sup> day of MAY, 2016, by John Zinsmeyer, member of the Board of Directors of Berry Creek (Austin) Homeowners Association, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.

(seal)



HF. Burgher  
Notary Public Signature

# TABLE OF CONTENTS

ATTACHMENT 1	CERTIFICATE OF FORMATION
ATTACHMENT 2	BYLAWS
ATTACHMENT 3	POLICY REGARDING DISPLAY AND INSTALLATION OF FLAGS AND FLAGPOLES
ATTACHMENT 4	POLICY REGARDING DISPLAY OF CERTAIN RELIGIOUS ITEMS
ATTACHMENT 5	POLICY REGARDING INSTALLATION AND USE OF RAINWATER HARVESTING SYSTEMS
ATTACHMENT 6	POLICY REGARDING INSTALLATION AND USE OF SOLAR ENERGY DEVICES AND ENERGY EFFICIENT ROOFING MATERIALS
ATTACHMENT 7	PAYMENT PLAN GUIDELINES AND APPLICATION OF PAYMENTS SCHEDULE
ATTACHMENT 8	RECORDS PRODUCTION AND COPYING POLICY
ATTACHMENT 9	DOCUMENT RETENTION POLICY
ATTACHMENT 10	STATUTORY COMPLIANCE POLICY

**ATTACHMENT 1**

**[CERTIFICATE OF FORMATION]**



## Office of the Secretary of State

### CERTIFICATE OF FILING OF

Berry Creek (Austin) Homeowners Association, Inc.  
File Number: 801910861

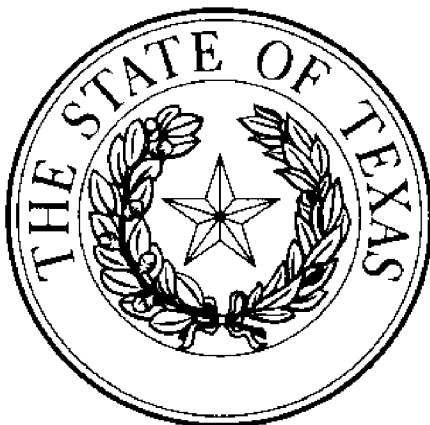
The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Nonprofit Corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as 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.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 01/08/2014

Effective: 01/08/2014



A handwritten signature in cursive script that reads "Coby Shorter III".

Coby Shorter III  
Deputy Secretary of State

**Form 202**

Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
FAX: 512/463-5709

Filing Fee: \$25



**Certificate of Formation  
Nonprofit Corporation**

Filed in the Office of the  
Secretary of State of Texas  
Filing #: 801910861 01/08/2014  
Document #: 523517690002  
Image Generated Electronically  
for Web Filing

**Article 1 - Corporate Name**

The filing entity formed is a nonprofit corporation. The name of the entity is :

**Berry Creek (Austin) Homeowners Association, Inc.**

**Article 2 – Registered Agent and Registered Office**

A. The initial registered agent is an organization (cannot be corporation named above) by the name of:

**OR**

B. The initial registered agent is an individual resident of the state whose name is set forth below:

**Name:**

**Roger Arriaga**

C. The business address of the registered agent and the registered office address is:

**Street Address:**

**10800 Pecan Park Boulevard, Suite 200 Austin TX 78750**

**Consent of Registered Agent**

A. A copy of the consent of registered agent is attached.

**OR**

B. The consent of the registered agent is maintained by the entity.

**Article 3 - Management**

A. Management of the affairs of the corporation is to be vested solely in the members of the corporation.

**OR**

B. Management of the affairs of the corporation is to be vested in its board of directors. The number of directors, which must be a minimum of three, that constitutes the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting or until their successors are elected and qualified are set forth below.

Director 1: **Roger Arriaga**

Title: **Director**

Address: **10800 Pecan Park Boulevard, Suite 200 Austin TX, USA 78750**

Director 2: **John Zinsmeyer**

Title: **Director**

Address: **10800 Pecan Park Boulevard, Suite 200 Austin TX, USA 78750**

Director 3: **April Miertschin**

Title: **Director**

Address: **10800 Pecan Park Boulevard, Suite 200 Austin TX, USA 78750**

**Article 4 - Organization Structure**

A. The corporation will have members.

or

B. The corporation will not have members.

**Article 5 - Purpose**

The corporation is organized for the following purpose or purposes:

**The Association is organized in accordance with, and shall operate for nonprofit purposes pursuant to, the Texas Business Organizations Code, and does not contemplate pecuniary gain or profit to its members. The Association is formed**

for the purpose of exercising all of the powers and privileges, and performing all of the duties and obligations, of the Association as set forth in that certain Declaration of Covenants, Conditions & Restrictions for Berry Creek Section Five, Phase Two, recorded in the Official Public Records of Williamson County, Texas, as the same may be amended from time to time (the "Declaration"). Without limiting the generality of the foregoing, the Association is organized for the following general purposes:

- (a) to fix, levy, collect, and enforce payment by any lawful means all charges or assessments arising pursuant to the terms of the Declaration;
- (b) to pay all expenses incident to the conduct of the business of the Association, including all licenses, taxes, or governmental charges levied or imposed against the Association's property; and
- (c) to have and to exercise any and all powers, rights, and privileges which a corporation organized under the Texas Business Organizations Code may now, or later, have or exercise.

The above statement of purposes shall be construed as a statement of both purposes and powers. The purposes and powers stated in each of the clauses above shall not be limited or restricted by reference to, or inference from, the terms and provisions of any other such clause, but shall be broadly construed as independent purposes and powers.

#### Supplemental Provisions / Information

#### **ARTICLE 6 - MEMBERSHIP**

Membership in the Association shall be dependent upon ownership of a qualifying property interest as defined and set forth in the Declaration. Any person or entity acquiring such a qualifying property interest shall automatically become a member of the Association, and such membership shall be appurtenant to, and shall run with, the property interest. The foregoing shall not be deemed or construed to include persons or entities holding an interest merely as security for performance of an obligation. Membership may not be severed from or in any way transferred, pledged, mortgaged, or alienated except together with the title to the qualifying property interest, and then only to the transferee of title to said property interest. Any attempt to make a prohibited severance, transfer, pledge, mortgage, or alienation shall be void.

#### **ARTICLE 7 - VOTING RIGHTS**

Voting rights of the members of the Association shall be determined as set forth in the Declaration. No owner, other than the Declarant under the Declaration, shall be entitled to vote at any meeting of the Association until such owner has presented to the Association evidence of ownership of a qualifying property interest in the Property. The vote of each owner may be cast by such owner or by proxy given to such owner's duly authorized representative.

#### **ARTICLE 8 - LIMITATION OF DIRECTOR LIABILITY**

A director of the Association shall not be personally liable to the Association for monetary damages for any act or omission in his capacity as a director, except to the extent otherwise expressly provided by a statute of the State of Texas. Any repeal or modification of this Article shall be prospective only, and shall not adversely affect any limitation of the personal liability of a director of the Association existing at the time of the repeal or modification.



**ARTICLE 9 - INDEMNIFICATION**

Each person who acts as a director or officer of the Association shall be indemnified by the Association against any costs, expenses and liabilities which may be imposed upon or reasonably incurred by him in connection with any civil or criminal action, suit or proceeding in which he may be named as a party defendant or in which he may be a witness by reason of his being or having been such director or officer or by reason of any action alleged to have been taken or omitted by him in either such capacity. Such indemnification shall be provided in the manner and under the terms, conditions and limitations set forth in the Bylaws of the Association.

**ARTICLE 10 - DISSOLUTION**

The Association may be dissolved with the written and signed assent of not less than ninety percent (90%) of the total number of votes of the Association, as determined under the Declaration. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed, and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such similar purposes.

**ARTICLE 11 - ACTION WITHOUT MEETING**

To the fullest extent permitted by applicable law, any action required by law to be taken at any annual or special meeting of the members of the Association, or any action that may be taken at any annual or special meeting of the members of the Association, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the number of members having the total number of votes of the Association necessary to enact the action taken, as determined under the Declaration or this Certificate of Formation.

**ARTICLE 12 - AMENDMENT**

Amendment of this Certificate of Formation shall be by proposal submitted to the membership of the Association. Any such proposed amendment shall be adopted only upon an affirmative vote by the holders of a minimum of two-thirds (2/3) of the total number of votes of the Association. In the case of any conflict between the Declaration and this Certificate of Formation, the Declaration shall control; and in the case of any conflict between this Certificate of Formation and the Bylaws of the Association, this Certificate of Formation shall control.

[The attached addendum, if any, is incorporated herein by reference.]

**Effectiveness of Filing**

A. This document becomes effective when the document is filed by the secretary of state.

**OR**

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

**Organizer**

The name and address of the organizer are set forth below.

**Joshua D. Bernstein**      **100 Congress Avenue, Suite 1300, Austin, Texas 78701**

**Execution**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

**Joshua D. Bernstein**

Signature of organizer.

**FILING OFFICE COPY**

**ATTACHMENT 2**

**[BYLAWS]**

**BYLAWS  
OF  
BERRY CREEK (AUSTIN) HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I  
INTRODUCTION**

The name of the corporation is Berry Creek (Austin) Homeowners Association, Inc., hereinafter referred to as the "Association." The principal office of the Association shall be located in Williamson County, Texas, but meetings of Members and Directors may be held at such places within the State of Texas as may be designated by the Board of Directors.

The Association is organized to be a nonprofit corporation.

**Notwithstanding anything to the contrary in these Bylaws, a number of provisions are modified by the Declarant's reservations in that certain Declaration of Covenants, Conditions and Restrictions for Berry Creek Section Five, Phase Two, recorded as Document No. 2014061857 in the Official Public Records of Williamson County, Texas, as amended, including the number, qualification, appointment, removal, and replacement of Directors.**

**ARTICLE II  
DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used in these Bylaws shall have the meanings hereinafter specified:

**Section 2.1. Assessment.** "Assessment" or "Assessments" shall mean assessment(s) levied by the Association under the terms and provisions of the Declaration.

**Section 2.2. Association.** "Association" shall mean and refer to Berry Creek (Austin) Homeowners Association, Inc., a Texas non-profit corporation.

**Section 2.3. Association Property.** "Association Property" shall mean Areas of Common Responsibility (as such term is defined in the Declaration) and all real or personal property now or hereafter owned by the Association, including without limitation, all easement estates, licenses, leasehold estates and other interests of any kind in and to real or personal property which are now are hereafter owned or held by the Association.

**Section 2.4. Association Rules.** "Association Rules" shall mean the rules and regulations adopted by the Board or the Architectural Reviewer pursuant to the Declaration, as the same may be amended from time to time.

**Section 2.5. Board.** "Board" shall mean the Board of Directors of the Association.

**Section 2.6. Bylaws.** “Bylaws” shall mean the Bylaws of the Association which may be adopted by the Board and as from time to time amended.

**Section 2.7. Certificate.** “Certificate” shall mean the Certificate of Formation of Berry Creek (Austin) Homeowners Association, Inc., which is filed in the office of the Secretary of the State of Texas, as the same may be amended.

**Section 2.8. Declarant.** “Declarant” shall mean KB HOME Lone Star Inc., a Texas corporation, and its successors or assigns.

**Section 2.9. Declaration.** “Declaration” shall mean the “Declaration of Covenants, Conditions and Restrictions for Berry Creek Section Five, Phase Two,” recorded as Document No. 2014061857 in the Official Public Records of Williamson County, Texas, as the same may be amended from time to time.

**Section 2.10. Development.** “Development” shall mean and refer to the property subject to the terms and provisions of the Declaration.

**Section 2.11. Development Period.** “Development Period” shall have the meaning ascribed to such term in Section 209.002 of the Texas Property Code.

**Section 2.12. Lot.** “Lot” shall have the meaning ascribed to such term in the Declaration.

**Section 2.13. Majority.** “Majority” shall mean more than half.

**Section 2.14. Manager.** “Manager” shall mean the person, firm, or corporation, if any, employed by the Association pursuant to the Declaration and delegated the duties, powers, or functions of the Association.

**Section 2.15. Master Restrictions.** “Master Restrictions” means the Declaration, any Supplemental Declaration, the Association Rules, the Certificate and the Bylaws of the Association, as the same may be amended from time to time.

**Section 2.16. Member.** “Member” or “Members” shall mean any person(s), entity or entities holding membership privileges in the Association as provided in the Declaration.

**Section 2.17. Owner.** “Owner” or “Owners” shall mean the person(s), entity or entities, including Declarant, holding a fee simple interest in any Lot, but shall not include the mortgagee under any mortgage(s) or deed(s) of trust covering any portion of the Development given to secure the payment of a debt.

**ARTICLE III**  
**MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES**

**Section 3.01. Membership.** Each Owner is a mandatory Member of the Association, as more fully set forth in the Declaration.

**Section 3.02. Place of Meetings.** Meetings of the Association shall be held where designated by the Board, either within the Development or as convenient as possible and practical.

**Section 3.03. Annual Meetings.** All annual meetings of the Association, whether a regular or special meeting, shall be held at such reasonable place, date and time as set by the Board.

**Section 3.04. Special Meetings.** Special meetings of Members may be called in accordance with Section 22.155 of the Texas Business Organizations Code or any successor statute.

**Section 3.05. Notice of Meetings.** Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting or by publication in a newspaper of general circulation, not less than ten (10) nor more than sixty (60) days before the date of such meeting, by or at the direction of the President, the Secretary, or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at the Member's address as it appears on the records of the Association, with postage prepaid.

**Section 3.06. Waiver of Notice.** Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting by a Member shall be deemed waiver of notice of all business transacted at such meeting unless an objection by a Member on the basis of lack of proper notice is raised before the business is put to a vote.

**Section 3.07. Quorum.** Except as provided in these Bylaws or in the Declaration, the presence of the Members representing twenty percent (20%) of the total votes in the Association shall constitute a quorum at all Association meetings. The Members 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 Members to leave less than a quorum,

provided that Members representing at least ten percent (10%) of the total votes in the Association remain in attendance, and provided that any action taken is approved by at least a Majority of the votes present at such adjourned meeting, unless otherwise provided in the Declaration.

**Section 3.08. Conduct of Meetings.** The President or any other person appointed by the Board shall preside over all Association meetings, and the Secretary, or the Secretary's designee, shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

**Section 3.09. Voting.** The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated by reference. Except as otherwise provided in the Declaration, action may be taken at any legally convened meeting of the Members upon the affirmative vote of the Members having a Majority of the total votes present at such meeting in person or proxy or by absentee ballot or electronic voting, if such votes are considered present at the meeting as further set forth herein. Cumulative voting shall not be allowed. The person holding legal title to a Lot shall be entitled to cast the vote allocated to such Lot and not the person merely holding beneficial title to the same unless such right is expressly delegated to the beneficial Owner thereof in writing. **Any provision in the Association's governing documents that would disqualify an Owner from voting in an Association election of Board Members or on any matter concerning the rights or responsibilities of the Owner is void.**

**Section 3.10. Methods of Voting: In Person; Proxies; Absentee Ballots; Electronically.** The voting rights of an Owner may be cast or given: (a) in person or by proxy at a meeting of the Association; (b) by absentee ballot; or (c) by electronic ballot. Any vote cast in an election or vote by a Member of the Association must be in writing and signed by the member. Electronic votes constitute written and signed ballots. In an Association-wide election, written and signed ballots are not required for uncontested races. Votes shall be cast as provided in this section:

- (a) **Proxies.** Any Member may give a revocable written proxy in the form as prescribed by the Board from time to time to any person authorizing such person to cast the Member's vote on any matter. A proxy may be submitted electronically. A Member's vote by proxy is subject to any limitations of Texas law relating to the use of general proxies and subject to any specific provision to the contrary in the Declaration or these Bylaws. No proxy shall be valid unless signed by the Member for which it is given or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Proxies shall be valid only for the specific meeting for which given and for lawful adjournments of such meeting. In no event shall a proxy be valid more than eleven (11) months after the effective date of the

proxy. Every proxy shall be revocable and shall automatically cease upon conveyance of the Lot for which it was given.

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

- (i) *Absentee Ballots.* No absentee ballot shall be valid unless it is in writing, signed by the Member for which it is given or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Absentee ballots shall be valid only for the specific meeting for which given and for lawful adjournments of such meeting. In no event shall an absentee ballot be valid after the specific meeting or lawful adjournment of such meeting at which such ballot is counted or upon conveyance of the Lot which it was given. Any solicitation for votes by absentee ballot must include:

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

- (ii) *Electronic Ballots.* “Electronic ballot” means a ballot: (a) given by email, facsimile or posting on a website; (b) for which the identity of Owner submitting the ballot can be confirmed; and (c) for which the Owner may



receive a receipt of the electronic transmission and receipt of the Owner's ballot. If an electronic ballot is posted on a website, a notice of the posting shall be sent to each Owner that contains instructions on obtaining access to the posting on the website.

**Section 3.11. Tabulation of and Access to Ballots.** A person who is a candidate in an Association election or who is otherwise the subject of an Association vote, or a person related to that person within the third degree by consanguinity or affinity may not tabulate or otherwise be given access to the ballots cast in that election or vote except such person may be given access to the ballots case in the election or vote as part of a recount process. A person tabulating votes in an Association election or vote may not disclose to any other person how an individual voted.

**Section 3.12. Recount of Votes.** Any Member may, not later than the fifteenth (15<sup>th</sup>) day after the date of the meeting at which the election was held, require a recount of the votes. A demand for a recount must be submitted in writing either: (a) by certified mail, return receipt requested, or by delivery by the U.S. Postal Service with signature confirmation service to the Association's mailing address as reflected on the latest management certificate; or (b) in person to the Association's managing agent as reflected on the latest management certificate or to the address to which absentee and proxy ballots are mailed. The Member requesting the recount will be required to pay, in advance, expenses associated with the recount as estimated by the Association. Any recount must be performed on or before the thirtieth (30<sup>th</sup>) day after the date of receipt of a request and payment for a recount is submitted to the Association for a vote tabulator as set forth below.

- (a) **Vote Tabulator.** At the expense of the Member requesting the recount, the Association shall retain for the purpose of performing the recount, the services of a person qualified to tabulate votes. The Association shall enter into a contract for the services of a person who: (i) is not a Member of the Association or related to a Member of the Association Board within the third degree by consanguinity or affinity; and (ii) is either a person agreed on by the Associations and any person requesting a recount or is a current or former county judge, county elections administrator, justice of the peace or county voter registrar.
- (b) **Reimbursement for Recount Expenses.** If the recount changes the results of the election, the Association shall reimburse the requesting Member for the cost of the recount to the extent such costs were previously paid by the Member to the Association. The Association shall provide the results of the recount to each Member who requested the recount.
- (c) **Board Action.** Any action taken by the Board in the period between the initial election vote tally and the completion of the recount is not affected by any recount.

**Section 3.13. Action Without a Meeting.** Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice, and without a vote if written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within sixty (60) days after receipt of the earliest dated consent, dated, and delivered to the Association at its principal place of business in Texas. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting. Within ten (10) days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

#### **ARTICLE IV BOARD OF DIRECTORS**

**Section 4.1. Authority; Number of Directors.**

- (a) The affairs of the Association shall be governed by the Board. The number of Directors shall be fixed by the Board from time to time. The initial Directors shall be three (3) in number and shall be those Directors named in the Certificate. The initial Directors shall serve until their successors are elected and qualified.
- (b) Upon expiration or termination of the Development Period, the Declarant will thereupon call a meeting of the Members of the Association where the Members, including Declarant, will elect three (3) new directors (to replace all Declarant appointed Directors and the First Member Elected Director) (the “**Member Election Meeting**”), one (1) Director for a three (3) year term, one (1) Director for a two (2) year term, and one (1) Director for a one (1) year term (with the individual receiving the highest number of votes to serve the three (3) year term, the individual receiving the next highest number of votes to serve the two (2) year term, and the individual receiving the third highest number of votes to serve a one (1) year term). Upon expiration of the term of a Director elected by the Members pursuant to this Section 4.1(c), his or her successor will be elected for a term of two (2) years.
- (d) A Director takes office upon the adjournment of the meeting or balloting at which he is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed.
- (e) Each Director, other than Directors appointed or elected by Declarant, shall be a Member and resident, or in the case of corporate or partnership ownership of a Lot, a duly authorized agent or representative of the corporate or partnership

Owner. The corporate, or partnership Owner shall be designated as the Director in all correspondence or other documentation setting forth the names of the Directors.

**Section 4.2. Compensation.** The Directors shall serve without compensation for such service. As determined by the Board, Directors may be reimbursed for any reasonable and necessary out-of-pocket expenses.

**Section 4.3. Nominations to Board of Directors.** Members may be nominated for election to the Board in either of the following ways:

- (a) A Member who is not a Director and who desires to run for election to that position shall be deemed to have been nominated for election upon his filing with the Board of Directors a written petition of nomination; or
- (b) A Director who is eligible to be re-elected shall be deemed to have been nominated for re-election to the position he holds by signifying his intention to seek reelection in writing addressed to the Board of Directors.

**Section 4.4. Removal of Directors for Cause.** An elected Director may be removed, with or without cause, by the vote of Members holding a majority of the votes entitled to be cast in the Association. If a Director breaches such Director's duties hereunder or violates the terms of the Declaration, the Certificate of Formation, the Rules and Regulations or these Bylaws, such Director may be removed by a majority vote of the remaining Directors.

**Section 4.5. Vacancies on Board of Directors.** if the office of any elected Director shall become vacant by reason of death, resignation, or disability, the remaining Directors, at a special meeting duly called for this purpose, shall choose a successor who shall fill the unexpired term of the directorship being vacated. If there is a deadlock in the voting for a successor by the remaining Directors, the one Director with the longest continuous term on the Board shall select the successor. At the expiration of the term of his position on the Board, the successor Director shall be re-elected or his successor shall be elected in accordance with these Bylaws.

**Section 4.6. Removal of Directors by Members.** An elected Director may be removed, with or without cause, by the vote of Members holding a Majority of the votes entitled to be cast in the Association.

**ARTICLE V  
MEETINGS OF DIRECTORS**

**Section 5.1. Definition of Board Meetings.** A meeting of the Board means a deliberation between a quorum of the Board, or between a quorum of the Board and another person, during which Association business is considered and the Board takes formal action.

**Section 5.2. Regular Meetings.** Regular meetings of the Board shall be held annually or such other frequency as determined by the Board, at such place and hour as may be fixed from time to time by resolution of the Board.

**Section 5.3. Special Meetings.** Special meetings of the Board shall be held when called by the President of the Association, or by any two Directors, after not less than three (3) days' notice to each Director.

**Section 5.4. Quorum.** A Majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a Majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

**Section 5.5. Open Board Meetings.** All regular and special Board meetings must be open to Owners. However, the Board has the right to adjourn a meeting and reconvene in closed executive session to consider actions involving: (a) personnel; (b) pending or threatened litigation; (c) contract negotiations; (d) enforcement actions; (e) confidential communications with the Association's attorney; (f) matters involving the invasion of privacy of individual Owners, or matters that are to remain confidential by request of the affected parties and agreement of the Board. Following an executive session, any decision made by the Board in executive session must be summarized orally in general terms and placed in the minutes. The oral summary must include a general explanation of expenditures approved in executive session.

**Section 5.6. Location.** Except if otherwise held by electronic or telephonic means, a Board meeting must be held in the county in which all or a party of the property in the subdivision is located or in a county adjacent to that county, as determined in the discretion of the Board.

**Section 5.7. Record; Minutes.** The Board shall keep a record of each regular or special Board meeting in the form of written minutes of the meeting. The Board shall make meeting records, including approved minutes, available to a Member for inspection and copying on the Member's written request to the Association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the Board.

**Section 5.8. Notices.** Members shall be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be: (a) mailed to each Member not later than the tenth (10<sup>th</sup>) day or earlier than the sixtieth (60<sup>th</sup>) day before the date of the meeting; **or** (b) provided at least seventy-two (72) hours before the start of the meeting by: (i) posting the notice in a conspicuous manner reasonably designed to provide notice to Members in a place located on the Association's common area or on any website maintained by the Association; and (ii) sending the notice by e-mail to each Member who has registered an e-mail address with the Association. It is the Member's duty to keep an updated e-mail address registered with the Association. The Board may establish a procedure for registration of email addresses, which procedure may be required for the purpose of receiving notice of Board meetings. If the Board recesses a regular or special Board meeting to continue the following regular business day, the Board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. If a regular or special Board meeting is continued to the following regular business day, and on that following day the Board continues the meeting to another day, the Board shall give notice of the continuation in at least one manner as set forth above within two (2) hours after adjourning the meeting being continued.

**Section 5.9. Meeting Without Prior Notice.** The Board may meet by any method of communication, including electronic and telephonic, without prior notice to the Members if each Board member may hear and be heard, and may take action by unanimous written consent 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 Members must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special Board meeting. The Board may not, without prior notice to the Members pursuant to *Section 5.8* above consider or vote on: (a) fines; (b) damage assessments; (c) initiation of foreclosure actions; (d) initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety; (e) increases in assessments; (f) levying of special assessments; (g) appeals from a denial of architectural control approval; or (h) a suspension of a right of a particular Owner before the Member has an opportunity to attend a Board meeting to present the Member's position, including any defense, on the issue.

**Section 5.10. Telephone and Electronic Meetings.** Any action permitted to be taken by the Board without prior notice to Owners may be taken by telephone or electronic methods by means of which all persons participating in the meeting can hear each other. Participation in such a meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**Section 5.11. Consent in Writing.** Any action permitted to be taken by the Board by unanimous written consent occurs if all Directors individually or collectively consent in writing to such action. The written consent must be filed with the minutes of Board meetings. Action by written consent has the same force and effect as a unanimous vote of the Directors.

**Section 5.12. Development Period.** Notwithstanding the foregoing, or any provision in these Bylaws to the contrary, the provisions of this *Article V* do not apply to Board meetings during the Development Period unless the meeting is conducted for the purpose of: (a) adopting or amending the Restrictions; (b) increasing the amount of regular assessments of the Association or adopting or increasing a special assessment; (c) electing non-developer Board members or establishing a process by which those members are elected; or (d) changing the voting rights of Members.

## **ARTICLE VI POWERS AND DUTIES OF THE BOARD**

**Section 6.1. Powers.** The Board shall have power and duty to undertake any of the following actions, in addition to those actions to which the Association is authorized to take in accordance with the Declaration:

- (a) Adopt and publish the Association Rules, including regulations governing the use of the Association Property and facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;
- (b) Suspend the right of a Member to use of the Association Property during any period in which such Member shall be in default in the payment of any Assessment levied by the Association, or after notice and hearing, for any period during which an infraction of the Association Rules by such Member exists;
- (c) Exercise for the Association all powers, duties and authority vested in or related to the Association and not reserved to the membership by other provisions of the Master Restrictions;
- (d) Enter into any contract or agreement with a municipal agency or utility company to provide electric utility service to all or any portion of the Development;
- (e) Declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board;
- (f) Employ such employees as they deem necessary, and to prescribe their duties;
- (g) As more fully provided in the Declaration, to:

- (1) Fix the amount of the Assessments against each Lot in advance of each annual assessment period and any other assessments provided by the Declaration; and
  - (2) Foreclose the lien against any property for which Assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same;
- (h) Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid and to levy a reasonable charge for the issuance of these certificates (it being understood that if a certificate states that an Assessment has been paid, such certificate shall be conclusive evidence of such payment);
- (i) Procure and maintain adequate liability and hazard insurance on property owned by the Association;
- (j) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and
- (k) Exercise such other and further powers or duties as provided in the Declaration or by law.

## **ARTICLE VII OFFICERS AND THEIR DUTIES**

**Section 7.1. Enumeration of Offices.** The officers of the Association shall be a President and a Vice-President, who shall at all times be members of the Board, a Secretary and a Treasurer, and such other officers as the Board may from time to time create by resolution.

**Section 7.2. Election of Officers.** The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

**Section 7.3. Term.** The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless he resigns sooner, or shall be removed or otherwise disqualified to serve.

**Section 7.4. Special Appointments.** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

**Section 7.5. 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 7.6. Vacancies.** A vacancy in any office may be filled through appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

**Section 7.7. Multiple Offices.** The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 7.4.

**Section 7.8. Duties.** The duties of the officers are as follows:

- (a) **President.** The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.
- (b) **Vice President.** The Vice President, if any, shall generally assist the President and shall have such powers and perform such duties and services as shall from time to time be prescribed or delegated to him by the President or the Board.
- (c) **Secretary.** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as required by the Board.
- (d) **Assistant Secretaries.** Each Assistant Secretary shall generally assist the Secretary and shall have such powers and perform such duties and services as shall from time to time be prescribed or delegated to him or her by the Secretary, the President, the Board or any committee established by the Board.
- (e) **Treasurer.** The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Association; keep proper books of account in appropriate form such that they could be audited by a public accountant whenever ordered by the Board or the membership; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular meeting, and deliver a copy of each to the Members.



**ARTICLE VIII  
OTHER COMMITTEES OF THE BOARD**

**Section 8.1. Committees.** The Board may, by resolution adopted by affirmative vote of a Majority of the number of Directors fixed by these Bylaws, designate two or more Directors (with such alternates, if any, as may be deemed desirable) to constitute another committee or committees for any purpose; provided, that any such other committee or committees shall have and may exercise only the power of recommending action to the Board and of carrying out and implementing any instructions or any policies, plans, programs and rules theretofore approved, authorized and adopted by the Board.

**ARTICLE IX  
BOOKS AND RECORDS**

**Section 9.1. Books and Records.** The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Master Restrictions shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

**ARTICLE X  
CORPORATE SEAL**

**Section 10.1. Seal Optional.** The Association may, but shall have no obligation to, have a seal in a form adopted by the Board.

**ARTICLE XI  
AMENDMENTS**

**Section 11.1. Amendment.** These Bylaws may be amended by a Majority vote of the Board.

**Section 11.2. Conflicts.** In the case of any conflict between the Certificate and these Bylaws, the Certificate shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

**ARTICLE XII  
INDEMNIFICATION**

**Section 12.1. Mandatory Indemnification.** The Association shall indemnify every Director, Officer and committee member of the Association against, and reimburse and advance to every Director, Officer and committee member for, all liabilities, costs and expenses' incurred in connection with such directorship or office and any actions taken or omitted in such capacity to the greatest extent permitted under the Texas Business Organizations Code and all other applicable laws at the time of such indemnification,

reimbursement or advance payment; provided, however, no Director, Officer or committee member shall be indemnified for: (a) a breach of duty of loyalty to the Association or its Members; (b) an act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law; (c) a transaction from which such Director, Officer or committee member received an improper benefit, whether or not the benefit resulted from an action taken within the scope of directorship or office; or (d) an act or omission for which the liability of such Director, Officer or committee member is expressly provided for by statute.

**ARTICLE XIII  
FISCAL YEAR**

**Section 13.1. Fiscal Year.** The fiscal year of the Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

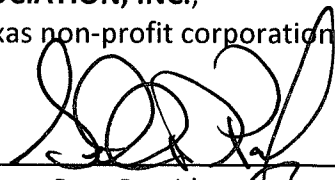
***[SIGNATURE PAGE FOLLOWS]***

ADOPTED this 2<sup>nd</sup> day of MAY, 2016.

The undersigned hereby certifies that he is the duly elected, qualified and acting President of Berry Creek (Austin) Homeowners Association, Inc., a Texas non-profit corporation (the "Association"), and that attached hereto is a true and correct copy of the Bylaws of the Association, having been duly adopted by the Association's Board of Directors.

**BERRY CREEK (AUSTIN) HOMEOWNERS  
ASSOCIATION, INC.,**

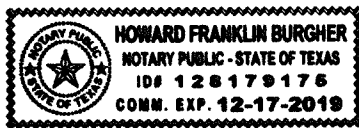
a Texas non-profit corporation

By:   
Gerry Poe, President

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 2<sup>nd</sup> day of MAY, 2016, by Gerry Poe, President of the Berry Creek (Austin) Homeowners Association, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.



  
Notary Public Signature

### ATTACHMENT 3

#### POLICY REGARDING DISPLAY AND INSTALLATION OF FLAGS AND FLAGPOLES

The purpose of this policy is to set forth certain requirements with which owners and residents must comply concerning any flags or flagpoles installed by them. To the extent that any provisions of this policy are held to be invalid, illegal, unenforceable or in conflict with any provision of applicable law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

An owner or resident wishing to install (1) the flag of the United States of America; (2) the flag of the State of Texas; or (3) an official or replica flag of any branch of the United States armed forces (collectively, the “**Permitted Flags**”) need not secure approval by the architectural review authority established under the Declaration (the “**Architectural Reviewer**”), provided that such owner or resident fully complies with all of the requirements set forth herein. An owner or resident wishing to install any flag other than a Permitted Flag, or to install a flag or flagpole, including a Permitted Flag, in a manner which deviates from the requirements set forth herein, may not do so unless and until the owner or resident has secured the prior written approval of the Architectural Reviewer.

Except as otherwise approved in writing by the Architectural Reviewer, the following requirements shall apply with respect to the installation of flags and flagpoles by owners and residents:

(1) Flags and flagpoles may be installed by an owner or resident only on the owner’s Lot or other property owned or exclusively controlled by such owner or resident.

(2) No more than one (1) flagpole may be installed per owner/resident, which flagpole shall not exceed twenty feet (20’) in height nor five feet (5’) in length.

(3) No flag displayed on any flagpole may be more than three feet (3’) in height by five feet (5’) in width (3’x5’).

(4) The flag of the United States of America must be displayed in accordance with 4 U.S.C. Sections 5-10 and the flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code.

(5) Any flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling.

(6) The display of a flag, or the location and construction of the supporting flagpole, must comply with all applicable zoning ordinances, easements and setbacks of record.

(7) A displayed flag and the flagpole on which it is flown must be maintained in good condition. Any deteriorated flag or deteriorated or structurally unsafe flagpole must be promptly repaired, replaced, or removed.

(8) Any flag may be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring property.

(9) Any external halyard of a flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the flagpole.

## ATTACHMENT 4

### POLICY REGARDING DISPLAY OF CERTAIN RELIGIOUS ITEMS

The purpose of this policy is to set forth certain requirements with which owners and residents must comply concerning religious items displayed or affixed by the owner or resident to the entry to the owner's or resident's dwelling. To the extent that any provisions of this policy are held to be invalid, illegal, unenforceable or in conflict with any provision of applicable law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

An owner or resident is permitted to display or affix to the entry door or door frame of the owner's or resident's dwelling one or more religious items, the display of which is motivated by the owner's or resident's sincere religious belief (collectively, "**Religious Displays**").

Except as otherwise approved in writing by the architectural review authority established under the Declaration, the requirements set forth below shall apply with respect to Religious Displays.

(1) The following Religious Displays shall be prohibited:

(a) a Religious Display which violates applicable law, contains language, graphics, or any display that is patently offensive to a passerby;

(b) a Religious Display which, in the reasonable opinion of the Association's Board of Directors, or any property manager or other third-party acting by or on behalf of the Association, threatens the public health or safety;

(c) a Religious Display which is installed in a location other than the entry door or door frame or which extends past the outer edge of the door frame of the owner's or resident's dwelling; or

(d) a Religious Display which, individually or in combination with each other Religious Display displayed or affixed to the entry door or door frame of the owner's or resident's dwelling, has a total size of greater than twenty-five (25) square inches.

(2) Nothing in this policy may be construed in any manner to authorize an owner or resident to use a material or color for the entry door or door frame of the owner's dwelling, or make an alteration to the entry door or door frame, that is not otherwise permitted pursuant to the Association's governing documents.

(3) The Association shall be permitted to remove any Religious Display which is in violation of the terms and provisions of this policy.

## ATTACHMENT 5

### POLICY REGARDING INSTALLATION AND USE OF RAINWATER HARVESTING SYSTEMS

The purpose of this policy is to set forth certain requirements with which owners and residents must comply concerning installation and use of rain barrels and rainwater harvesting systems and any related appurtenances (collectively, "**Rainwater Systems**") on any property owned or exclusively controlled by an owner or resident. To the extent that any provisions of this policy are held to be invalid, illegal, unenforceable or in conflict with any provision of applicable law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Except as otherwise approved in writing by the architectural review authority established under the Declaration (the "**Architectural Reviewer**"), the following Rainwater Systems shall be prohibited:

- (1) a Rainwater System installed in or on any property owned by the Association or any property owned in common by the members of the Association;
- (2) a Rainwater System located between the front of the owner or resident's home and an adjoining or adjacent street;
- (3) a Rainwater System that is of a color other than a color consistent with the color scheme of the owner's or resident's home; or
- (4) a Rainwater System that displays any language or other content that is not typically displayed by such Rainwater System as it is manufactured.

The prior written approval of the Architectural Review shall be required for an owner or resident to install any Rainwater System on the side of the owner's or resident's house, or at any other location that is visible from a street, another owner's or resident's property, or a common area (each, a "**Visible Rainwater System**"). In considering any Visible Rainwater System for approval, the Architectural Reviewer may regulate the size, type, shielding of, and materials used in the construction of the Visible Rainwater System; provided, however, that in no event may the Architectural Reviewer prohibit the economic installation of a Visible Rainwater System if there is reasonably sufficient area on the owner's or resident's property in which to install the Visible Rainwater System.

## ATTACHMENT 6

### POLICY REGARDING INSTALLATION AND USE OF SOLAR ENERGY DEVICES AND ENERGY EFFICIENT ROOFING MATERIALS

The purpose of this policy is to set forth certain requirements with which owners and residents must comply concerning installation and use of “**Solar Energy Devices**” and “**Energy Efficient Roofing Materials**,” as each such term is defined below. To the extent that any provisions of this policy are held to be invalid, illegal, unenforceable or in conflict with any provision of applicable law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

For purposes of this policy: (i) a Solar Energy Device means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy, and includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power; and (ii) Energy Efficient Roofing Materials, for purposes of this policy, means shingles that are designed primarily to: (a) be wind and hail resistant; (b) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (c) provide solar generation capabilities.

#### SOLAR ENERGY DEVICES

The prior written approval of the architectural review authority established under the Declaration (the “**Architectural Reviewer**”) shall be required for an owner or resident to install any Solar Energy Device. Any application to the Architectural Reviewer for installation of a Solar Energy Device must state the proposed installation location of the Solar Energy Device and include a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction, together with such other information as the Architectural Review may reasonably request. The Architectural Review must act provide its decision regarding the proposed installation within a reasonable period or within the period specified in the Declaration or other applicable governing document. The Architectural Reviewer may not withhold approval for installation of a Solar Energy Device **UNLESS** the Architectural Reviewer makes a determination that placement of the Solar Energy Device will create a condition that substantially interferes with the use and enjoyment of the property within the community by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The foregoing right of the Architectural Reviewer to make such a determination is negated if all owners of property immediately adjacent to the owner/applicant provide written approval of the proposed placement.

Without limitation on the foregoing, except as otherwise approved in writing by the Architectural Reviewer, the Solar Energy Devices set forth below shall be prohibited.

- (1) A Solar Energy Device that, as adjudicated by a court, threatens the public health or safety, violates a law.
- (2) A Solar Energy Device that is located on property owned or maintained by the Association.
- (3) A Solar Energy Device that is located on property owned in common by the members of the Association.
- (4) A Solar Energy Device that is located in an area on the owner’s or resident’s property other than (a) on the roof of the home or of another structure allowed under the Declaration and/or the governing documents of the community; or (b) in a fenced yard or patio owned and maintained by the owner or resident.

(5) A Solar Energy Device, if mounted on the roof of the home, that (a) extends higher than or beyond the roofline or (b) is located in an area other than an area designated by the Architectural Reviewer, unless the alternate location increases the estimated annual energy production of the Solar Energy Device by more than ten percent (10%) above the energy production of the Solar Energy Device if located in an area designated by the Architectural Reviewer (such determination to be made by using a publicly available modeling tool provided by the National Renewable Energy Laboratory).

(6) A Solar Energy Device that does not conform to the slope of the roof and has a top edge that is not parallel to the roofline.

(7) A Solar Energy Device that has a frame, a support bracket, or visible piping or wiring that is not in a silver, bronze, or black tone commonly available in the marketplace.

(8) A Solar Energy Device, if located in a fenced yard or patio, that is taller than the fence line.

(9) A Solar Energy Device that, as installed, voids material warranties.

During any “declarant control period,” “development period,” or other period provided for in the Declaration during which in which the developer of the project has reserved a right to facilitate the development, construction, and marketing of the project, and to direct the size, shape, and composition of the project (each, a “**Development Period**”), the developer may prohibit or restrict an owner or resident from installing a Solar Energy Device. **Accordingly, and notwithstanding any provision in this policy to the contrary, during any applicable Development Period, the Architectural Reviewer may approve, deny, or further restrict the installation of a Solar Energy Device in any manner.**

#### **ENERGY EFFICIENT ROOFING MATERIALS**

While an owner or resident desiring to install Energy Efficient Roofing Materials will be required to comply with all applicable architectural review procedures set forth in the Declaration and governing documents of the community, notwithstanding any provision to the contrary in the Declaration or other governing documents of the community, the Architectural Reviewer may not prohibit an owner or resident from installing Energy Efficient Roofing Materials, provided that the Energy Efficient Roofing Materials: (i) resemble the shingles used or otherwise authorized for use within the community; (ii) are more durable than, and are of equal or superior quality to, the shingles used or otherwise authorized for use within the community; and (iii) match the aesthetics of adjacent property.



## ATTACHMENT 7

### PAYMENT PLAN GUIDELINES AND APPLICATION OF PAYMENTS SCHEDULE

#### Payment Plan Guidelines

1. A member of the Association who is delinquent in the payment of any regular or special assessments, or any other amounts owed to the Association (collectively, "**Delinquent Payments**"), shall be entitled to enter into a payment plan with the Association providing for an alternative payment schedule by which the member may make partial payments to the Association for Delinquent Payments (each, a "**Payment Plan**"). Each such Payment Plan shall be in accordance with terms of these Payment Plan Guidelines and the requirements of Section 209.0062 of the Texas Property Code (the "**Code**"). Notwithstanding the foregoing, or any provision herein to the contrary, the Board of Directors of the Association, in its discretion, may elect not to allow a Payment Plan for any member of the Association who has failed to honor the terms of a previous payment plan with the Association during the two (2) years following the member's default under the previous Payment Plan.

2. There shall be three (3) Payment Plans available as follows:

(a) Members owing Delinquent Payments to the Association totaling \$600 or less shall be entitled to pay all Delinquent Payments and any "Payment Plan Administrative Charges" (as defined below) owed in equal monthly installments over a period of six (6) months.

(b) Members owing Delinquent Payments to the Association totaling \$601-\$1200 shall be entitled to pay all Delinquent Payments and any "Payment Plan Administrative Charges" (as defined below) owed in equal monthly installments over a period of twelve (12) months.

(c) Members owing Delinquent Payments to the Association totaling \$1201 or more shall be entitled to pay all Delinquent Payments and any "Payment Plan Administrative Charges" (as defined below) owed in equal monthly installments over a period of eighteen (18) months.

3. Under any Payment Plan, in addition to the Delinquent Payments due and payable thereunder, the Association shall also be entitled to recover all interest due and payable on the member's Delinquent Payments (which interest shall continue to accrue on all Delinquent Payments in accordance with applicable provisions of the Association's governing documents), as well as the Association's reasonable costs associated with administering the Payment Plan (collectively, the "**Payment Plan Administrative Charges**").

4. Each Payment Plan shall be evidenced in writing by an agreement executed by both the member and an authorized representative of the Association. Such writing shall specify the total amount of Delinquent Payments owed, the total amount of Payment Plan Administrative Charges, and the period of repayment under the Payment Plan.

5. Each payment due under any Payment Plan shall be due on or before the first (1<sup>st</sup>) day of each month during the pendency of the Payment Plan.

6. Any payment made pursuant to a Payment Plan which is returned for insufficient funds, and any payment which is received after the due day thereof, shall constitute a material breach of the Payment Plan, in which event the Payment Plan shall terminate, and all unpaid amounts subject to the Payment Plan shall immediately become due and payable in full.

#### Application of Payments Schedule

1. In accordance with the terms of Section 209.0063 of the Code, except for payments made to the Association by members who are in default under any Payment Plan with the Association, a payment received by the Association from a member shall be applied to the member's debt in the following order of priority: (1) any

delinquent assessment; (2) any current assessment; (3) any attorney's fees or third party collection costs incurred by the Association associated solely with assessments or any other charge that could provide the basis for foreclosure; (4) any attorney's fees incurred by the Association that are not subject to subparagraph (3); (5) any fines assessed by the Association; and (6) any other amount owed to the Association.

2. Any payments received by the Association from a member of the Association who is in default under any Payment Plan with the Association shall be applied to the member's debt in the following alternative order of priority: (1) any attorney's fees or third party collection costs incurred by the Association in connection with collection of the member's debt; (2) any other fees and expenses reimbursable to the Association in connection with collection of the member's debt; (3) late charges and interest due by the member; (4) any delinquent assessment; (5) any current assessment; (6) any other amount owned to the Association (excluding fines); and (7) any fines assessed by the Association.

## ATTACHMENT 8

### RECORDS PRODUCTION AND COPYING POLICY

**1. Member Responsibility for Records Production and Copying Charges.** Upon receipt of a proper request for information, by a proper party pursuant to Section 209.005(c) of the Texas Property Code (the “Code”), the Association shall make the records described by Section 209.005 of the Code available pursuant to the terms thereof, within the time allotted therein, and shall otherwise comply with such provisions of Section 209.005 of the Code, including the withholding of certain information described therein. A member of the Association who requests any items from the Association in accordance with the terms of Section 209.005 of the Code shall be responsible for the costs, expenses and charges of the Association incurred in responding to such request in accordance with the terms of this Records Production and Copying Policy. The Association may, but shall not be required to, require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. Reconciliation of any advance payment of estimated costs to actual costs shall be made in accordance with the procedures set forth in Section 209.005 of the Code.

**2. Personal Information.** In accordance with the provisions of Section 209.005(k) of the Code, and except as otherwise authorized or required pursuant to Section 209.005(l) of the Code, the Association shall not release or allow inspection of any books or records that identify the dedicatory instrument violation history of an individual owner, an owner’s personal financial information, including records of payment or nonpayment of amounts due to the Association, an owner’s contact information, other than the owner’s address, or information related to an employee of the Association, including personnel files.

**3. Copy Charges.**

(a) Standard paper copy. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page or part of a page. Each side that has recorded information is considered a page.

(b) Nonstandard copy. The charges in this subsection are to cover the materials onto which information is copied and do not reflect any additional charges, including labor, that may be associated with a particular request. The charges for nonstandard copies are:

(1)	diskette:	\$1.00;
(2)	magnetic tape:	actual cost
(3)	data cartridge:	actual cost
(4)	tape cartridge:	actual cost
(5)	CD:	\$1.00;
(6)	DVD:	\$3.00;
(7)	JAZ drive:	actual cost
(8)	other electronic media:	actual cost;
(9)	VHS video cassette:	\$2.50;
(10)	audio cassette:	\$1.00;
(11)	oversize paper copy:	\$.50;
(12)	specialty paper:	actual cost.

**4. Labor Charges.** The charge for labor costs incurred in processing a request for public information is \$15 an hour. The labor charge includes the actual time to locate, compile, manipulate data, and reproduce the requested information.

**5. Overhead Charge.** Whenever any labor charge is applicable to a request, the Association may include in the charges direct and indirect costs, in addition to the specific labor charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative

overhead. The overhead charge shall be computed at 20% of the charge made to cover any labor costs associated with a particular request. Example: if one hour of labor is used for a particular request, the formula would be as follows: labor charge for locating, compiling, and reproducing, \$15.00 x .20 = \$3.00. An overhead charge shall not be made for requests for copies of 50 or fewer pages of standard paper records.

**6. Remote Document Retrieval Charge.** If the Association has a contract with a commercial records storage company, whereby the private company charges a fee to locate, retrieve, deliver, and return to storage the needed record(s), no additional labor charge shall be factored in for time spent locating documents at the storage location by the private company's personnel. If after delivery to the Association, the boxes must still be searched for records that are responsive to the request, a labor charge may be charged as provided above.

**7. Miscellaneous Supplies.** The actual cost of miscellaneous supplies, such as labels, boxes, and other supplies used to produce the requested information, may be added to the total charge for public information.

**8. Postal and Shipping Charges.** The Association may add any related postal or shipping expenses which are necessary to transmit the reproduced information to the requesting party.

## **ATTACHMENT 9**

### **DOCUMENT RETENTION POLICY**

#### ***SECTION 1***

##### ***Introduction***

#### **1.1 Scope**

This Document Retention and Destruction Policy (this "**Policy**") applies to the BERRY CREEK (AUSTIN) HOMEOWNERS ASSOCIATION, INC., a Texas non-profit corporation (the "**Association**"), the Association's manager (the "**Manager**"), the Association's employees and the Association's Board of Directors (the "**Board**").

The documents maintained by the Association's legal counsel are not subject to this Policy.

#### **1.2 Purpose**

This Policy is created to establish guidelines for identifying, retaining, storing, protecting and disposing of the Association's books, records and other documents in the Association's and to ensure that the Association adheres to legal and business requirements in an efficient and cost-effective manner. For purposes of this Policy, the term "**Documents**" means any documentary material which is generated or received by the Association in connection with transacting its business or is related to the Association's legal obligations. The Documents include, among others, writings, drawings, graphs, charts, photographs, tape, disc, audio recordings, microforms, and other electronic documents from which information can be obtained or translated such as electronic mail, voice mail, floppy disks, hard discs and CD ROM.

#### **1.3 Policy**

- A.** It is the Association's policy to maintain complete and accurate copies of the Documents. The Documents are to be retained for the period of their immediate use, unless longer retention is required for historical reference, contractual or legal requirements, or for other purposes as set forth in this Policy.
- B.** Documents that are no longer required, or have satisfied their recommended period of retention, are to be destroyed in an appropriate manner.
- C.** Unless otherwise directed by legal counsel, Documents may be scanned and maintained in an electronic format.
- D.** The Manager, or in the event there is no Manager, the Secretary, is responsible for ensuring that the Documents are identified, retained, stored, protected and subsequently disposed of, in accordance with the guidelines set forth in this Policy.

#### **1.4 Board Members**

The Association does not require Board members to maintain any Documents that were generated by the Association. However, if a Board member receives Documents relating to the Association, which were not generated by the Association, or not received through the Association, Board members must send the originals of such Documents to the Manager to be maintained in the Association's records.

When a Board member ceases to be a Board member, such Board member shall turn over to the Manager or the Secretary of the Association, all Documents and files relating to the business of the Association, which are not otherwise in the Association's records.

**1.5 Annual Purge of Files**

The Manager shall conduct an annual purge of files. The annual purge of files is to be conducted during the first quarter of each calendar year.

**1.6 Destruction Procedure**

If the Documents to be destroyed are of public record, it is recommended that they be recycled. If recycling is not possible, the Documents may be placed in a trash receptacle.

If the Documents to be destroyed are not of public record, they should only be recycled if their confidentiality can be protected; otherwise, the Documents should be destroyed in a manner that ensures the information contained thereon remains confidential.

**1.7 Miscellaneous**

Copies of any Document may be destroyed, provided that an original is maintained in the Association’s records or is otherwise not required to be maintained pursuant to this Policy.

**1.8 Onset of Litigation**

At the onset of litigation, or if it is reasonably foreseeable that litigation may be imminent, all Documents potentially relevant to the dispute must be preserved.

At the direction of legal counsel, the Manager will advise the Board, and any other person who may be in possession of Documents, of the matter and instruct them that all Documents potentially relevant to such litigation must not be destroyed. At the conclusion of the litigation, as determined by legal counsel, the “hold” period will cease and the time periods otherwise provided in this Policy will recommence.

**SECTION 2**

***Document Retention Periods***

Set forth below is a chart detailing the required retention periods for the Documents. The Documents are grouped into five functional categories as set forth below. For purposes of this Policy, the term “Permanent” means that the retention period for that Document is for the life of the Association, and the term “Termination” means expiration of the term of the applicable Document. For example: “Termination + 4 years” means four (4) years beyond expiration of the term of such Document.

<b>1.</b>	<b><u>Accounting Records</u></b>	<b><u>Retention Period</u></b>
	Audit Reports	Permanent
	Chart of Accounts	Permanent
	Fixed Asset Purchases	Permanent
	General Ledger	Permanent
	Accounts Payable	7 yrs
	Account Receivable	7 yrs
	Expense Records	7 yrs
	Financial Statements (Annual)	7 yrs
	Inventory Records	7 yrs
	Loan Payment Schedules	7 yrs
	Tax Returns	7 yrs
<b>2.</b>	<b><u>Bank Records</u></b>	<b><u>Retention Period</u></b>
	Bank Reconciliations	7 Yrs
	Bank Statements	7 Yrs
	Cancelled Checks	7 Yrs

	Electronic Payment Records	7 Yrs
<b>3.</b>	<b><u>Governing Documents and Corporate Records</u></b>	<b><u>Retention Period</u></b>
	Articles or Certification of Incorporation, Bylaws, Declaration and other Restrictive Covenants, including any amendments	Permanent
	Rules and Regulations	Permanent
	Policies and Guidelines	Permanent
	Record of Actions of Board or Members taken by Written Ballot or Written Consent in Lieu of a Meeting	Permanent
	Record Meeting Notice Waivers	Permanent
	Business Licenses	Permanent
	Contracts – Major	Permanent
	Correspondence from Legal Counsel	Permanent
	Leases/Mortgages	Permanent
	Board Minutes and Resolutions	7 Yrs
	Committee Minutes	7 Yrs
	Member Meeting Minutes	7 Yrs
	Contracts - Minor	Termination + 4 Yrs
	Insurance Policies	Termination + 4 Yrs
	Account Records of Current Association Members	5 Yrs
<b>4.</b>	<b><u>Employee Records</u></b>	<b><u>Retention Period</u></b>
	Benefit Plans	Permanent
	Pension/Profit Sharing Plans	Permanent
	Employee Files (ex-employees)	7 Yrs
	Employment Taxes	7 Yrs
	Payroll Records	7 Yrs
	Employment Applications, Resumes, Ads, or Notices for Job Opportunities	3 Yrs
<b>5.</b>	<b><u>Real Property Records</u></b>	<b><u>Retention Period</u></b>
	Construction Records	Permanent
	Warranties	Permanent
	Leasehold Improvements	Permanent
	Real Estate Purchases	Permanent
	Lease Payment Records	7 Yrs

## ATTACHMENT 10

### STATUTORY COMPLIANCE POLICY

In its 2011 regular legislative session, the Texas legislature adopted, and the governor signed into law, numerous new statutes and changes to existing statutes affecting homeowners associations (such changes, collectively, the “**2011 HOA Legislation**”). These changes in law, which were incorporated into Chapter 209 of the Texas Property Code (the “**Code**”), affect and govern the manner in which the Association may conduct member meetings, the methods by which members of the Association may vote at such meetings, and the procedures and requirements for holding meetings of the Association’s Board of Directors (the “**Board**”). The requirements of the 2011 HOA Legislation are mandatory and control over otherwise applicable provisions which may be contained in the Association’s bylaws and other governing documents (collectively, the “**Governing Documents**”).

The purpose of this Statutory Compliance Policy is to summarize those provisions of the 2011 HOA Legislation which concern the Association’s member meetings, voting procedures and Board governance, and to confirm that the Association, its members, and the Board will be bound by the 2011 HOA Legislation. As the 2011 HOA Legislation takes precedence over any contrary provisions in the Governing Documents, to the extent of any conflict between the terms and provisions of the 2011 HOA Legislation and the terms and provisions contained in the Governing Documents, the terms and provisions of the 2011 HOA Legislation, as summarized in this Statutory Compliance Policy, shall prevail.

#### REQUIREMENTS FOR MEMBER MEETINGS, VOTING, AND ELECTIONS

**1. Annual Meetings Mandatory.** As set forth in Section 209.014 of the Code, the Board is required to call an annual meeting of the members of the Association.

**2. Notice of Election or Association Vote.** As set forth in Section 209.0056 of the Code, not later than the tenth (10<sup>th</sup>) day or earlier than the sixtieth (60<sup>th</sup>) day before the date of an election or vote, the Association must give written notice of the election or vote to: (i) each owner of property in the Association, for purposes of an Association-wide election or vote; or (ii) each owner of property in the Association entitled to vote under the Governing Documents in a particular representative election, for purposes of a vote that involves election of representatives in the association which are vested under the Governing Documents with the authority to elect or appoint members of the Board.

**3. Vacancies in the Board; Replacement.** As set forth in Section 209.00593 of the Code, except during any applicable “**Development Period**” (as defined below), any member of the Board whose term has expired must be elected by owners who are members of the Association. A member of the Board may be appointed by the Board only to fill a vacancy caused by a resignation, death, or disability. A member of the Board appointed to fill a vacant position shall serve the unexpired term of the predecessor Board member. The foregoing requirements do not apply to a representative board whose members or delegates are elected or appointed by representatives of a property owners’ association who are elected by owner members of such association. For purposes of this Compliance Policy, the term Development Period means a period stated in the Declaration during which the developer has reserved: (i) a right to facilitate the development, construction, and marketing of the community; and (ii) a right to direct the size, shape, and composition of the community.

**4. Eligibility for Board Membership.** As set forth in Section 209.00591 of the Code, except during any applicable Development Period, the Association may not restrict an owner’s right to run for a position on the Board. If the Board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a member of the Board has been convicted of a felony or crime involving moral turpitude, the member of the Board is then immediately ineligible to serve on the Board, automatically considered removed from the Board, and prohibited from future service on the Board.



5. **Right to Vote.** As set forth in Section 209.0059 of the Code, any provision in the Governing documents that would disqualify an owner from voting in an Association election of Board members or on any matter concerning the rights or responsibilities of the owner is void.

6. **Voting; Quorum.** As set forth in Section 209.00592 of the Code, The voting rights of an owner may be cast or given: (i) in person or by proxy at a meeting of the Association; (ii) by absentee ballot; (ii) by **“Electronic Ballot”** (as defined below); or (iv) by any method of representative or delegated voting provided by the Association's governing documents. As defined in Section 209.00592 of the Code, Electronic Ballot means a ballot: (i) given by email, facsimile, or posting on an Internet website; (ii) for which the identity of the property owner submitting the ballot can be confirmed; and (iii) for which the property owner may receive a receipt of the electronic transmission and receipt of the owner’s ballot.

7. **Written Ballots.** As set forth in Section 209.0058 of the Code, any vote cast in an election or vote by a member of the Association must be in writing and signed by the member. Electronic votes constitute written and signed ballots. In an Association-wide election, written and signed ballots are not required for uncontested races.

8. **Absentee or Electronic Ballots.** As set forth in Section 209.00592(b) of the Code, an absentee or Electronic Ballot: (i) may be counted as an owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot; (ii) may not be counted, even if properly delivered, if the owner attends any meeting to vote in person, so that any vote cast at a meeting by an owner supersedes any vote submitted by absentee or Electronic Ballot previously submitted for that proposal; and (iii) may not be counted on the final vote of a proposal if the motion was amended at the meeting to be different from the exact language on the absentee or Electronic Ballot.

9. **Solicitation for Votes by Absentee Ballot.** As set forth in Section 209.00592(c) of the Code, any solicitation for votes by absentee ballot must include: (i) an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action; (ii) instructions for delivery of the completed absentee ballot, including the delivery location; and (iii) the following language: *“By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail.”*

10. **Tabulation of and Access to Ballots.** As set forth in Section 209.00594 of the Code, a person who is a candidate in an Association election or who is otherwise the subject of an Association vote, or a person related to that person within the third degree by consanguinity or affinity, may not tabulate or otherwise be given access to the ballots cast in that election or vote. A person tabulating votes in an Association election or vote may not disclose to any other person how an individual voted.

11. **Recount of Votes.** As set forth in Section 209.0057 of the Code, any owner may, not later than the fifteenth (15<sup>th</sup>) day after the date of the meeting at which the election was held, require a recount of the votes. A demand for a recount must be submitted in writing either: (i) by certified mail, return receipt requested, or by delivery by the U.S. Postal Service with signature confirmation service to the Association's mailing address as reflected on the latest management certificate; or (ii) in person to the Association's managing agent as reflected on the latest management certificate or to the address to which absentee and proxy ballots are mailed. The owner requesting the recount will be required to pay, in advance, expenses associated with the recount as estimated by the Association. Any recount must be performed on or before the thirtieth (30<sup>th</sup>) day after the date of receipt of a request and payment for a recount is submitted to the Association for a vote tabulator as set forth below.

At the expense of the owner requesting the recount, the Association shall retain for the purpose of performing the recount, the services of a person qualified to tabulate votes. The Association shall enter into a contract for the services of a person who: (i) is not a Member of the Association or related to a member of the

Board within the third degree by consanguinity or affinity; and (ii) is either a person agreed on by the Association and any person requesting a recount or is a current or former county judge, county elections administrator, justice of the peace or county voter registrar.

If the recount changes the results of the election, the Association must reimburse the requesting owner for the cost of the recount to the extent such costs were previously paid by the owner to the Association. The Association must provide the results of the recount to each owner who requested the recount.

Any action taken by the Board in the period between the initial election vote tally and the completion of the recount is not affected by any recount.

## **REQUIREMENTS FOR BOARD MEETINGS AND ACTION TAKEN BY THE BOARD OF DIRECTORS**

**1. Requirements Applicable to "Board Meetings".** The 2011 HOA Legislation sets forth various new requirements intended to make meetings of the Board open to and accessible by the Association's members; however, the 2011 HOA Legislation set forth a very specific definition of "Board Meeting," and these new requirements apply only to meetings of the Board which constitute Board Meetings as defined in Section 209.0051 of the Code. That section defined Board Meeting to mean a deliberation between a quorum of the Board, or between a quorum of the Board and another person, during which Association business is considered and the Board takes formal action. A Board Meeting does not include any gathering of a quorum of the Board at a social function unrelated to the business of the Association or the attendance by a quorum of the Board at a regional, state, or national convention, ceremonial event, or press conference, if formal action is not taken and any discussion of Association business is incidental to the social function, convention, ceremonial event, or press conference.

**2. Board Meetings During Development Period.** As set forth in Section 209.0051(i) of the Code, the requirements of the 2011 HOA Legislation with respect to open Board Meetings do not apply to Board Meetings during any applicable Development Period unless the Board Meeting is conducted for the purpose of: (i) adopting or amending the Governing Documents; (ii) increasing the amount of regular assessments of the Association or adopting or increasing a special assessment; (iii) electing non-developer Board members or establishing a process by which those Board members are elected; or (iv) changing the voting rights of members of the Association. Given this, the following provisions of this Compliance Policy apply to Board Meetings only if the action taken at such Board Meeting involves any of items (i) through (iv) set forth in this paragraph.

**3. Open Board Meetings.** As set forth in Section 209.0051(c) of the Code, all regular and special Board Meetings must be open to owners. However, the Board has the right to adjourn a meeting and reconvene in closed executive session to consider actions involving: (i) personnel; (ii) pending or threatened litigation; (iii) contract negotiations; (iv) enforcement actions; (v) confidential communications with the Association's attorney; and (vi) matters involving the invasion of privacy of individual owners, or matters that are to remain confidential by request of the affected parties and agreement of the Board. Following an executive session, any decision made by the Board in executive session must be summarized orally in general terms and placed in the minutes, without breaching the privacy of individual owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.

**4. Location of Board Meeting.** As set forth in Section 209.0051(c-1) of the Code, except for a Board Meeting held by electronic or telephonic means as permitted by Section 209.0051(h) of the Code (as described in Section 8 below), a Board Meeting must be held in the county in which all or a party of the property in the subdivision is located or in a county adjacent to that county, as determined in the discretion of the Board.

**5. Record; Minutes of Board Meeting.** As set forth in Section 209.0051(d) of the Code, the Board must keep a record of each regular or special Board Meeting in the form of written minutes of the Board Meeting. The Board must make meeting records, including approved minutes, available to the Association's members for

inspection and copying on written request to the Association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the Board.

**6. Notice of Board Meeting.** As set forth in Section 209.0051(e) of the Code, members of the Association must be given notice of the date, hour, place, and general subject of a regular or special Board Meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice must be: (i) mailed to each property owner not later than the tenth (10<sup>th</sup>) day or earlier than the sixtieth (60<sup>th</sup>) day before the date of the meeting; or (ii) provided at least seventy-two (72) hours before the start of the meeting by: (a) posting the notice in a conspicuous manner reasonably designed to provide notice to Association members in a place located on the Association's common area property or on any website maintained by the Association; and (b) sending the notice by e-mail to each owner who has registered an e-mail address with the Association. It is an owner's duty to keep an updated e-mail address registered with the Association.

**7. Recessing and Reconvening Board Meeting.** As set forth in Section 209.0051(g) of the Code, if the Board recesses a regular or special Board Meeting to continue the following regular business day, the Board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. If a regular or special Board Meeting is continued to the following regular business day, and on that following day the Board continues the Board Meeting to another day, the Board shall give notice of the continuation in at least one manner as set forth above within two (2) hours after adjourning the meeting being continued.

**8. Board Meeting without Prior Notice.** As set forth in Section 209.0051(h) of the Code, A Board may meet by any method of communication, including electronic and telephonic, without prior notice to owners if each director may hear and be heard and may take action by unanimous written consent 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 must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special Board meeting.

Notwithstanding the foregoing, the Board may not, without prior notice to owners under Section 6 above, consider or vote on: (i) fines; (ii) damage assessments; (iii) initiation of foreclosure actions; (iv) initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety; (v) increases in assessments; (vi) levying of special assessments; (vii) appeals from a denial of architectural control approval; or (viii) a suspension of a right of a particular owner before the owner has an opportunity to attend a Board meeting to present the owner's position, including any defense, on the issue.

2016036708

Electronically Recorded  
OFFICIAL PUBLIC RECORDS



Nancy E. Rister, County Clerk  
5/2/2016 2:15 PM

Pages: 43 Fee: \$ 189.00

Williamson County Texas