BYLAWS

OF

THE ORCHARDS PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE I

NAME, PRINCIPAL OFFICE, AND DEFINITIONS

Section 1.1 **Name**. The name of the corporation is The Orchards Property Owners Association, Inc. (the "Association"), a Texas nonprofit corporation.

Section 1.2 **Principal Office**. The principal office of the Association shall be located in the State of Texas. The Association may have such other offices, either within or outside the State of Texas, as the Board of Directors may determine or as the affairs of the Association may require.

Section 1.3 **Registered Agent**. The Association shall have and continuously maintain in the State of Texas a registered agent whose office is identical with such registered office, as required by the TNCL. The registered office may be, but need not be, identical to the principal office in the State of Texas, and the registered office may be changed from time to time by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 2.1 **Definitions**. The following terms shall have the meanings set forth below:

"Act." The Texas Residential Property Owners Protection Act, Title 11, Chapter 209 of the Texas Property Code, as amended from time to time.

"Board of Directors." Those individuals serving as Directors pursuant to Article IV of these Bylaws and their successors as duly elected and qualified from time to time.

"Code." The Internal Revenue Code of 1986, as amended.

"Declaration." The Declaration of Covenants, Conditions and Restrictions for Orchards on the Brazos, and all recorded amendments thereto.

"Director." A member of the Board of Directors.

"Manager." Any professional manager or management company with whom the Association contracts for the day-to-day management of the Development or the administration of the Association.

"Member." All present and future Owners of any Lot in the Development.

"Member in Good Standing." Has the meaning set forth in the Certificate of Formation.

"Minute Book." The minute book of the Association, which shall contain the minutes of all annual and special meetings of the Members of the Association and the Board of Directors and all resolutions of the Board of Directors.

"President." The officer of the Association having the duties described in Section 5.4 of these Bylaws.

"Quorum." Has the meaning set forth in the Certificate of Formation.

"Secretary." The officer of the Association having the duties described in Section 5.6 of these Bylaws.

"TNCL." The Texas Nonprofit Corporation Law, as amended from time to time.

"Treasurer." The officer of the Association having the duties described in Section 5.7 of these Bylaws.

"Vice President." The officer of the Association having the duties described in Section 5.5 of these Bylaws.

Any capitalized term that is not defined in this Section shall have the meaning set forth in the Declaration.

Section 2.2 **Interpretation**. In the event of a conflict of interpretation between the provisions set forth in these Bylaws and the Declaration, the Declaration shall govern. If the Code is hereafter amended or changed, both the Declaration and these Bylaws shall be interpreted in a manner which conforms to the provisions of the Code with respect to nonprofit entities, it being the intention to preserve the status of the Association as a *bona fide* nonprofit entity.

ARTICLE III

ASSOCIATION: MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES

Section 3.1 **Classes of Membership**. The Developer may, by Supplemental Declaration, create additional classes of membership for the Owners of Lots within any additional real property made subject to the Declaration and these Bylaws, which such rights, privileges and obligations as may be specified in such Supplemental Declaration and any corresponding amendment to these Bylaws.

Section 3.2 **Place of Meetings**. All annual and special meetings of the Members shall be held at the principal office of the Association or at another suitable and convenient place permitted by law and fixed by the Board of Directors from time to time and designated in the notices of the meetings.

Section 3.3 **Annual Meetings**. The first annual meeting of the Members shall be held within one year of its formation. Thereafter, annual meetings of the Members shall be held in March each year on a date as shall be fixed by the Board of Directors by written notice to the Members. The Members may transact any business that may properly come before the meeting.

Section 3.4 **Notice of Annual Meetings**. The Secretary shall mail notices of annual meetings to each Member directed to the most recent post office address provided to the Association by such Member, as shown on the records of the Association, by regular mail, postage prepaid. This notice shall be mailed not less than ten or more than 60 days before the date of the meeting and shall state the date, time and place of the meeting, the purpose or purposes thereof and the items on the agenda, including the specific nature of any proposed amendment or change to the Governing Documents.

Section 3.5 **Special Meeting**. A special meeting of the Members of the Association may be called by the President, a majority of the Directors, or upon presentation to the Secretary of a petition stating the specific purpose of the special meeting, which petition has been signed by Members in Good Standing having not less than 51% of the aggregate votes entitled to be cast at such meeting.

Section 3.6 **Notice of Special Meetings**. The Secretary shall mail notice of any special meeting of the Members of the Association to each Member in the manner provided in Section 3.4 of these Bylaws. The notice shall state the same items required by Section 3.4 of these Bylaws for notices of annual meetings. No business shall be transacted at any special meeting except as stated in the notice thereof.

Section 3.7 **Waiver of Notice**. Waiver of notice of a meeting of the Association shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Association, either before or after such meeting. Attendance at a meeting shall be deemed a waiver of any objection as to notice of the time, date, and place thereof, unless a specific objection as to the lack of proper notice is given at the time the meeting is called to order. Attendance at a meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

Section 3.8 **Agenda**. The agenda at all meetings of the Members shall include: (a) roll call; (b) proof of notice of meeting or waiver of notice; (c) approval of the minutes of the preceding meeting; (d) reports of officers and committees; (e) election of Directors, if applicable; (f) unfinished business; (g) new business; and (h) adjournment.

Section 3.9 **Adjournment of Meetings**. If any meeting of the Association cannot be held because a Quorum is not present, Members in Good Standing representing 51% of the votes represented at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a Quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not set by those in attendance at the original meeting or if for any reason a new date is set for reconvening the meeting after adjournment, notice for reconvening the meeting shall be given to Members in the manner prescribed in Section 2.7 of these Bylaws.

Section 3.10 **Membership and Voting**. Every Owner shall automatically be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Each Member shall be entitled to cast one vote with respect to any matter on which Members of the Association are entitled to vote. Any matter described in these Bylaws or in the Governing Documents as requiring approval by a stated percentage or a majority of the Owners shall be by the Vote of the Members, unless otherwise required by the Act. In cases where more than one Person owns a fee interest in a Lot, all such Persons shall arrange among

themselves for one of their number to exercise the voting rights attributable to such Lot. Membership of a Member in the Association shall automatically terminate when such Member ceases to be an Owner; provided, however, that such termination shall not release or relieve such Member from any liability or obligation under the Declaration that was incurred during such Member's period of ownership of a Lot.

Section 3.11 **List for Voting**. The Secretary shall be responsible for maintaining, at the principal office of the Association, an updated list of Members and their last known addresses as provided by each Member in such form and containing such other information as required by the TNCL. The list shall also show opposite each Member's name the address of the Lot owned. The list shall be revised by the Secretary to reflect changes in the ownership of the Lots occurring prior to the date of the annual or special meeting. The list shall be open to inspection by all Members and other Persons lawfully entitled to inspect the list during regular business hours up to the date of the annual or special meeting. The Secretary shall also keep current and retain custody of the Minute Book.

Section 3.12 **Proxies**. Votes may be cast by written proxy or by ballot. Written proxies may be submitted by United States mail, delivered to the office of the Association, delivered directly to the Secretary or delivered in such other manner as directed by the Association. A proxy vote shall be defined as a written vote submitted by a Member which either states the specific vote of the Member with respect to the issues, resolutions or election being voted on by the Members at the annual or special meeting or which is written permission for the Board of Directors or a specific Director to exercise the Member's vote as the Board of Directors or the specific Director sees fit. A proxy shall be valid for the meeting specified in the proxy or any valid continuation of such meeting. Each proxy shall be revocable unless otherwise expressly provided therein to be irrevocable. No proxy will be valid after 11 months from the date of its execution unless otherwise provided therein. A Member may not revoke a proxy except by giving actual written notice of revocation to the Person presiding over the meeting.

Section 3.13 **Quorum**. Quorum requirements with respect to any matter on which Members are entitled to vote and affirmative votes required for Member acts are set forth in the Certificate of Formation.

Section 3.14 **Action Without a Meeting**. Any action which may be taken by the vote of the Members at a regular or special meeting, other than the election of Directors, may be taken without a meeting if done in compliance with relevant provisions of the TNCL. If an action is taken without a meeting, the Secretary shall distribute a written ballot to every Member entitled to vote on the matter. The ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the Association. Approval by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the Quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the proposal at a regular or special meeting authorizing the action.

ARTICLE IV

BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

Section 4.1 **Governing Body; Composition**. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Each Director shall

be a Member. No Owner shall be eligible to serve as a Director if any Assessment for such Owner's Lot is delinquent. In the case of a Member which is not a natural person, any officer, director, partner, member, manager, employee, or fiduciary of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member, provided, that no Member may have more than one such representative on the Board of Directors at a time.

Section 4.2 **Number of Directors**.The affairs of the Association shall be governed by the Board of Directors. The initial Directors shall be three in number and shall be those Directors named in the Certificate of Formation. Developer shall have the right to appoint and remove members of the Board of Directors until the termination of the Developer Control Period. If Developer voluntarily surrenders the right to appoint and remove members of the Board of Directors prior to the termination of the Developer Control Period, Developer may require that specified actions of the Board of Directors be subject to Developer approval until the expiration of the Developer Control Period.

Section 4.3 **Nomination and Election Procedures**. Persons may be nominated for election to the Board of Directors 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 of Directors of a written petition of nomination bearing the genuine signatures of at least five other Members; or

(b) A Director shall be deemed to have been nominated for re-election to the position he holds by signifying his intention to seek re-election in a writing addressed to the Board of Directors.

Section 4.4 **Election and Term of Office**. The nominee, or nominees, as the case may be, receiving the highest number of votes shall be elected to the Board of Directors. Except as otherwise set forth herein and in the Declaration, each Director will serve a term of two years and may serve an unlimited number of consecutive terms. The number of Directors may be changed by amendment of these Bylaws, but may not be less than three. A Director takes office upon his election or appointment and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed. The Directors shall serve without compensation for such service.

Section 4.5 **Removal of Directors and Vacancies**. Except with respect to Directors appointed by Developer during the Developer Control Period (which vacancies shall be filled by Developer), if the office of any Director shall become vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, 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. At the expiration of the term of his position on the Board of Directors, 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**. Except with respect to Directors appointed by Developer during the Developer Control Period (the removal of which shall only be caused by Developer), Directors may be removed, with or without cause, by a vote of at least 51% of the votes represented at a special meeting of the Members duly called for this purpose, notice of which meeting shall be given to all Directors.

Section 4.7 **Organizational Meetings**. No later than 20 days following each of (a) the filing of the Certificate of Formation; (b) the termination of the Developer Control Period; and (c) each annual meeting of the Members, the Board of Directors shall hold a regular meeting for the purposes of organization, election of officers and transaction of other business. Notice of this meeting shall be given to all Directors in accordance with Section 4.8 of these Bylaws, except for the initial meeting, which shall be called by Developer.

Section 4.8 **Regular Meetings**. All meetings of the Board of Directors shall be held at the principal office of the Association or at any other place or places designated at any time by resolution of the Board of Directors or by written consent of all of the Directors. Any meeting of the Board of Directors may be held by any means of remote electronic communication, including electronic, telephonic, videoconferencing or the internet if each person entitled to participate in the meeting consents to the meeting being held by means of that system, provided that each Director may communicate concurrently with every other Director, and any such meeting may involve consideration of any action, including any action involving a vote on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular Member before the Member has an opportunity to attend a meeting of the Board of Directors to present the Member's position on the issue. Notice of regular meetings of the Board of Directors shall be given to each Director personally, by telegram, telephone, electronic mail, facsimile or by United States mail, with postage prepaid, directed to him at his last known post office address, phone number, facsimile number or electronic mail address, as the same appears on the records of the Association, at least ten but not more than 40 days before the date of the meeting. This notice shall state the date, time, place and purpose of the meeting.

Section 4.9 **Special Meetings of the Board of Directors**. Special meetings of the Board of Directors may be called by the President on his own accord or by the President or the Secretary upon the written request of any two Directors on three days prior notice to each Director personally, by telegram, telephone, electronic mail, facsimile or by United States mail, with postage prepaid, directed to him at his last known post office address, phone number, facsimile number or electronic mail address, as the same appears on the records of the Association.

Section 4.10 **Waiver of Notice**. With respect to any meeting of the Board of Directors, whether regular or special, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to giving the required notice. All written waivers shall be filed in the Minute Book of the Association or made a part of the minutes of the meeting. Participation by a Director at any meeting of the Board of Directors shall likewise constitute a waiver by him of the required notice, unless the participation is for the express purpose of objecting to the transaction of business at the meeting on the grounds that the meeting has not been lawfully called or convened. If all Directors are present at any meeting of the Board of Directors, no notice of the meeting shall be required and any business may be transacted at the meeting except as prohibited by law or these Bylaws.

Section 4.11 **Consent in Writing**. Any action by the Board of Directors, including any action involving a vote on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular Member before the Member has an opportunity to attend a meeting of the Board of Directors to present the Member's position on the issue, may be taken without a meeting if all of the Directors shall unanimously consent in writing to the action. Such written consent shall be filed in the Minute Book. Any action taken by such written consent shall have the same force and effect as a unanimous vote of the Directors.

Section 4.12 **Records**. The Board of Directors shall cause a complete record of all of its acts and the corporate affairs of the Association to be kept and to present a general report thereof to the Members at each annual meeting of the Members of the Association or at any special meeting of the Members of the Association where a general report is requested in writing by one-third of the Members entitled to vote.

Section 4.13 **Quorum of Board of Directors**. At all duly convened meetings of the Board of Directors, at least 51% of the Directors must be present to constitute a Quorum for the transaction of business, except as otherwise expressly provided in these Bylaws. The vote of a majority of the Directors present at the meeting at which a Quorum is present shall be the act of the Board of Directors.

Section 4.14 **Open Meetings**. Meetings of the Members and the Board of Directors shall be open to all Members. Subject to applicable law, the Board of Directors shall have the right to adjourn a meeting and reconvene in private, closed executive session to consider any actions involving personnel, pending litigation, contract negotiations, or enforcement actions, or upon the request of an affected party, or to consider matters that are confidential in the opinion of the Board of Directors; provided, however, the Board of Directors shall announce the general nature of the business to be considered in such executive session prior to adjourning the meeting.

Section 4.15 **Powers**. Subject to the Governing Documents, the Board of Directors shall have and exercise all powers and duties necessary for the proper administration of the affairs of the Association. In the performance of its duties as the governing body of the Association, subject to limitations set forth in the Declaration, the Board of Directors shall have all powers set forth in the Act (except as otherwise provided in the Governing Documents), and in addition to those powers and duties set forth in the Act, the Certificate of Formation and the Declaration, the Board of Directors shall have the powers and duties enumerated below. Each Director individually and the Board of Directors collectively shall perform the duties and powers of the Board of Directors in good faith as a fiduciary of the Association, in a manner which the Director believes to be in the best interest of the Association and with the care of a person of ordinary prudence under similar circumstances, including reasonable inquiry, skill and diligence.

Section 4.16 **Duties**. The duties of the Board of Directors shall include:

(a) preparing and adopting, in accordance with related provisions of the Declaration and these Bylaws, an annual budget establishing each Owner's share of the Common Expenses;

(b) determining the Common Expenses and any other charges comprising the operating expenses of the Association, establishing the amount of Annual Assessments, as the same may increase or decrease, and assess the same against the Members in accordance with the provisions of the Declaration and these Bylaws;

(c) levying and collecting, in addition to Annual Assessments, Special Assessments in amounts which the Board of Directors deems proper, whenever the Board of Directors is of the opinion it is necessary to do so in order to meet increased operating or maintenance costs or additional capital expenses or because of emergencies subject to the limitations specified in the Declaration;

(d) providing for the operation, maintenance, management, insurance, cleaning, sanitation, renewal, replacement, care and upkeep of the Common Areas and all property, real or personal, of the Association;

(e) collecting delinquent Assessments against any Lot and the Owner thereof, whether by suit or otherwise and to abate any nuisance and enforcing the terms of the Declaration and the observance of the Rules by injunction or other legal action or means which the Board of Directors may deem necessary or appropriate;

(f) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(g) depositing all funds received on behalf of the Association in a bank depository which it shall approve and using such funds to operate the Association, provided any reserve funds may be deposited, in the Board of Directors' best business judgment, in depositories other than banks;

(h) establishing operating, escrow and other accounts in the name of the Association as the Board of Directors may deem appropriate from time to time;

(i) maintaining the Common Areas;

(j) maintaining a reserve fund out of Annual Assessments;

(k) contracting for repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;

(l) making and enforcing compliance with the Rules relative to the operation, use and occupancy of the Property, including, but not limited to, penalties to be levied for violations of these Bylaws, the Declaration and the Rules which the Board of Directors shall adopt, and to amend the same from time to time as and when approved by appropriate resolutions which shall be binding on the Owners and occupants of the Lots, their successors in title and assigns. A copy of the Rules and copies of any amendments thereto shall be delivered or mailed to each Owner or occupant of a Lot promptly upon the adoption thereof.

(m) obtaining and carrying property and liability insurance and fidelity bonds, as provided herein and/or in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(n) paying the costs of all services rendered to the Association;

(o) keeping books with detailed accounts of the receipts and expenditures of the Association in accordance with generally accepted accounting principles;

(p) causing a complete review of the books and accounts of the Association to be made by a competent independent public accountant at the end of each fiscal year and at any other time or times deemed necessary;

(q) using and expending any sums collected from Annual Assessments and Special Assessments for the operation, maintenance, renewal, care and upkeep of the Common Areas;

(r) making available to any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section VIII of these Bylaws;

(s) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Development;

(t) indemnifying Developer, a director, officer or ACC or committee member, or former director, officer or ACC or committee member of the Association to the extent such indemnity is required or permitted under the TNCL or the Governing Documents;

(u) assisting in the resolution of disputes between Owners and others without litigation as may be set forth herein and/or in the Declaration;

(v) paying all taxes and assessments levied or assessed against any property that may be owned by the Association, exclusive of any taxes or assessments levied against any Member or otherwise properly chargeable to the Member; and

(w) establishing a form of estoppel certificate acceptable to the Association for delivery to prospective Lot purchasers and lenders.

The duties imposed on and powers granted to the Board of Directors by this Section shall not be amended so as to reduce, eliminate or expand any duties or powers of the Board of Directors without the affirmative vote of 67% of the Members voting at the meeting called to consider such amendment.

Section 4.17 **Powers**:

(a) employing and dismissing personnel of the Association, and purchasing or arranging for those services, machinery, equipment, tools, materials and supplies as, in the opinion of the Board of Directors, may from time to time be necessary for the proper operation and maintenance of the Common Areas;

(b) entering into contracts for professional management of the Development and the Association, at such prices and upon such terms as may be determined by the Board of Directors, to perform those duties and services which the Board of Directors may lawfully delegate;

(c) employing or retaining and receiving advice from professional counsel and consultants, including, but not limited to, landscape architects, architects, engineers, planners, biologists, lawyers and accountants, which the Board of Directors may deem necessary for any proper purposes of the Association, and fix the compensation for professional advice or services, including, but not limited to, those hereinbefore or hereinafter referred to in these Bylaws. The Board of Directors shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following: (i) one or more officers or employees of the Association whom the Board of Directors reasonably believes to be reliable and competent in the matter presented; (ii) counsel, public accountants or other Persons as to the matters which the Board of Directors reasonably believes to be within the professional or expert competence of this Person;

and (iii) a committee of the Board of Directors duly designated in accordance with law, as to matters within its designated authority, which committee the Board of Directors reasonably believes to merit confidence. The Board of Directors shall not be considered to be acting in good faith if it has knowledge concerning the matter in question that would cause this reliance to be unwarranted;

(d) naming as a trustee, on behalf of the Association, the Association's authorized representative, including any trustee with which the Association may enter into any insurance trust agreement or any successor to this trustee (each of which shall be referred to herein as the "Insurance Trustee"), to be given exclusive authority to negotiate losses under any policy providing property insurance coverage. The Association or any Insurance Trustee or substitute Insurance Trustee designated by the Association shall have the exclusive power to act as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses, execution of releases of liability and the execution of all documents and the performance of all other acts necessary to accomplish these purposes;

(e) establishing depositories for the funds of the Association with the bank or banks as shall be designated from time to time by the Board of Directors and in which monies of the Association shall be deposited. Withdrawal of monies shall be only by check signed by those Persons who are authorized by the Board of Directors to sign checks on behalf of the Association;

(f) investing monies of the Association in any investments which the Board of Directors deems to be reasonably prudent;

(g) borrowing and repaying monies and give notes, mortgages or other security upon the terms which are deemed reasonable by the Board of Directors;

(h) acquiring by purchase, gift, annexation or lease, real or personal property, if, at any time in the future, the Board of Directors deems it to be proper and not inconsistent with the terms hereof to do so;

(i) granting and reserving easements, leases, licenses or concessions where necessary or desirable for utilities, routes of ingress and egress, or any other purpose, over the Common Areas; and

(j) doing all things incidental and necessary to the accomplishment of the foregoing.

Section 4.18 **Management**. If the Board of Directors determines that it is in the best interest of the Association to hire a Manager for the Development to facilitate management of the Development and/or the administration of the Association, the Board of Directors may delegate to a Manager responsibility for matters of a routine nature, renewable by agreement of the parties thereto for successive one year periods only, and shall be subject to termination by either party with or without cause and without payment of a termination fee upon not more than 30 days prior written notice. After a Manager has been appointed, no decision by the Association to manage its own affairs without a Manager shall be effective unless and until approved by the affirmative vote of 67% of the Members voting at the meeting called to consider such matter with the written consent of not less than 51% of the Mortgagees.

Section 4.19 **Management Certificate**. The Association shall record in the County a certificate, signed and acknowledged by an officer of the Association stating:

(a) the name of the Development;

(b) the name of the Association;

(c) the location of the Development;

(d) the recording data for the Declaration;

(e) the mailing address of the Association, or the name and mailing address of the Person managing the Association; and

(f) other information the Association considers appropriate.

A new certificate shall be recorded within 30 days after the Association receives notice of a change in any of the information listed in this Section 4.19.

Section 4.20 **Accounts and Reports**. The following management standards of performance shall be followed unless the Board of Directors by resolution specifically determines otherwise:

(a) cash or accrual accounting, as defined by generally accepted accounting principles, shall be employed;

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

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by a member of the Board of Directors or the Manager from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise;

(e) any financial or other interest which a member of the Board of Directors or the Manager may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;

(f) commencing at the end of the fiscal quarter in which the first Lot is sold and closed, financial reports shall be prepared for the Association each fiscal quarter (such financial statements shall include an income statement reflecting all income and expense activity for the preceding period on a cash or accrual basis and may include such other reports as deemed necessary by the Board of Directors);

(g) an annual financial report shall be made available to all Members within 120 days after the close of the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board of Directors determines; provided, however, upon written request of any holder, guarantor or insurer of any first Mortgage on a Lot, the Association shall provide an audited financial statement; and

(h) all financial reports shall be kept at the principal office of the Association for at

least three years after the closing of each fiscal year.

Section 4.21 **Borrowing**. The Association shall have the power to borrow money for any legal purpose; provided, however, if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12 month period, exceeds or would exceed ten percent of the budgeted gross expenses of the Association for that fiscal year, the Board of Directors shall obtain the approval of Members representing at least 67% of the Members entitled to vote prior to borrowing such money.

ARTICLE V

OFFICERS

Section 5.1 **Officers**. The officers of the Association shall be a President, one or more Vice Presidents, a Secretary and Treasurer. The same individual may not hold the offices of President and Secretary. The Secretary may be eligible to hold the office of Treasurer. The President and Treasurer must also be Directors. The Secretary need not be a Director.

Section 5.2 **Election and Term of Office**. Except as set forth herein, the officers of the Association shall be elected annually by the Board of Directors at the organizational meeting held pursuant to Section 4.7 of these Bylaws and shall hold office until their successors are elected or appointed by the Board of Directors; provided that each officer may be removed, either with or without cause, whenever in the best interest of the Association, and his successor elected by the affirmative vote of a majority of the Directors at any annual or special meeting of the Board of Directors called for that purpose. The President and Secretary shall each serve for a term of two years and the remaining officers shall serve for a term of one year. The Board of Directors may, from time to time, appoint other officers who, in its judgment, are necessary. Any officer may resign at any time by giving written notice to the Board of Directors or to the President or Secretary of the Association. Any resignation shall take effect as of the date of the receipt of this notice or any later time specified therein; unless specified therein, the acceptance of a written resignation shall not be necessary to make it effective.

Section 5.3 **Removal and Vacancies**. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled by election by the affirmative vote of a majority of the Directors at any annual or special meeting of the Board of Directors called for that purpose.

Section 5.4 **President**. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members of the Association and the Board of Directors. The President shall have the general powers and duties usually vested in the office of the president of a community association, including the power to appoint committees from time to time as he may deem appropriate to assist in the conduct of the affairs of the Association, provided, however, no such committee shall have the right to exercise the full authority of the Board of Directors. The President shall be an ex-officio member of all standing committees, if any. The President shall execute deeds, contracts and other instruments, in the name and on behalf of the Association and under its corporate seal when a seal is required, except when these documents are required or permitted by law to be otherwise executed, and except when the signing and execution thereof shall be delegated by the Board of Directors to another officer or agent of the Association.

Section 5.5 **Vice President**. In the absence of the President or in the event of the President's inability or refusal to act, a Vice President shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all of the restrictions upon the President. Any Vice President shall have only such powers and perform only such duties as the Board of Directors may from time to time prescribe or as the officers may from time to time delegate.

Section 5.6 **Secretary**. The Secretary shall attend all meetings of the Board of Directors and all meetings of the Members of the Association and record all votes and the minutes of all meetings and proceedings, including resolutions, in the Minute Book. The Secretary shall perform the same duties for any committees when required. The Secretary shall have charge of the Minute Book, the records of the Association and any papers which the Board of Directors shall direct the Secretary to keep; shall perform all duties incident to the office of Secretary, including sending notices of meetings to the Members, the Directors and members of any committees, and shall perform any other duties which may be prescribed by these Bylaws or by the Board of Directors or the President. The Secretary shall also have custody of the corporate seal and shall affix the same to any instrument requiring it when authorized by the Board of Directors and shall attest or certify the same when appropriate. The Secretary shall keep, or cause to be kept, at the principal office of the Association, a membership register showing the following: (a) the names and addresses of all Directors; (b) the names and addresses of all Members as provided by the Members; (c) the Lot that is owned by each Member; and (d) the vote of each Member. The Secretary shall prepare, execute and cause the recordation of amendments to the Declaration on behalf of the Association except when the preparation, execution and recordation thereof shall be delegated by the Board of Directors to another officer or agent of the Association. Nothing shall prohibit the functions of the Secretary to be delegated to an agent of the Association provided this delegation is approved by resolution of the Board of Directors. The delegation of the duties of the Secretary shall not relieve the Secretary from any responsibility related to overseeing and reviewing any duties performed by the agent.

Section 5.7 **Treasurer**. The Treasurer shall have the responsibility for the Association's funds and securities, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies, checks and other valuable effects in the name of and to the credit of the Association in those depositories which may be designated from time to time by the Board of Directors. The Treasurer shall disburse the funds of the Association, as the Treasurer may be ordered to do from time to time by the Board of Directors or by the President, and shall render to the President and the Directors at the regular meetings of the Board of Directors, or whenever they or either of them shall require, an account of his transactions as Treasurer and of the financial condition of the Association. Nothing shall prohibit the functions of the Treasurer to be delegated to an agent of the Association provided this delegation is approved by resolution of the Board of Directors. The delegation of the duties of the Treasurer shall not relieve the Treasurer from any responsibility related to overseeing and reviewing any duties performed by the agent.

Section 5.8 **Compensation**. The officers of the Association shall serve without compensation except that they shall be entitled to reimbursement for all expenses reasonably incurred in the discharge of their duties.

ARTICLE VI

ANNUAL BUDGETS AND ASSESSMENTS

Copies of the proposed budget setting forth the proposed annual Common Expenses, proposed reserves and proposed Assessments for the next fiscal year of the Association shall be prepared by the Board of Directors and distributed to all Members at least 30 days prior to the beginning of each fiscal year of the Association and shall be available to all Members for inspection during regular business hours at the Association's office. If the proposed budget is subsequently amended before the Assessments are made, a copy of the amended budget shall also be distributed and made available for inspection. Reserve funds shall include reasonable amounts to be credited, allocated or accumulated for replacement of those Common Areas that require replacement, renovation or rehabilitation periodically. Subject to the provisions of the Declaration, nothing herein contained shall be construed as restricting the right of the Board of Directors, at any time and in its sole discretion, to levy a Special Assessment in the event that the budget as originally adopted shall appear to be insufficient to pay the cost of the operation or management of the Property or in the event of emergencies.

ARTICLE VII

ASSOCIATION BOOKS AND RECORDS

The Association shall keep or cause to be kept (a) detailed financial records of the Association in sufficient detail to enable the Association to prepare a resale certificate in accordance with the provisions of the Act; (b) the name and mailing address of each Owner of a Lot; (c) voting records, proxies and correspondence relating to all amendments to the Declaration; and (d) the minutes of all meetings of the Members of the Association and the Board of Directors. All books and records of the Association shall be available for inspection by the Owners, Mortgagees, and their respective agents and representatives, during normal business hours. All books and records of the Association shall be kept in accordance with generally accepted accounting principals, consistently applied, and shall be audited at least once a year by an independent certified public accountant. If requested in writing by a Member or Mortgagee, the Association shall furnish such requesting Member or Mortgagee copies of the audited financial statements of the Association within 90 days following the end of each fiscal year of the Association. The Board of Directors shall further make available for the inspection by Members, Mortgagees, and their respective agents and representatives, during normal business hours, the current version of the Governing Documents and all other documents affecting the Association, the Owners, or the Property, as well as all amendments thereto and revisions thereof. Developer shall furnish copies of the information set forth in this Section to the Association on the date the first Lot is conveyed to an Owner. For purposes of this paragraph, "available" shall mean available for inspection, upon reasonable advance request of not less than 24 hours, during regular business hours at the office of the Association or the office of a Manager of the Association. The cost of any copies shall be reimbursed to the Association at a rate set by the Board of Directors.

ARTICLE VIII

WINDING UP AND TERMINATION

Upon winding up of the Association, the real and personal property of the Association shall be distributed pursuant to the provision of the Certificate of Formation or, if no such provision is

made, distributed to one or more organizations which are exempt from taxation under Section 501(c)(3) of the Code.

ARTICLE IX

MISCELLANEOUS

Section 9.1 **Fiscal Year**. The fiscal year of the Association shall be the calendar year unless the Board of Directors shall determine otherwise.

Section 9.2 **Amendments by Board of Directors**. These Bylaws may be amended from time to time by the affirmative vote of 51% of the Directors present at a meeting of Directors at which a Quorum is present. Members must be given notice of any meeting of the Directors for the purpose of amending the Bylaws not less than ten or more than 20 days preceding the date of the meeting. Any such notice shall include the specific amendment or other change proposed to be made to these Bylaws.

Section 9.3 **Amendments by Developer**. Pursuant to Article X of the Declaration, Developer may amend these Bylaws at its sole discretion and without the approval of the Board of Directors or the Members, during the Development Period.

Section 9.4 **Construction**. Number and gender as used in these Bylaws shall extend to and include both singular and plural and all genders as the context and construction require.

[The Remainder of this Page is Intentionally Left Blank]