

AMENDMENT 1 TO BYLAWS OF LA CONCHA ESTATES

ARTICLE 1: Council of Owners

1.01 Administration. LA CONCHA ESTATES, a planned residential development project located in Nueces County, Texas, shall be administered by a homeowner association (the "Association"). The Association will be a Texas non-profit corporation organized under the name of "LA CONCHA ESTATES OWNERS ASSOCIATION, Inc." The Association shall be responsible for the management, maintenance, operation, and administration of the Subdivision in accordance with the Declaration, these Bylaws, the Articles of incorporation of the Association, the duly adopted Rules and Regulations of the Association, and the laws of the State of Texas (collectively the "Subdivision Documents"). Owners of lots within the Subdivision and all persons using or entering the Subdivision shall be subject to the provisions and terms set forth in the Subdivision Documents.

1.02 Association Meetings. Meetings of the Association must be held at least once each year. Special meetings of the Association may be called by the president, a majority of the Board, or Owners having at least 20 percent of the votes in the Association.

Meetings of the Association and Board must be open to all Owners, subject to the right of the Board to adjourn a meeting of the Board and reconvene in closed executive session to consider actions involving personnel, pending litigation, contract negotiations, enforcement actions, matters involving the invasion of privacy of an Owner, or matters that are to remain confidential by request of the affected parties and agreement of the Board. The general nature of any business to be considered in executive session must first be announced at the open meeting

1.03 Method of Providing Notice to Owner.

The Association may use an alternative method if the property owner to whom the notice is provided has affirmatively opted to allow the association to use the alternative method of providing notice to provide to the owner notices for which another method is prescribed by law.

1.04 Notice of Association Meetings. Notice of time, place, and subject matter of all meetings will be mailed to each Owner at the address or email given by the Owner to the Association for notices. If any Owner fails to give an address or email to the Association, all notices will be sent to the address of the Owner/s lot, and such Owner shall be deemed to have been given notice of the meeting irrespective of actual receipt of the notice.

1.05 Membership Voting. Membership in the Association and voting by members of the Association shall be in accordance with the following:

(a) Each Owner shall be a member of the Association and no other person or entity shall be entitled to membership. No Owner shall be required to pay any consideration for his membership in the Association.

(b) Each lot shall be entitled to one (1) vote. The total number of votes in the Association is subject to change from time to time resulting from an Owners exercise of their right to re-plat their lots. If two or more lots are platted into one lot; the resulting re-platted lot shall be entitled to only one (1) vote.

(c) No Owner shall be entitled to vote at any meeting of the Association until the Owner has presented a copy of the Owner's deed to the Secretary of the Association.

(d) If title to a lot is in the name of two or more persons as Owners, any one of the Owners may vote as Owner of the lot at any meeting of the Association. The Owner's vote shall be binding on the other Owner(s) who are not present at the meeting unless written notice to the contrary from any other Owner of the lot has been received by the Association prior to the meeting. In that event the unanimous action of all the Owners of the lot (in person or by proxy) shall be required

to cast their vote as Owners. If two or more of the Owners of a lot are present at any meeting of the Association, then unanimous action shall also be required to cast their vote as Owners. Multiple Owners are in unanimous agreement if one of the multiple Owners casts the votes allocated to their lot and none of the other Owners present at the meeting makes a prompt protest to the person presiding over the meeting.

1.06 Voting. The property owners' association may not bar a property owner from voting in an association election solely based on the fact that:

- (1) there is a pending enforcement action against the property owner; or
- (2) the property owner owes the association any delinquent assessments, fees, or fines.

1.07 Quorum

(a) The presence at the beginning of the meeting, in person or by proxy, of Owners qualified to vote and representing fifty-one percent (51%) of the lots shall constitute a quorum for holding any meeting of the Association. If a quorum is not present or represented at the beginning of the meeting, the Owners then present in person or represented by proxy shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At the adjourned meeting at which a quorum shall be present or represented by proxy, any business may be transacted which might have been transacted at the original meeting. Votes at all Association meetings may only be cast in person or by proxy. Proxies must be filed with the Secretary of the Association at or before the appointed time of each meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise specifically provided in the proxy.

(b) When a quorum is present at any meeting of the Association, the vote of a majority fifty-one percent (51%) or more of the Owners qualified to vote and present in person or represented by proxy at the meeting shall decide any question brought before the meeting, unless the question is one upon which by express provision of the statutes, the Declaration, or these Bylaws, a different percentage vote is required, in which case such express provision shall govern and control the decision of such question. Owners present in person or by proxy at a duly organized meeting of the Association may continue to transact business until adjournment, notwithstanding the withdrawal of enough Owners to leave less than a quorum.

(c) At all meetings of Owners cumulative voting shall not be permitted or counted.

1.08 Association Records Retention. The Association shall keep or cause to be kept detailed financial records that comply with generally accepted accounting principles and that are sufficiently detailed to enable the Association to account for:

- (a) all expenditures and receipts for the administration of the Subdivision,
- (b) the maintenance and repair expenses of the Common Area and any other expenses incurred by or on behalf of the Association and Owners,
- (c) the Subdivision's Resale Certificate prepared under Sections 207.001 and 207.003, Disclosure of information by Property Owners' Association, of the Texas Property Code
- (d) the name and mailing address of each lot Owner,
- (e) voting records, proxies, and correspondence relating to amendments to the Subdivision Documents,
- (f) invoices for attorney's fees and other costs itemized so as to relating to all matters for which the Association seeks reimbursement of fees and costs, and
- (g) minutes of meetings of the Association and Board

The financial and other records of the Association shall be reasonably available at the office of the treasurer for examination by a lot Owner and the Owner/s authorized agents. An attorney's files and records relating to the Association, excluding invoices, are not records of the Association and are not subject to inspection by Owners or production in a legal proceeding.

1.09 Association Records. An owner or the owner's authorized representative must submit a written request for access or information by certified mail, with sufficient detail describing the property owners' association's books and records requested, to the mailing address of the association or authorized representative as reflected on the most current management certificate filed. The request must contain an election either to inspect the books and records before obtaining copies or to have the property owners' association forward copies of the requested books and records and:

- (1) if an inspection is requested, the association, on or before the 10th business day after the date the association receives the request, shall send written notice of dates during normal business hours that the owner may inspect the requested books and records to the extent those books and records are in the possession, custody, or control of the association; or
- (2) if copies of identified books and records are requested, the association shall, to the extent those books and records are in the possession, custody, or control of the association, produce the requested books and records for the requesting party on or before the 10th business day after the date the association receives the request, except as otherwise provided by this section.

If the property owners' association is unable to produce the books or records requested on or before the 10th business day after the date the association receives the request, the association must provide to the requestor written notice that:

- (1) informs the requestor that the association is unable to produce the information on or before the 10th business day after the date the association received the request; and
- (2) states a date by which the information will be sent or made available for inspection to the requesting party that is not later than the 15th business day after the date notice under this subsection is given.

If an inspection is requested or required, the inspection shall take place at a mutually agreed on time during normal business hours, and the requesting party shall identify the books and records for the property owners' association to copy and forward to the requesting party.

A property owners' association may produce books and records requested in hard copy, electronic, or other format reasonably available to the association.

The property owners' association board has adopted a records production and copying policy that prescribes the costs the association will charge for the compilation, production, and reproduction of information requested under this section. The prescribed charges may include all reasonable costs of materials, labor, and overhead but not exceed costs that would be applicable for an item under 1 T.A.C. Section 70.3.

An owner is responsible for costs related to the compilation, production, and reproduction of the requested information in the amounts prescribed by the policy adopted under this subsection. The association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information.

If the estimated costs are lesser or greater than the actual costs, the association shall submit a final invoice to the owner on or before the 30th business day after the date the information is delivered.

If the final invoice includes additional amounts due from the owner, the additional amounts, if not reimbursed to the association before the 30th business day after the date the invoice is sent to the owner, may be added to the owner's account as an assessment.

If the estimated costs exceed the final invoice amount, the owner is entitled to a refund, and the refund shall be issued to the owner not later than the 30th business day after the date the invoice is sent to the owner.

To the extent the information is provided in the meeting minutes, the property owners' association is not required to release or allow inspection of any books or records that identify the dedicatory instrument violation history of an individual owner of an association, an owner's personal financial information, including records of payment or nonpayment of amounts due 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. Information may be released in an aggregate or summary manner that would not identify an individual property owner.

The books and records described above shall be released or made available for inspection if:

- (1) the express written approval of the owner whose records are the subject of the request for inspection is provided to the property owners' association; or
- (2) a court orders the release of the books and records or orders that the books and records be made available for inspection.

Document retention policy requirements:

- (1) certificates of formation, bylaws, restrictive covenants, and all amendments to the certificates of formation, bylaws, and covenants shall be retained permanently;
- (2) financial books and records shall be retained for seven years;
- (3) account records of current owners shall be retained for five years;
- (4) contracts with a term of one year or more shall be retained for four years after the expiration of the contract term;
- (5) minutes of meetings of the owners and the board shall be retained for seven years; and
- (6) tax returns and audit records shall be retained for seven years.

A member of a property owners' association who is denied access to or copies of association books or records to which the member is entitled under this section may file a petition with the justice of the peace of a justice precinct in which all or part of the property that is governed by the association is located requesting relief in accordance with this subsection. If the justice of the peace finds that the member is entitled to access to or copies of the records, the justice of the peace may grant one or more of the following remedies:

- (1) a judgment ordering the property owners' association to release or allow access to the books or records;
- (2) a judgment against the property owners' association for court costs and attorney's fees incurred in connection with seeking a remedy under this section; or
- (3) a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded from any future regular or special assessments payable to the property owners' association.

If the property owners' association prevails in an action, the association is entitled to a judgment for court costs and attorney's fees incurred by the association in connection with the action.

On or before the 10th business day before the date a person brings an action against a property owners' association under this section, the person must send written notice to the association of the person's intent to bring the action.

The notice must:

- (1) be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service to the mailing address of the association or authorized representative as reflected on the most current management certificate filed under Section 209.004; and
- (2) describe with sufficient detail the books and records being requested.

For the purposes of this section, "business day" means a day other than Saturday, Sunday, or a state or federal holiday.

1.10 Online Subdivision Information Required.

The property owners' association has made the current version of the association's dedicatory instruments relating to the association and filed in the county deed records available on an Internet website:

- (1) maintained by the association or a management company on behalf of the association; and
- (2) available to association members.

1.11 Delivery of Subdivision Information to Owner.

(a) Not later than the 10th business day after the date a written request for subdivision information is received from an owner or the owner's agent, a purchaser of property in a subdivision or the purchaser's agent, or a title insurance company or its agent acting on behalf of the owner or purchaser and the evidence of the requestor's authority to order a resale certificate under Subsection (a-1) is received and verified, the property owners' association shall deliver to the owner or the owner's agent, the purchaser or the purchaser's agent, or the title insurance company or its agent:

- (1) a current copy of the restrictions applying to the subdivision;
- (2) a current copy of the bylaws and rules of the property owners' association; and
- (3) a resale certificate prepared not earlier than the 60th day before the date the certificate is delivered that complies with Subsection (b).

(a-1) For a request from a purchaser of property in a subdivision or the purchaser's agent, the property owners' association may require the purchaser or purchaser's agent to provide to the association, before the association begins the process of preparing or delivers the items listed in Subsection (a), reasonable evidence that the purchaser has a contractual or other right to acquire property in the subdivision.

(b) A resale certificate under Subsection (a) must contain:

- (1) a statement of any right of first refusal, other than a right of first refusal that is prohibited by statute, and other restraint contained in the restrictions or restrictive covenants that restricts the owner's right to transfer the owner's property;
- (2) the frequency and amount of any regular assessments;
- (3) the amount and purpose of any special assessment that has been approved before and is due after the resale certificate is delivered;
- (4) the total of all amounts due and unpaid to the property owners' association that are attributable to the owner's property;

- (5) capital expenditures, if any, approved by the property owners' association for the property owners' association's current fiscal year;
- (6) the amount of reserves, if any, for capital expenditures;
- (7) the property owners' association's current operating budget and balance sheet;
- (8) the total of any unsatisfied judgments against the property owners' association;
- (9) the style and cause number of any pending lawsuit in which the property owners' association is a party other than a lawsuit relating to unpaid ad valorem taxes of an individual member of the association;
- (10) a copy of a certificate of insurance showing the property owners' association's property and liability insurance relating to the common areas and common facilities;
- (11) a description of any conditions on the owner's property that the property owners' association board has actual knowledge are in violation of the restrictions applying to the subdivision or the bylaws or rules of the property owners' association;
- (12) a summary or copy of notices received by the property owners' association from any governmental authority regarding health or housing code violations existing on the preparation date of the certificate relating to the owner's property or any common areas or common facilities owned or leased by the property owners' association;
- (13) the amount of any administrative transfer fee charged by the property owners' association for a change of ownership of property in the subdivision;
- (14) the name, mailing address, and telephone number of the property owners' association's managing agent, if any;
- (15) a statement indicating whether the restrictions allow foreclosure of a property owners' association's lien on the owner's property for failure to pay assessments; and
- (16) a statement of all fees associated with the transfer of ownership, including a description of each fee, to whom each fee is paid, and the amount of each fee.

(c) A property owners' association may charge a reasonable and necessary fee, not to exceed \$375, to assemble, copy, and deliver the information required by this section and may charge a reasonable and necessary fee, not to exceed \$75, to prepare and deliver an update of a resale certificate under Subsection (f).

(c-1) The property owners' association requires payment before beginning the process of providing a resale certificate but not process a payment for a resale certificate until the certificate is available for delivery. The association may not charge a fee if the certificate is not provided in the time prescribed by Subsection (a).

(d) The property owners' association shall deliver the information required by Subsection (a) or (f) to the person specified in the written request. A written request that does not specify the name and location to which the information is to be sent is not effective. The property owners' association may deliver the information required by Subsection (a) and any update to the resale certificate required by Subsection (f) by mail, hand delivery, or alternative delivery means specified in the written request.

(e) Neither a property owners' association or its agent is required to inspect a property before issuing a resale certificate or an update to a resale certificate.

(f) Not later than the seventh business day after the date a written request for an update of a resale certificate delivered under Subsection (a) is received from an owner, owner's agent, or title insurance company or its agent acting on behalf

of the owner, the property owners' association shall deliver to the owner, owner's agent, or title insurance company or its agent an updated resale certificate that contains the following information:

- (1) if a right of first refusal or other restraint on sale is contained in the restrictions, a statement of whether the property owners' association waives the restraint on sale;
- (2) the status of any unpaid special assessments, dues, or other payments attributable to the owner's property; and
- (3) any changes to the information provided in the resale certificate issued under Subsection (a).

(g) Requests for an updated resale certificate pursuant to Subsection (f) must be made within 180 days of the date a resale certificate is issued under Subsection (a). The update request may be made only by the party requesting the original resale certificate.

1.12 Owner's Remedies for Failure by Property Owners' Association to Timely Deliver Information.

(a) If the property owners' association does not timely deliver information in accordance with Section 207.003, the owner, owner's agent, or title insurance company or its agent acting on behalf of the owner may submit a second request for the information

(b) If the property owners' association fails to deliver the information required under Section 207.003 before the fifth business day after the second request for the information was mailed by certified mail, return receipt requested, or hand delivered, evidenced by receipt, the owner:

(1) may seek one or any combination of the following:

- A) a court order directing the property owners' association to furnish the required information;
- (B) a judgment against the property owners' association for not more than \$5,000;
- (C) a judgment against the property owners' association for court costs and reasonable attorney's fees; or
- (D) a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded under Paragraphs (B) and (C) from any future regular or special assessments payable to the property owners' association; and

(2) may provide a buyer under contract to purchase the owner's property an affidavit that states that the owner, owner's agent, or title insurance company or its agent acting on behalf of the owner made, in accordance with this chapter, two written requests to the property owners' association for the information described in Section 207.003 and that the association did not timely provide the information.

(c) If the owner provides a buyer under contract to purchase the owner's property an affidavit in accordance with Subsection (b)(2):

(1) the buyer, lender, or title insurance company or its agent is not liable to the property owners' for:

- (A) any money that is due and unpaid to the property owners' association on the date the affidavit was prepared; and
- (B) any debt to the property owners' association or claim by the property owners' association that accrued before the date the affidavit was prepared; and

(2) the property owners' association's lien to secure the amounts due the property owners' association on the property on the date the affidavit was prepared shall automatically terminate.

1.13 Effect of Resale Certificate; Liability.

(a) The property owners' association may not deny the validity of any statement in the resale certificate. The property owners' association's lien to secure undisclosed amounts due the property owners' association on the date the resale certificate is prepared shall automatically terminate as a lien securing the undisclosed amount. A buyer, buyer's agent, owner, owner's agent, lender, and title insurance company and its agent are not liable for any debt or claim existing on the preparation date of the resale certificate that is not disclosed in the resale certificate.

(b) A resale certificate does not affect:

(1) the right of a property owners' association to recover debts or claims that arise or become due after the date the resale certificate is prepared; or

(2) a lien on a property securing payment of future assessments held by the property owners' association.

(c) The owner's agent and the title insurance company and its agent are not liable to a buyer for any delay or failure by the property owners' association in delivering the information required by Section 207.003.

(d) Except as provided by Section 207.004, the property owners' association is not liable to an owner selling property in the subdivision for delay or failure to deliver the information required by Section 207.003. An officer or agent of the property owners' association is not liable for a delay or failure to furnish a resale certificate.

1.14 Priority Payments.

(a) Except as provided by Subsection

(b) A payment received by the property owners' association from the owner shall be applied to the owner's debt in the following order of priority:

(1) any delinquent assessment;

(2) any current assessment;

(3) any reasonable attorney's fees or reasonable 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 reasonable attorney's fees incurred by the association that are not subject to Subdivision (3);

(5) any reasonable fines assessed by the association; and

(6) any other reasonable amount owed to the association.

(c) If at the time the property owners' association receives a payment from a property owner, the owner is in default under a payment plan entered into with the association:

(1) the association is not required to apply the payment in the order of priority specified by Subsection (a); and

(2) in applying the payment, a fine assessed by the association may not be given priority over any other amount owed to the association.

1.15 Alternative Payment Schedule for Certain Assessments.

(a) The property owners' association establish an alternative payment schedule by which an owner may make partial payments to the property owners' association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties. For purposes of this section, monetary penalties do not include reasonable costs associated with administering the payment plan or interest.

(b) The minimum term for a payment plan offered by a property owners' association is three (3) months.

(c) The property owners' association will not allow a payment plan for any amount that extends more than 18 months from the date of the owner's request for a payment plan. The association will not enter into a payment plan with an owner who failed to honor the terms of a previous payment plan during the two years following the owner's default under the previous payment plan. The association will not make a payment plan available to an owner after the period for cure described by Section 209.0064(b)(3) expires. The association is not required to allow an owner to enter into a payment plan more than once in any 12-month period.

(d) The property owners' association shall file the association's guidelines under this section in the real property records of each county in which the subdivision is located.

(e) The property owners' association's failure to file as required by this section the association's guidelines in the real property records of each county in which the subdivision is located does not prohibit a property owner from receiving an alternative payment schedule by which the owner may make partial payments to the property owners' association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties, as defined by Subsection (a).

1.16 Third Party Collections.

(a) In this section, "collection agent" means a debt collector, as defined by Section 803 of the federal Fair Debt Collection Practices Act (15 U.S.C. Section 1692a).

(b) The property owners' association may not hold an owner liable for fees of a collection agent retained by the association unless the association first provides written notice to the owner by certified mail that:

(1) specifies each delinquent amount and the total amount of the payment required to make the account current;

(2) The association is subject to Section 209.0062,

(3) And provides a period of at least 45 days for the owner to cure the delinquency before further collection action is taken.

(c) An owner is not liable for fees of a collection agent retained by the property owners' association if:

(1) the obligation for payment by the association to the association's collection agent for fees or costs associated with a collection action is in any way dependent or contingent on amounts recovered; or

(2) the payment agreement between the association and the association's collection agent does not require payment by the association of all fees to a collection agent for the action undertaken by the collection agent.

(d) The agreement between the property owners' association and the association's collection agent may not prohibit the owner from contacting the association board or the association's managing agent regarding the owner's delinquency.

(e) The property owners' association may not sell or otherwise transfer any interest in the association's accounts receivables for a purpose other than as collateral for a loan.

1.17 Credit Reporting Services

(a) The property owners' association or the association's collection agent may not report any delinquent fines, fees, or assessments to a credit reporting service that are the subject of a pending dispute between the owner and the property owners' association.

(b) The property owners' association may report the delinquent payment history of assessments, fines, and fees of property owners within its jurisdiction to a credit reporting service only if:

(1) at least 30 business days before reporting to a credit reporting service, the association sends, via certified mail, hand delivery, electronic delivery, or by other delivery means acceptable between the parties, a detailed report of all delinquent charges owed; and

(2) The property owner has been given the opportunity to enter into a payment plan.

(c) The property owners' association may not charge a fee to an individual property owner for the reporting under Subsection (b) of the delinquent payment history of assessments, fines, and fees of property owners within the association's jurisdiction to a credit reporting service.

1.18 Association's Banking Account. All Assessments, attorney's fees, costs, and other amounts collected from the Owner(s) shall be deposited into an account maintained at a financial institution in the name of the Association. Only officers of the Association, members of the Board, the Association's managing agent, or employees of the Association's managing agent may be signatories on the account.

1.19 Annual Audit. The Association shall, as a common expense, annually obtain an independent audit the records unless the audit is waived a majority vote, at a meeting of the Association.

1.20 Owner information. Not later than the 30th day after the date of acquiring an interest in a lot, and not later than the 30th day after the date any of the required information changes, the lot Owner shall provide the Association with:

(a) the lot Owners mailing address, telephone number, email, and driver's license number, if any,

(b) the name and address of the holder of any lien against the lot, and the lender's loan number

(c) the name and telephone number of any person occupying the lot other than the Owner, and

(d) the name, address, and telephone number of any person managing the lot as agent of the Owner.

1.21 Qualification of Board Members. Each member of the Board of Directors of the Association must be a member of the Association or a designated representative of such member if the member is a corporation, partnership, or other legal entity. The number of directors will be five (5), but the number of directors may be increased or decreased from time to time by amendment to these Bylaws, provided, however, that the number of directors shall never be less than three (3). An amendment to decrease the number of directors may not shorten the term of any incumbent director.

1.22 Board Membership.

(a) A person may not serve on the board of the property owners' association if the person cohabits at the same primary residence with another board member of the association.

(b) If a board is presented with written, documented evidence from a database or other record maintained by a law enforcement authority that a board member was convicted of a felony or crime involving moral turpitude not more than 20 years before the date the board is presented with the evidence, the board member is immediately ineligible to serve on the board of the property owners' association, automatically considered removed from the board, and prohibited from future service on the board.

1.23 Tenure of Directors. By resolution of July 22, 2023, at the Annual Owner's meeting, two (2) directors will be elected to serve a one (1) year term and three (3) directors who receive the greatest numbers of votes shall be elected to serve a

two (2) year term. New Directors shall be elected at the annual meeting of the Association for the Directors whose terms have expired. In subsequent years, at the Annual Meetings of the Association, the Owners shall elect all directors by secret ballot to serve a two (2) year term, and the nominees receiving the greatest number of votes shall be elected.

1.24 Notice of Election or Association Vote.

(a) For an election or vote taken at a meeting of the owners, not later than the 10th day or earlier than the 60th day before the date of the election or vote, a property owners' association shall give written notice of the election or vote to:

- (1) each owner of property in the property owners' association, for purposes of an association-wide election or vote; or
- (2) each owner of property in the property owners' association entitled under the dedicatory instruments to vote in a particular representative election, for purposes of a vote that involves election of representatives of the association who are vested under the dedicatory instruments of the property owners' association with the authority to elect or appoint board members of the property owners' association.

(a-1) For an election or vote of owners not taken at a meeting, the property owners' association shall give notice of the election or vote to all owners entitled to vote on any matter under consideration. The notice shall be given not later than the 20th day before the latest date on which a ballot may be submitted to be counted.

1.25 Election of Board Members.

(a) Notwithstanding any provision in a dedicatory instrument, any board member whose term has expired must be elected by owners who are members of the property owners' association. A board member may be appointed by the board to fill a vacancy on the board. A board member appointed to fill a vacant position shall serve for the remainder of the unexpired term of the position.

(a-1) At least 10 days before the date a property owners' association composed of more than 100 lots disseminates absentee ballots or other ballots to association members for purposes of voting in a board member election, the association must provide notice to the association members soliciting candidates interested in running for a position on the board. The notice must contain instructions for an eligible candidate to notify the association of the candidate's request to be placed on the ballot and the deadline to submit the candidate's request. The deadline may not be earlier than the 10th day after the date the association provides the notice required by this subsection.

(a-2) The notice required by Subsection (a-1) must be:

- (1) mailed to each owner; or
- (2) provided by:
 - (A) posting the notice in a conspicuous manner reasonably designed to provide notice to association members:
 - (i) in a place located on the association's common property or, with the property owner's consent, on other conspicuously located privately owned property within the subdivision; or
 - (ii) on any Internet website maintained by the association or other Internet media; and

1.26 Ballots.

Any vote cast in an election or vote by a member of a property owners' association must be in writing and signed by the member if the vote is cast:

- (1) outside of a meeting;

- (2) in an election to fill a position on the board;
- (3) on a proposed adoption or amendment of a dedicatory instrument;
- (4) on a proposed increase in the amount of a regular assessment or the proposed adoption of a special assessment; or
- (5) on the proposed removal of a board member.
- (6) Electronic votes constitute written and signed ballots.
- (7) In a property owners' association election, written and signed ballots are not required for uncontested races.

1.27 Voting; Quorum.

(a) Subject to Subsection (a-1), the voting rights of an owner may be cast or given:

- (1) in person or by proxy at a meeting of the property owners' association;
- (2) by absentee ballot in accordance with this section;
- (3) by electronic ballot in accordance with this section; or
- (4) by any method of representative or delegated voting provided by a dedicatory instrument.

(a-1) Except as provided by this subsection, unless a dedicatory instrument provides otherwise, a property owners' association is not required to provide an owner with more than one voting method. An owner must be allowed to vote by absentee ballot or proxy.

(b) An absentee or electronic ballot:

- (1) may be counted as an owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot;
- (2) 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 a property owner supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal; and
- (3) 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.

(b-1) For purposes of Subsection (b), a nomination taken from the floor in a board member election is not considered an amendment to the proposal for the election.

(c) A solicitation for votes by absentee ballot must include:

- (1) an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action;
- (2) instructions for delivery of the completed absentee ballot, including the delivery location; and
- (3) 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."

(d) For the purposes of this section, "electronic ballot" means a ballot:

(1) given by:

(A) e-mail;

(B) facsimile; or

(C) posting on an Internet website;

(2) for which the identity of the property owner submitting the ballot can be confirmed; and

(3) for which the property owner may receive a receipt of the electronic transmission and receipt of the owner's ballot.

(e) If an electronic ballot is posted on an Internet website, a notice of the posting shall be sent to each owner that contains instructions on obtaining access to the posting on the website.

1.28 Voting.

(1) a member cannot cast more votes than the member is eligible to cast in an election or vote;

(2) the association counts each vote cast by a member that the member is eligible to cast; and

(3) in any election for the board, each candidate may name one person to observe the counting of the ballots, provided that this does not entitle any observer to see the name of the person who cast any ballot and that any disruptive observer may be removed.

1.29 Tabulation of and Access to Ballots.

(a) Notwithstanding any other provision of this chapter or any other law, a person who is a candidate in a property owners' 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, as determined under Chapter 573, Government Code, may not tabulate or otherwise be given access to the ballots cast in that election or vote except as provided by this section.

(b) A person other than a person described by Subsection (a) may tabulate votes in an association election or vote.

(b-1) A person who tabulates votes under Subsection (b) or who performs a recount under Section 209.0057(c) may not disclose to any other person how an individual voted.

(c) Notwithstanding any other provision of this chapter or any other law, only a person who tabulates votes under Subsection (b) or who performs a recount under Section 209.0057(c) may be given access to the ballots cast in the election or vote.

(d) This section may not be construed to affect a person's obligation to comply with a court order for the release of ballots or other voting records.

1.30 Recount of Votes.

(a) Any owner may, not later than the 15th day after the later of the date of any meeting of owners at which the election or vote was held or the date of the announcement of the results of the election or vote, require a recount of the votes. A demand for a recount must be submitted in writing either:

- (1) by verified mail or by delivery by the United States Postal Service with signature confirmation service to the property owners' association's mailing address as reflected on the latest management certificate filed under Section 209.004; or
- (2) in person to the property owners' association's managing agent as reflected on the latest management certificate filed under Section 209.004 or to the address to which absentee and proxy ballots are mailed.

(a-1) The property owners' association must estimate the costs for performance of the recount by a person qualified to tabulate votes under Subsection (c) and must send an invoice for the estimated costs to the requesting owner at the owner's last known address according to association records not later than the 20th day after the date the association receives the owner's demand for the recount.

(a-2) The owner demanding a recount under this section must pay the invoice described by Subsection (b-1) in full to the property owners' association on or before the 30th day after the date the invoice is sent to the owner.

(a-3) If the invoice described by Subsection (b-1) is not paid by the deadline prescribed by Subsection (b-2), the owner's demand for a recount is considered withdrawn and a recount is not required.

(a-4) If the estimated costs under Subsection (b-1) are lesser or greater than the actual costs, the property owners' association must send a final invoice to the owner on or before the 30th business day after the date the results of the recount are provided. If the final invoice includes additional amounts owed by the owner, any additional amounts not paid to the association before the 30th business day after the date the invoice is sent to the owner may be added to the owner's account as an assessment. If the estimated costs exceed the final invoice amount, the owner is entitled to a refund. The refund shall be paid to the owner at the time the final invoice is sent under this subsection.

(b) Following receipt of payment under Subsection (a-2), the property owners' association shall, at the expense of the owner requesting the recount, retain for the purpose of performing the recount the services of a person qualified to tabulate votes under this subsection. The association shall enter into a contract for the services of a person who:

- (1) is not a member of the association or related to a member of the association board within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code; and

- (2) is:

- (A) a current or former:

- (i) county judge;
 - (ii) county elections administrator;
 - (iii) justice of the peace; or
 - (iv) county voter registrar; or

- (B) a person agreed on by the association and each person requesting the recount.

(c) On or before the 30th day after the date of receipt of payment for a recount in accordance with Subsection (c-2), the recount must be completed and the property owners' association must provide each owner who requested the recount with notice of the results of the recount. If the recount changes the results of the election, the association shall reimburse the requesting owner for the cost of the recount not later than the 30th day after the date the results of the recount are provided. 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.

1.31 Vacancies. Whenever a vacancy occurs in the board of directors other than from the expiration of a term of office, the remaining directors shall appoint a lot Owner to fill the vacancy for the remaining unexpired term of office.

1.32 Board Meetings. A regular meeting of the Board shall be held without call or notice immediately after and at the same place as the annual meeting of the Association.

1.33 Open Board and Special Board Meetings.

(a) In this section, "board meeting":

- (1) means a deliberation between a quorum of the voting board of the property owners' association, or between a quorum of the voting board and another person, during which property owners' association business is considered and the board takes formal action; and
- (2) does not include the 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.

(b) Regular and special board meetings must be open to owners, subject to the right of the board to adjourn a board meeting and reconvene in closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the property owners' association's attorney, 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 in the executive session must be summarized orally and placed in the minutes, in general terms, 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.

(c-1) Except for a meeting held by electronic or telephonic means under Subsection (c-2), a board meeting must be held in a county in which all or part of the property in the subdivision is located or in a county adjacent to that county.

(c-2) A board meeting may be held by electronic or telephonic means provided that:

- (1) each board member may hear and be heard by every other board member;
- (2) except for any portion of the meeting conducted in executive session:
 - (A) all owners in attendance at the meeting may hear all board members; and
 - (B) owners are allowed to listen using any electronic or telephonic communication method used or expected to be used by a board member to participate; and
- (3) the notice of the meeting includes instructions for owners to access any communication method required to be accessible under Subdivision (2)(B).

(d) 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 property owners' 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.

(e) 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:

- (1) mailed to each property owner not later than the 10th day or earlier than the 60th day before the date of the meeting; or

(2) provided at least 144 hours before the start of a regular board meeting and at least 72 hours before the start of a special board meeting by:

(A) posting the notice in a conspicuous manner reasonably designed to provide notice to property owners' association members:

(i) in a place located on the association's common property or, with the property owner's consent, on other conspicuously located privately owned property within the subdivision; or

(ii) on any Internet website available to association members that is maintained by the association or by a management company on behalf of the association; and

(B) sending the notice by e-mail to each owner who has registered an e-mail address with the association.

(f) It is an owner's duty to keep an updated e-mail address registered with the property owners' association under Subsection (e)(2)(B).

(g) 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 prescribed by Subsection (e)(2)(A) within two hours after adjourning the meeting being continued.

(h) Except as provided by this subsection, a board may take action outside of a meeting, including voting by electronic or telephonic means, without prior notice to owners under Subsection (e), if each board member is given a reasonable opportunity to express the board member's opinion to all other board members and to vote. Any action taken without notice to owners under Subsection (e) 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, unless done in an open meeting for which prior notice was given to owners under Subsection (e), consider or vote on:

(1) fines;

(2) damage assessments;

(3) initiation of foreclosure actions;

(4) initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety;

(5) increases in assessments;

(6) levying of special assessments;

(7) appeals from a denial of architectural control approval;

(8) 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;

(9) lending or borrowing money;

(10) the adoption or amendment of a dedicatory instrument;

(11) the approval of an annual budget or the approval of an amendment of an annual budget;

- (12) the sale or purchase of real property;
- (13) the filling of a vacancy on the board;
- (14) the construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or
- (15) the election of an officer.

1.34 Mandatory Election Required After Failure to Call Regular Meeting.

- (a) The board of the property owners' association shall call an annual meeting of the members of the association.
- (b) If a board of a property owners' association does not call an annual meeting of the association members, an owner may demand that a meeting of the association members be called not later than the 30th day after the date of the owner's demand. The owner's demand must be made in writing and sent by certified mail, return receipt requested, to the registered agent of the property owners' association and to the association at the address for the association according to the most recently filed management certificate. A copy of the notice must be sent to each property owner who is a member of the association.
- (c) If the board does not call a meeting of the members of the property owners' association on or before the 30th day after the date of a demand under Subsection (b), three or more owners may form an election committee. The election committee shall file written notice of the committee's formation with the county clerk of each county in which the subdivision is located.
- (d) A notice filed by an election committee must contain:
 - (1) a statement that an election committee has been formed to call a meeting of owners who are members of the property owners' association for the sole purpose of electing board members;
 - (2) the name and residential address of each committee member; and
 - (3) the name of the subdivision over which the property owners' association has jurisdiction under a dedicatory instrument.
- (e) Each committee member must sign and acknowledge the notice before a notary or other official authorized to take acknowledgments.
- (f) The county clerk shall enter on the notice the date the notice is filed and record the notice in the county's real property records.
- (g) Only one committee in a subdivision may operate under this section at one time. If more than one committee in a subdivision files a notice, the first committee that files a notice, after having complied with all other requirements of this section, is the committee with the power to act under this section. A committee that does not hold or conduct a successful election within four months after the date the notice is filed with the county clerk is dissolved by operation of law. An election held or conducted by a dissolved committee is ineffective for any purpose under this section.
- (h) The election committee may call meetings of the owners who are members of the property owners' association for the sole purpose of electing board members. Notice, quorum, and voting provisions contained in the bylaws of the property owners' association apply to any meeting called by the election committee.

1.35 Grievance Meetings. Grievance Meetings of the Board, or the Grievance Committee if one has been appointed by the Board, shall be held upon call of the President after the Association's receipt of a written request from an Owner pursuant to Section 1.37(n), below. The purpose of the Grievance Meeting is to discuss and verify facts and attempt to resolve the matter in issue.

(a) Notice of all Grievance Meetings shall be given to each director, or Grievance Committee member if a committee has been appointed, at least 10 days prior to the meeting by written notice which may be delivered personally or mailed. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail sent to the last known address of the director. The attendance of a director or Grievance Committee member at a meeting shall constitute a waiver of notice of such meeting, except when a director or member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted it nor the purpose of; any Grievance Meeting need be specified in the notice of the meeting.

(b) All Grievance Meetings shall be held no later than the 30th day after the date the Association receives the Owner's request for a hearing and shall notify the Owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. The Board, Grievance Committee, or Owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than 10 days. Additional postponements may be granted by agreement of the parties. Audio recordings shall be permitted at the hearing.

(c) The notice and hearing procedures for a Grievance Meetings and paragraph 1.37(n) below does not apply if the Association files a suit seeking a temporary restraining order or temporary injunctive relief or files a suit that includes foreclosure as a cause of action. if a suit is filed relating to a matter to which the procedures for a Grievance Meeting and paragraph 1.37(n) do apply, a party to the suit may file a motion to compel mediation, The notice and hearing procedures for a Grievance Meetings and paragraph 1.37(n) below do not apply to a temporary suspension of an Owner's right to use the Common Area if the temporary suspension is the result of a violation that occurred in a Common Area and involved a significant and immediate risk of harm to others in the Subdivision. The temporary suspension is effective until the Board makes a final determination on the suspension after following the prescribed Grievance Meeting and paragraph 1.37(n) procedures.

(d) Notwithstanding anything in the Subdivision Documents to the contrary, an Owner is not liable for attorney's fees incurred by the Association relating to a matter described in a 1.37(n) Notice if the attorney's fees are incurred before the conclusion of the Grievance Meeting, or if the Owner does not request a hearing, before the date by which the Owner must request a hearing. The notice provisions of this subsection do not apply to a counterclaim of the Association in a lawsuit brought against the Association by an Owner.

(e) The Owner's presence is not required to hold a requested Grievance Meeting.

(f) All Grievance Meetings shall be held in executive session. Prior to the effectiveness of any sanction ordered by the Board and/or the Grievance Committee, proof of notice, and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer or director who mailed the notice. The 1.37(n) Notice requirement shall be deemed satisfied if a violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed,

1.36 Quorum of Board or Grievance Meeting. A quorum is present throughout a meeting of the Board or at a Grievance Meeting if persons entitled to cast at least fifty percent (50%) of the votes on the Board or the Grievance Committee are present at the beginning of the meeting.

1.37 Powers of the Board. The Board, acting on behalf of the Association, may:

- (a) adopt and amend budgets for revenues, expenditures, and reserves, and collect assessments from the Owners.
- (b) provide for independent management of the Subdivision, hire and terminate managing agents and other employees, agents, and independent contractors.
- (c) institute, defend, intervene in settle, or compromise litigation or administrative proceedings in its own name on behalf of itself or two or more lot owners on matters affecting the Subdivision.

- (d) make contracts and incur liabilities relating to the operation of the Subdivision.
- (e) regulate the use, maintenance, repair, replacement, modification, and appearance of the all improvements to the Subdivision.
- (f) adopt and amend rules regulating the use, maintenance, repair modification, and appearance of the Common Area.
- (g) cause additional improvements to be made as a part of the Common Area.
- h) acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property.
- (i) grant easements, leases, licenses, and concessions through or over the Common Area.
- (j) impose and receive payments, fees, or charges for the use, rental, or operation of the Common Area and for services provided to the Owners.
- (k) impose interest and late charges for late payments of assessments, returned check charges, and, if notice and an opportunity to be heard are given, reasonable fines for violations of the Subdivision Documents.
- (l) adopt and amend rules regulating the collection of delinquent assessments and the application of payments
- (m) impose reasonable charges for preparing, recording, or copying declaration amendments, resale certificates, or statements of unpaid assessment.
- (n) after giving written notice to an Owner by certified mail, return receipt requested (sometimes referred to as a "1.37(n) Notice"), the Board may suspend an Owner's right to use the Common Area, file a suit against an Owner (other than a suit to collect a Regular or Special Assessment or foreclose under an Association lien), charge an Owner for property damage, or levy a fine for a violation of the Subdivision Documents.

The 1.37(n) Notice must:

1. describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the Association from the Owner, and
2. inform the Owner that the Owner:
 - A. is entitled to a reasonable period to cure the violation and avoid the fine or suspension unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months, and
 - B. may request a hearing before the Board, or the Grievance Committee if one has been appointed by the Board, on or before the 30th day after the date the Owner receives the notice
3. inform the Owner that if a hearing is to be held before the Grievance Committee that the Owner has the right to appeal the committee's decision to the Board.
4. inform the Owner if attorney's fees and costs relating to collecting amounts, including damages, due the Association for enforcing the Subdivision Documents will be charged to the Owner if the delinquency or violation continues after the cure date defined in the notice.
5. inform the Owner of the proposed sanction(s) to be imposed.

(o) at the discretion of the Board, appoint a Grievance Committee which is to be made up of no less than three (3) Owners and no more than five (5) Owners. Officers and directors on the Board may serve on the Grievance Committee, which, if appointed, will hear, discuss, and attempt to resolve any matters following a request from an Owner in receipt of a 1.37(n) Notice. Grievance Committee members shall serve three (3) year terms, subject to the right of the Board to

remove any committee member by a majority vote at a meeting of the Board. If a vacancy occurs on the Grievance Committee, either from the expiration of a term of office or resignation, the Directors shall appoint a committee member to fill the vacancy for the remaining un-expired.

(p) purchase insurance and fidelity bonds it considers appropriate or necessary.

1.38 Officers of the Association. The officers of the Association shall be a President, a Secretary, and a Treasurer, and such other officers as the Board shall from time to time determine. All offices may be held by a person who may also be a member of the Board. All officers shall be elected by and hold office at the pleasure of the Board of Directors, which shall fix the tenure of all officers.

1.39 Powers. The officers of the Association shall have the powers and duties generally ascribed to the respective officers, and such additional authority or duty as may from time to time be established by the Board.

1.40 Execution of Documents. The Board may, in its discretion, determine the method and designate the signatory officer or officers, or other persons or persons, to execute any instrument or document including amendments to the Declaration and these By-laws, or to sign the Association name without limitation, except where otherwise provided by law, and such execution or signature shall be binding upon the Association.

ARTICLE 2: TAXES, MAINTENANCE, AND ASSESSMENTS

2.01 Owner(s)' Taxes. Each Lot Owner shall be assessed as the person or entity in possession of the Owner's lot, and all real property and personal property taxes thereon shall be paid by the Lot Owner to the taxing authority.

2.02 Owner(s) Maintenance Responsibilities. Each Owner is responsible for the cost of maintenance and repair of the Owner's lot and improvements to the lot.

2.03. Association Expenses and Receipts. All costs incurred by the Association, including costs incurred in satisfaction of any liability arising from, caused by, or in connection with the Association's administration, operation, and maintenance of the Subdivision and Common Area shall be paid pro-rata by the Owners per lot (the "Common Expense"). All sums received by the Association, including all sums received from Assessments and as proceeds from any policy of insurance carried by the Association, shall be Association receipts. The share of an Owner in the funds and assets of the Association cannot be assigned, pledged, or transferred in any manner except as an appurtenance to the Owner's lot.

2.04 Association's Maintenance Responsibilities and Annual and Special Assessments.

The Association is responsible for maintenance, repair, and replacements of the Common Area.

(a) Regular Assessments: The Board shall establish an annual budget in advance for each fiscal year and such budget shall project all Common Expenses or the forthcoming year which may be required for the proper administration, operation, management, and maintenance of the Subdivision and of the Association, including reasonable allowances for working capital, contingencies, and reserves for maintenance, repairs, and replacements, and reserves for shared maintenance expenses created by any contract or agreement. The Regular Assessment levied against Owners for each year shall be established by the adoption of the annual budget by the Board. Copies of the budget will be delivered to each Owner, although the delivery of a copy of the budget to each Owner shall not affect the liability of any Owner for any existing or future assessment. Should the Board at any time determine in its sole discretion that the Regular Assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Subdivision or the Common Area in any fiscal year for any reason, including non-payment of assessments by an Owner, then the Board has the authority at any time and from time to time to levy an additional assessment or assessments as it shall deem necessary for that purpose. If, for any year, the income of the Association from assessments exceeds the sum of:

- (i) total expenses of the Association for which payment has been made or liability incurred, and
- (ii) reasonable reserves as may have been established by the Board, the additional income may be utilized in accordance with a vote of Owners at a meeting called for such purpose, which votes shall be to either: (1) return such excess to Owners or (2) apply the excess to the following year's assessments.

(b) Special Assessments, in addition to those described in paragraph 2.04(a) above, may be made by the Board at any time and from time to time:

- (i) to meet other needs or
- (ii) to construct or establish facilities deemed of benefit to the Association. All Special assessments under this paragraph shall not be levied without the prior written approval of at least sixty-seven percent (67%) of the Owners.

2.05 Allocation of Assessments. All assessments levied against the Owners to cover Common Expenses shall be apportioned among and paid by Owners on a pro-rata basis in accordance with the number of lots in the Subdivision, except for assessments made against a single Owner, such as for repairs made by the Association at the expense of an Owner or as a fine against an Owner as provided in the Subdivision Documents, which shall be paid in full by such Owner. Assessments will be made on an annual basis but may be due and payable in monthly installments, in advance, on the first day of each month, or at such other times as the Board may determine. An Owner shall be in default if such assessment, or any part thereof, is not paid to the Association in full on or before the due date for such payment; and upon written notice, after such default, the Board may accelerate and declare immediately due and payable the entire annual assessment of such Owner. Assessments in default shall bear interest at the highest lawful rate commencing on the fifth day after such assessment becomes delinquent until paid in full. Each Owner (whether one or more persons) shall be, and remain, personally (and in the case of a lot with more than one Owner, jointly and severally) liable for the payment of all assessments which may be levied against such Owner by the Association in accordance with the Subdivision Documents; and any unpaid assessments with accrued interest thereon owed with respect to a lot may, at the option of the Association, be collected out of the sales proceeds of the lot.

2.06 No Exemptions. No Owner may exempt himself from liability for provided for in the Subdivision Documents by waiver of the use or enjoyment of any of the Common Area or by the abandonment of the Owners lot.

2.07 Notice Required Before Enforcement Action.

(a) Before the property owners' association may suspend an owner's right to use a common area, file a suit against an owner other than a suit to collect a regular or special assessment or foreclose under an association's lien, charge an owner for property damage, levy a fine for a violation of the restrictions or bylaws or rules of the association, or report any delinquency of an owner to a credit reporting service, the association or its agent must give written notice to the owner by certified mail.

(b) The notice must:

(1) describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the association from the owner;

(2) except as provided by Subsection (d), inform the owner that the owner:

(A) is entitled to a reasonable period to cure the violation and avoid the fine or suspension if the violation is of a curable nature and does not pose a threat to public health or safety;

(B) may request a hearing under Section 209.007 on or before the 30th day after the date the notice was mailed to the owner; and

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

(3) specify the date by which the owner must cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety; and

(4) be sent by verified mail to the owner at the owner's last known address as shown on the association records.

(c) The date specified in the notice under Subsection (b)(3) must provide a reasonable period to cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety.

(d) Subsections (a) and (b) do not apply to a violation for which the owner has been previously given notice under this section and the opportunity to exercise any rights available under this section in the preceding six months.

(e) If the owner cures the violation before the expiration of the period for cure described by Subsection

(f), a fine may not be assessed for the violation.

(g) For purposes of this section, a violation is considered a threat to public health or safety if the violation could materially affect the physical health or safety of an ordinary resident.

(h) For purposes of this section, a violation is considered incurable if the violation has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. For purposes of this subsection, the nonrepetition of a one-time violation or other violation that is not ongoing is not considered an adequate remedy.

(i) The following are examples of acts considered incurable for purposes of this section:

(1) shooting fireworks;

(2) an act constituting a threat to health or safety;

(3) a noise violation that is not ongoing;

(4) property damage, including the removal or alteration of landscape; and

(5) holding a garage sale or other event prohibited by a dedicatory instrument.

(ii) The following are examples of acts considered curable for purposes of this section:

(1) a parking violation;

(2) a maintenance violation;

(3) the failure to construct improvements or modifications in accordance with approved plans and specifications; and

(4) an ongoing noise violation such as a barking dog.

2.08 Association Policy; Fines

(a) The property owners' association board has an enforcement policy regarding the levying of fines by the property owners' association.

(b) Members of the Association who do not comply to the rules and regulations will be sent a notice of violation via certified mail and an opportunity for a hearing.

(c) Owners will be given thirty (30) days to remedy curable violations such as:

- Parking violations;
- Maintenance violations;
- Architectural Control Authority violations;

(d) Ongoing noise violations (e.g. barking dog) are as follows: If the violation is not remedied within the times prescribed below, the following fines will be assessed:

Initial violation if not cured within thirty (30) days of notice: **\$25**

Second violation of the same offense within twelve (12) months of initial violation if not cured within fifteen (15) days of notice: **\$50**

Third violation of the same offense within twelve (12) months of initial violation if not cured within seven (7) days of notice: **\$100**

(e) Subsequent violations of the same offense within twelve (12) months of the initial violation: **\$25** per day:

(f) The owner in violation may request a hearing under Title 11 Property Code. Chapter 11 Section 209.007 on or before the 30th day after the date the notice was mailed to the owner by submitting a written request for a hearing to discuss and verify facts and resolve the matter in issue before the board. The hearing will not extend the period given to remedy the violation.

(g) No notice for a fine will be given for Incurable Violations such as, but not limited to:

- Threat to health or safety (materially affect physical health or safety of ordinary resident);
- Property Damage

(h) Incurable violations within twelve (12) months will follow the following fee schedule:

Initial Violation: **\$50**

Second Violation of the Same Rule: **\$75**

Subsequent Violations of the Same Rule: **\$100**

(i) If six (6) repeat violations occur within a six (6) month period and the violation is not cured within ten (10) days of the 6th notice the matter may be referred to the Association's attorney for further action. In the event, the attorneys' fees and collection fees will be incurred by the Owner (Violator).

(j) Violations that involve property damage or harm to others will result in an additional fine of **\$25** per day. The member shall be responsible for all costs associated with the property damage or harm to others. The violation will also merit further evaluation by the Board of Directors to preserve peace and order within the community.

(k) **POLICY FOR REPORTING VIOLATIONS** If you feel a property owner is in violation of La Concha Estates Covenants, Conditions & Restrictions, and the By-Laws please notify one or all of the board members via email.

(l) The property owners' association shall:

(1) provide a copy of the policy to an owner of each property in the subdivision by:

(A) posting the policy on an Internet website maintained by the property owners' association or an agent acting on behalf of the association and accessible to members of the association; or

(B) annually sending a copy of the policy, separately or included in routine communication from the property owners' association to property owners, by:

(i) hand delivery to the owner;

(ii) first class mail to the owner's last known mailing address; or

(iii) e-mail to an e-mail address provided to the property owners' association by the owner; and

(2) make the policy available on any publicly accessible Internet website maintained by the property owners' association or an agent acting on behalf of the association.

2.09 Hearing Before Board; Alternative Dispute Resolution.

(a) Except as provided by Subsection (d) and only if the owner is entitled to an opportunity to cure the violation, the owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before the board.

(b) The association shall hold a hearing under this section not later than the 30th day after the date the board receives the owner's request for a hearing and shall notify the owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. The board or the owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than 10 days. Additional postponements may be granted by agreement of the parties. The owner or the association may make an audio recording of the meeting.

(c) The notice and hearing provisions of Section 209.006 and this section do not apply if the association files a suit seeking a temporary restraining order or temporary injunctive relief or files a suit that includes foreclosure as a cause of action. If a suit is filed relating to a matter to which those sections apply, a party to the suit may file a motion to compel mediation. The notice and hearing provisions of Section 209.006 and this section do not apply to a temporary suspension of a person's right to use common areas if the temporary suspension is the result of a violation that occurred in a common area and involved a significant and immediate risk of harm to others in the subdivision. The temporary suspension is effective until the board makes a final determination on the suspension action after following the procedures prescribed by this section.

(d) An owner or property owners' association may use alternative dispute resolution services.

(e) Not later than 10 days before the association holds a hearing under this section, the association shall provide to an owner a packet containing all documents, photographs, and communications relating to the matter the association intends to introduce at the hearing.

(f) If an association does not provide a packet within the period described by Subsection (f), an owner is entitled to an automatic 15-day postponement of the hearing.

(g) During a hearing, a member of the board or the association's designated representative shall first present the association's case against the owner. An owner or the owner's designated representative is entitled to present the owner's information and issues relevant to the appeal or dispute.

2.10 Collection of Assessments. The Association may enforce collection of delinquent Regular or Special Assessments by suit at law for a money judgment, and the expenses incurred in collecting such unpaid assessments including interest, costs, and attorney's fees shall be chargeable to the Owner in default. Further, all assessments are secured by a continuing lien on the Owner's lot and on rents and insurance proceeds received by the Owner relating to the lot. The term "Assessments" may mean Regular or Special assessment, and all dues, fees, charges, interest, late fees, fines, collection costs, attorney's fees, and any other amount due to the Association by the Owner or levied against the lot by the Association.

2.11 Attorney's Fees.

- (a) The property owners' association may collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the association relating to collecting amounts, including damages, due the association for enforcing restrictions or the bylaws or rules of the association only if the owner is provided a written notice that attorney's fees and costs will be charged to the owner if the delinquency or violation continues after a date certain.
- (b) An owner is not liable for attorney's fees incurred by the association relating to a matter described by the notice under Section 209.006 if the attorney's fees are incurred before the conclusion of the hearing under Section 209.007 or, if the owner does not request a hearing under that section, before the date by which the owner must request a hearing. The owner's presence is not required to hold a hearing under Section 209.007.
- (c) All attorney's fees, costs, and other amounts collected from an owner shall be deposited into an account maintained at a financial institution in the name of the association or its managing agent. Only members of the association's board or its managing agent or employees of its managing agent may be signatories on the account.
- (d) On written request from the owner, the association shall provide copies of invoices for attorney's fees and other costs relating only to the matter for which the association seeks reimbursement of fees and costs.
- (e) The notice provisions of Subsection (a) do not apply to a counterclaim of an association in a lawsuit brought against the association by a property owner.

The number of attorney's fees included in a non-judicial foreclosure sale for an Assessment is limited to the greater of:

- (a) one-third of the amount of all actual costs and Assessments, excluding attorney's fees, plus interest and court costs, or
- (b) \$2,500.00, or
- (c) as provided by section 209.008 of the Texas Property Code or its amendment. This restriction on attorney's fees only applies to the Association's remedy of nonjudicial foreclosure. It does not prevent the Association from recovering or collecting Attorney's fees in excess of the restricted amounts by other means provided by law.

2.12 Priority of the Association's Lien: The Association's lien for Assessments has priority over any other lien except:

- (a) a lien for real property taxes and other governmental assessments or charges against the Lot,
- (b) a first vendor's lien and first deed of trust securing a note given for the purchase of a lot (a "purchase money lien") that is recorded before the date on which the Assessments sought to be enforced becomes delinquent,
- (c) a deed of trust securing a note for work and material used in the construction of improvements on the Owner's lot if contracted for in writing as provided by Sections 53.254(a), (b), and (e) of the Texas Property Code and recorded before the date on which the assessments sought to be enforced becomes delinquent, and
- (d) a deed of trust securing an extension of credit that meets the requirements of Sections 50(a)(6), Article XVI, Texas Constitution (a "Home Equity Loan") that is recorded before the date on which the assessments sought to be enforced becomes delinquent.

2.13 Assessment Lien Enforcement: To evidence the Association's lien, the Board may authorize an officer of the Association to prepare and sign a written notice signed setting forth the amount of any unpaid Assessments, the name of the Owner in default, and a description of the Owners lot. The notice may be filed of record with the County Clerk, Nueces County, Texas (the lien shall attach from the due date of such unpaid assessment, however, not the date of the filing of the notice). A lien for Assessments may be enforced by the Association by judicial foreclosure in a suit to recover

a money judgment for the delinquent assessments, and/or through a nonjudicial sale by exercising the power of sale granted to the Association by the Owner as provided in the Declaration and in accordance with Section 51.002 of the Texas Property Code, and shall also secure the interest, costs, and attorneys' fees incurred in such action. The Association shall have the power to bid in the Condominium Lot at foreclosure and to acquire, hold, lease, mortgage, convey, or otherwise deal with the same.

2.14 Foreclosure Sale Prohibited in Certain Circumstances: As provided by Section 209.009 of the Texas Property Code, the Association may not foreclose an Assessment lien if the Regular or Special Assessment debt has been paid by the Owner and the remaining debt to the Association consists solely of:

- (a) fines assessed by Association, or
- (b) attorney's fees incurred by the Association solely associated with fines assessed by the Association. Amounts added to the owner's account as an assessment for records cost or fees for recount of votes. In such an event, the Association's remedy is to collect the debt from the Owner when the Owner's lot is sold, or to file a lawsuit to recover a money judgment for unpaid assessments without foreclosing or waiving the lien securing the same, and the Association's attorney's fees in such an action is not restricted by the caps set forth in section 2.09 above.

2.15 Loss of Voting Rights: An Owner in default of his obligations to the Association or other Owners as set forth herein shall not be entitled to vote at any meeting of the Association so long as such default continues.

2.16 Prerequisites to Foreclosure; Notice and Opportunity to Cure for Certain Other Lien Holders

(a) The property owners' association may not file an application for an expedited court order authorizing foreclosure of the association's assessment lien as described by Section 209.0092(a) or a petition for judicial foreclosure of the association's assessment lien as described by Section 209.0092(d) unless the association has:

- (1) provided written notice of the total amount of the delinquency giving rise to the foreclosure to any other holder of a lien of record on the property whose lien is inferior or subordinate to the association's lien and is evidenced by a deed of trust; and
- (2) provided the recipient of the notice an opportunity to cure the delinquency before the 61st day after the association mails the notice described in Subdivision (1).

(b) Notice under this section must be sent by certified mail to the address for the lienholder shown in the deed records relating to the property that is subject to the property owners' association assessment lien.

(c) Notwithstanding any other law, notice under this section may be provided to any holder of a lien of record on the property.

2.17 Judicial Foreclosure Required.

(a) Except as provided by Subsection (c) or (d) and subject to Section 209.009 the property owners' association may not foreclose a property owners' association assessment lien unless the association first obtains a court order in an application for expedited foreclosure under the rules adopted by the supreme court under Subsection (b). A property owners' association may use the procedure described by this subsection to foreclose any lien described by the association's dedicatory instruments. A property owners' association whose dedicatory instruments grant a right of foreclosure is considered to have any power of sale required by law as a condition of using the procedure described by this subsection.

(b) The supreme court, as an exercise of the court's authority under Section 74.024, Government Code, shall adopt rules establishing expedited foreclosure proceedings for use by a property owners' association in foreclosing an assessment

lien of the association. The rules adopted under this subsection must be substantially similar to the rules adopted by the supreme court under Section 50(r), Article XVI, Texas Constitution.

(c) Expedited foreclosure is not required under this section if the owner of the property that is subject to foreclosure agrees in writing at the time the foreclosure is sought to waive expedited foreclosure under this section. A waiver under this subsection may not be required as a condition of the transfer of title to real property.

(d) The property owners' association authorized to use the procedure described by Subsection (a) may in its discretion elect not to use that procedure and instead foreclose the association's assessment lien under court judgment foreclosing the lien and ordering the sale, pursuant to Rules 309 and 646a, Texas Rules of Civil Procedure.

(e) This section does not affect any right an association that is not authorized to use the procedure described by Subsection (a) may have to judicially foreclose the association's assessment lien as described by Subsection (d).

2.18 Removal or Adoption of Foreclosure Authority.

A provision granting a right to foreclose a lien on real property for unpaid amounts due to a property owners' association may be removed from a dedicatory instrument or adopted in a dedicatory instrument by a vote of at least 67 percent of the total votes allocated to property owners in the property owners' association. Owners holding at least 10 percent of all voting interests in the property owners' association may petition the association and require a special meeting to be called for the purposes of taking a vote for the purposes of this section.

2.19 Assessment Lien Filing.

(a) In this section, "assessment lien" means a lien, lien affidavit, or other lien instrument evidencing the nonpayment of assessments or other charges owed to a property owners' association.

(b) An assessment lien filed in the official public records of a county is a legal instrument affecting title to real property.

(c) Before the property owners' association files an assessment lien, the association must provide notices of delinquency in accordance with Subsections (d) and (e).

(d) The first notice of delinquency must be provided:

(1) by first class mail to the property owner's last known mailing address, as reflected in records maintained by the association; or

(2) by e-mail to an e-mail address the property owner has provided to the property owners' association.

(e) The second notice of delinquency must be provided by certified mail, return receipt requested, to the property owner's last known mailing address, as reflected in the records maintained by the association, not earlier than the 30th day after notice is given under Subsection (d).

(f) The property owners' association may not file an assessment lien before the 90th day after the date notice of delinquency was sent to the property owner under Subsection (e).

2.20 Notice After Foreclosure Sale:

(a) The property owners' association that conducts a foreclosure sale of an owner's lot must send to the lot owner and to each lienholder of record, not later than the 30th day after the date of the foreclosure sale, a written notice stating the date and time the sale occurred and informing the lot owner and each lienholder of record of the right of the lot owner and lienholder to redeem the property under Section 209.011.

(b) The Post Foreclosure Notice must be written stating the date and time the sale occurred and informing the Owner of the right of the lot owner and lienholder to redeem the property under Section 209.011.

(c) The notice must be sent by certified mail, return receipt requested, to:

- (1) the lot owner's last known mailing address, as reflected in the records of the property owners' association;
- (2) the address of each holder of a lien on the property subject to foreclosure evidenced by the most recent deed of trust filed of record in the real property records of the county in which the property is located; and
- (3) the address of each transferee or assignee of a deed of trust described by Subdivision (2) who has provided notice to a property owners' association of such assignment or transfer. Notice provided by a transferee or assignee to a property owners' association shall be in writing, shall contain the mailing address of the transferee or assignee, and shall be mailed by certified mail, return receipt requested, or United States mail with signature confirmation to the property owners' association according to the mailing address of the property owners' association pursuant to the most recent management certificate filed of record pursuant to Section 209.004.

(c-1) If a recorded instrument does not include an address for the lienholder, the association does not have a duty to notify the lienholder as provided by this section.

(c-2) For purposes of this section, the lot owner is deemed to have given approval for the association to notify the lienholder.

(d) Not later than the 30th day after the date the association sends the notice required by Subsection (a), the association must record an affidavit in the real property records of the county in which the lot is located, stating the date on which the notice was sent and containing a legal description of the lot. Any person is entitled to rely conclusively on the information contained in the recorded affidavit.

(e) The notice requirements of this section also apply to the sale of an owner's lot by a sheriff or constable conducted as provided by a judgment obtained by the property owners' association.

2.21 Owner's Right of Redemption: The Owner of a lot purchased by the Association at a foreclosure sale of the Association's lien for Assessments may redeem the lot not later than the 180th day after the date of the Post Foreclosure Notice is mailed to the Owner. A person who purchases a lot at a sale foreclosing the Association's Assessment lien may not transfer ownership of the lot to a person other than the redeeming lot Owner during the redemption period.

2.22 Redemption Procedure from the Association: To redeem a lot purchased by the Association at the Assessment foreclosure sale, the lot Owner must pay to the Association:

- (a) all amounts due the Association at the time of the foreclosure sale,
- (b) interest from the date of foreclosure sale to the date of redemption at the annual rate of 10%,
- (c) costs incurred by the Association in foreclosing the lien and conveying the lot to the redeeming lot Owner, including reasonable attorney's fees,
- (d) any assessment levied against the lot by the Association after the foreclosure sale, and
- (e) any reasonable cost incurred by the Association as owner of the Lot, including mortgage payments and costs of repair, maintenance, and leasing and leasing the property.
- (f) the purchase price paid by the Association at the foreclosure sale less any amounts due the Association that were satisfied out of the foreclosure sale proceeds.

2.23 Right of Redemption After Foreclosure.

(a) The property owners' association or other person who purchases occupied property at a sale foreclosing a property owners' association's assessment lien must commence and prosecute a forcible entry and detainer action under Chapter 24 to recover possession of the property.

(b) The owner of property in a residential subdivision or a lienholder of record may redeem the property from any purchaser at a sale foreclosing a property owners' association's assessment lien not later than the 180th day after the date the association mails written notice of the sale to the owner and the lienholder under Section 209.010. A lienholder of record may not redeem the property as provided herein before 90 days after the date the association mails written notice of the sale to the lot owner and the lienholder under Section 209.010, and only if the lot owner has not previously redeemed.

(c) A person who purchases property at a sale foreclosing a property owners' association's assessment lien may not transfer ownership of the property to a person other than a redeeming lot owner during the redemption period.

(d) To redeem property purchased by the property owners' association at the foreclosure sale, the lot owner or lienholder must pay to the association:

(1) all amounts due the association at the time of the foreclosure sale;

(2) interest from the date of the foreclosure sale to the date of redemption on all amounts owed the association rate stated in the dedicatory instruments for delinquent assessments or, if no rate is stated, at an annual interest rate of 10 percent;

(3) costs incurred by the association in foreclosing the lien and conveying the property to the lot owner, including reasonable attorney's fees;

(4) any assessment levied against the property by the association after the date of the foreclosure sale;

(5) any reasonable cost incurred by the association, including mortgage payments and costs of repair, maintenance, and leasing of the property; and

(6) the purchase price paid by the association at the foreclosure sale less any amounts due the association under Subdivision (1) that were satisfied out of foreclosure sale proceeds.

(e) To redeem property purchased at the foreclosure sale by a person other than the property owners' association, the lot owner or lienholder:

(1) must pay to the association:

(A) all amounts due the association at the time of the foreclosure sale less the foreclosure sales price received by the association from the purchaser;

(B) interest from the date of the foreclosure sale through the date of redemption on all amounts owed the association at the rate stated in the dedicatory instruments for delinquent assessments or, if no rate is stated, at an annual interest rate of 10 percent;

(C) costs incurred by the association in foreclosing the lien and conveying the property to the redeeming lot owner, including reasonable attorney's fees;

(D) any unpaid assessments levied against the property by the association after the date of the sale; and

(E) taxable costs incurred in a proceeding brought under Subsection (a); and

(2) must pay to the person who purchased the property at the foreclosure sale:

- (A) any assessments levied against the property by the association after the date of the foreclosure sale and paid by the purchaser;
- (B) the purchase price paid by the purchaser at the foreclosure sale;
- (C) the amount of the deed recording fee;
- (D) the amount paid by the purchaser as ad valorem taxes, penalties, and interest on the property after the date of the foreclosure sale; and
- (E) taxable costs incurred in a proceeding brought under Subsection (a).

(f) If a lot owner or lienholder redeems the property under this section, the purchaser of the property at shall immediately execute and deliver to the redeeming party a deed transferring the property to the lot owner. If a purchaser fails to comply with this section, the lot owner or lienholder may file an action against the purchaser and may recover reasonable attorney's fees from the purchaser if the lot owner or the lienholder is the prevailing party in the action.

(g) If, before the expiration of the redemption period, the redeeming lot owner or lienholder fails to record the deed from the foreclosing purchaser or fails to record an affidavit stating that the lot owner or lienholder has redeemed the property, the lot owner's or lienholder's right of redemption as against a bona fide purchaser or lender for value expires after the redemption period.

(h) The purchaser of the property at the foreclosure sale or a person to whom the person who purchased the property at the foreclosure sale transferred the property may presume conclusively that the lot owner or a lienholder did not redeem the property unless the lot owner or a lienholder files in the real property records of the county in which the property is located:

(1) a deed from the purchaser of the property at the foreclosure sale; or

(2) an affidavit that:

(A) states that the property has been redeemed;

(B) contains a legal description of the property; and

(C) includes the name and mailing address of the person who redeemed the property.

(i) If the property owners' association purchases the property at foreclosure, all rent and other income collected association from the date of the foreclosure sale to the date of redemption shall be credited toward the amount owed the association under Subsection (d), and if there are excess proceeds, they shall be refunded to the lot owner. If a person other than the association purchases the property at foreclosure, all rent and other income collected by the purchaser from the date of the foreclosure sale to the date of redemption shall be credited toward the amount owed the purchaser under Subsection (e), and if there are excess proceeds, those proceeds shall be refunded to the lot owner.

(j) If a person other than the property owners' association is the purchaser at the foreclosure sale, before executing a deed transferring the property to the lot owner, the purchaser shall obtain an affidavit from the association or its authorized agent stating that all amounts owed the association under Subsection (e) have been paid. The association shall provide the purchaser with the affidavit not later than the 10th day after the date the association receives all amounts owed to the association under Subsection (e). Failure of a purchaser to comply with this subsection does not affect the validity of a redemption.

(k) Property that is redeemed remains subject to all liens and encumbrances on the property before foreclosure. Any lease entered into by the purchaser of property at a sale foreclosing an assessment lien of a property owners' association

is subject to the right of redemption provided by this section and the lot owner's right to reoccupy the property immediately after redemption.

(l) If a lot owner makes partial payment of amounts due the association at any time before the redemption period expires but fails to pay all amounts necessary to redeem the property before the redemption period expires, the association shall refund any partial payments to the lot owner by mailing payment to the owner's last known address as shown in the association's records not later than the 30th day after the expiration date of the redemption period.

(m) If a lot owner or lienholder sends by certified mail, return receipt requested, a written request to redeem the property on or before the last day of the redemption period, the lot owner's or lienholder's right of redemption is extended until the 10th day after the date the association and any third party foreclosure purchaser provides written notice to the redeeming party of the amounts that must be paid to redeem the property.

(n) After the redemption period and any extended redemption period provided by Subsection (m) expires without a redemption of the property, the association or third party foreclosure purchaser shall record an affidavit in the real property records of the county in which the property is located stating that the lot owner or a lienholder did not redeem the property during the redemption period or any extended redemption period.

(o) The association or the person who purchased the property at the foreclosure sale may file an affidavit in the real property records of the county in which the property is located that states the date the citation was served in a suit under Subsection (a) and contains a legal description of the property. Any person may rely conclusively on the information contained in the affidavit.

(p) The rights of a lot owner and a lienholder under this section also apply if the sale of the lot owner's property is conducted by a constable or sheriff as provided by a judgment obtained by the property owners' association.

2.24 Restrictive Covenants Granting Easements to Certain Property Owners' Associations.

(a) The property owners' association may not amend a dedicatory instrument to grant the property owners' association an easement through or over an owner's lot without the consent of the owner.

2.25 Regulation of Residential Leases or Rental Agreements.

(a) The property owners' association may request the following information to be submitted to the association regarding a lease or rental applicant:

- (1) contact information, including the name, mailing address, phone number, and e-mail address of each person who will reside at a property in the subdivision under a lease; and
- (2) the commencement date and term of the lease.

2.26 Notice to Lender: If a Lot Owner is delinquent in payment of Assessments to an Association, at the request of the Association a holder of a recorded lien against the Lot may provide the Association with information about the Lot Owner's debt secured by the holder's lien against the Lot and other relevant information. At the request of a lien holder, the Association may furnish the lien holder with information about the Subdivision and the Lot Owner's obligations to the Association.

2.27 Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Board to prepare or adopt a budget for any final year shall not constitute a waiver or release in any manner of an Owner's obligation to pay Assessments. In the absence of any annual budget or adjusted budget, each Owner shall continue to pay Assessments at the rate established for the previous fiscal year until notice of the new payment which is due after such new annual or adjusted budget shall have been adopted.

2.28 Statement of Assessments. Upon written request, the Association shall provide any mortgagee a written statement of all unpaid Assessments due from the Owner. The Board may impose a reasonable charge for the preparation of such statement to cover the cost of preparation and delivery of the statement.

2.29 Litigation Expenses. The Board may utilize the funds of the Association, whether collected by Regular or Special Assessments, to pay the costs and expenses, including attorney's fees as provided in these By-laws incurred or arising in connection with any litigation by or against the Association, including, but not limited to, suits to collect Assessments from an Owner and bidding at the foreclosure sale of a lot.

ARTICLE 3: OWNER ACTION

3.01 Without limiting the other legal rights of any Owner, legal action may be brought by the Association in its sole discretion on behalf of two (2) or more Owners, as their respective interests may appear, with respect to any cause of action relating to the enforcement of the Subdivision Documents,

3.02 Justice Court Jurisdiction. An owner of property in the subdivision may bring an action for a violation of Chapter 209 OF Title 11 against the property owners' association of the subdivision in the justice court of a precinct in which all or part of the subdivision is located.

ARTICLE 4: INSURANCE

4.01 Insurance. The association shall maintain, to the extent reasonably available, proper insurance on the insurable Common Area insuring against all risks of direct physical loss commonly insured against, including fire, flood, and extended coverage, in a total amount of at least 80 percent of the replacement cost or actual cash value of the insured properly as of the effective date and at each renewal date of the policy, and commercial general liability insurance, including medical payments insurance, in an amount determined by the Board covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Area. All property insurance must provide that:

- (a) each Lot Owner is an insured person under the policy with respect to liability arising out of the person's ownership of an undivided interest in the Common Area or membership in the Association;
- (b) the insurer waives its right to subrogation under the policy against a Lot Owner;
- (c) no action or omission of a Lot Owner, unless within the scope of the Lot Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and
- (d) if at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same property covered by the policy, the Association's policy provides primary insurance.

4.02 Fidelity Insurance. The Association may also maintain adequate fidelity coverage to protect against dishonest acts on the part of directors, officers, trustees, employees, volunteers, and managers, if any, of the Association who handle, or are responsible for handling, funds belonging to or administered by the Association. Such fidelity bonds shall name the Association as obligee, shall be written in an amount at least equal to one hundred fifty percent (150%) of the estimated annual operating expenses and reserves of the Association for the current year, and shall contain waivers of any defense based upon the exclusion of any persons who serve without compensation.

4.03 Premiums. All premiums upon insurance purchased by the Association pursuant to these Bylaws shall be included in the Association's budget in accordance with Paragraph 2.04(a).

4.04 Claims and Proceeds. A claim for any loss covered by the Association's Policy must be submitted by and adjusted with the Association. Proceeds of all insurance policies owned by the Association shall be received by the Association, and not to any Lot Owner or lien holder, and held in separate account and applied by the Association to remedy the casualty or restore the funds occasioned by the loss.

4.05 Owners Contents. The Association shall not be responsible for procurement or maintenance of any insurance covering any hazards to the contents of any Lot nor the liability of any Owner for occurrences therein not caused by or connected with the Association's operation, maintenance, or use of the Project.

4.06 Unavailable Insurance. Neither the Board, nor any officer of the Association, shall be liable for failure to obtain any, coverage required by this Article or for any loss or damages resulting from such failure. If such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is so available only at demonstrably unreasonable cost. If the insurance is not reasonably available, the Board shall cause notice of that fact to be delivered or mailed to all Lot Owners and lien holders. This section does not affect the right of a lienholder to require a Lot Owner to acquire insurance in addition to that provided by the Association.

ARTICLE 5: ADDITIONS, MAINTENANQE. REPAIR, AND REPLACEMENT

5.01 Additions, Alterations, or improvements by Board of Directors. Whenever in the judgment of the Board the Common Area shall require additions, alterations, or improvements costing in excess of Ten Thousand Dollars (\$10,000.00) during any period of twelve consecutive months (or in excess of Ten Thousand Dollars more than reserves accumulated thereof), such additions, alterations, or improvements shall be made only with the prior approval of the Association, at a meeting of the Association at which a quorum is present, and passed by a vote sixty-seven percent (67%) of the Owners qualified to vote and present in person or represented by proxy at the meeting. Following the Association's approval, the Board may proceed with such additions, alterations, or improvements and shall assess all Owners for the cost thereof as a Common Expense. Any additions, alterations, or improvements costing Ten Thousand Dollars (\$10,000) or less during any period of twelve consecutive months (or not in excess of Ten Thousand Dollars (\$10,000) more than reserves accumulated thereof) may be made by the Board without prior approval of the Owners and the cost thereof shall constitute a Common Expense, which may be assessed, if necessary, as provided in Paragraph 2.04(a).

5.02 Association Contracts.

(a) The association may enter into an enforceable contract with a current association board member, a person related to a current association board member within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, a company in which a current association board member has a financial interest in at least 51 percent of profits, or a company in which a person related to a current association board member within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a financial interest in at least 51 percent of profits only if the following conditions are satisfied:

- (1) the board member, relative, or company bids on the proposed contract and the association received at least two other bids for the contract from persons not associated with the board relative, or company, if reasonably available in the community;
- (2) the board member:
 - (A) is not given access to the other bids;
 - (B) does not participate in any board discussion regarding the contract; and
 - (C) does not vote on the award of the contract;

(3) the material facts regarding the relationship or interest with respect to the proposed contract are disclosed to or known by the association board and the board, in good faith and with ordinary care, authorizes the contract by an affirmative vote of the majority of the board members who do not have an interest governed by this subsection; and

(4) the association board certifies that the other requirements of this subsection have been by a resolution approved by an affirmative vote of the majority of the board members who do not have an interest governed by this subsection.

(b) In addition to the other applicable requirements of this section, an association that proposes to contract for services that will cost more than \$50,000 shall solicit bids or proposals using a bid process established by the association.

ARTICLE 6: MORTGAGES

6.01 Mortgagee's Responsibility for Assessments. Any first lien purchase money and/or construction mortgagee which obtains title to a Lot as a result of a foreclosure of its lien shall extinguish the Association's lien on the Lot for assessments which accrued prior to the foreclosure. All assessments accruing on a Lot after the date of the foreclosure sale shall be assessed and paid by the foreclosing Mortgagee as the Owner of the Lot, and such Mortgagee shall abide by and conform to all Subdivision Documents.

ARTICLE 7: COMPLIANCE

7.01 Acceptance of Governing Rules. The Association, all present or future Owners, tenants, future tenants, or any other persons using the Subdivision facilities shall comply with the Subdivision Documents. In the event these Bylaws shall be inconsistent with the Declaration, then the Declaration shall be controlling.

7.02 Amendment of ByLaws. These Bylaws may be amended by the members of the Association from time to time. All amendments must be approved at a meeting of the Association the notice of which will contain the nature of the amendment and its written text. A quorum must be present at the meeting, and the amendment must be passed by a vote of sixty-seven percent (67%) or more of the Owners qualified to vote and present in person or represented by proxy at the meeting. Upon the approval of any amendment, an instrument in recordable form setting forth the amendment and containing a certificate by the President and the Secretary of the Association, certifying as to the accuracy of the contents of such amendment and as to its due adoption in accordance herewith shall be prepared and filed of record in Nueces County, Texas, and such instrument shall be effective to amend these Bylaws without the signatures of any other parties.

ARTICLE 8:

NET EARNINGS OF ASSOCIATION

8.01 Association Earnings: Except to the extent Owners shall benefit (i) from the administration, operation, management, maintenance, repair, and/or rebuilding of the Common Area by the Association or (ii) from the rebating of excess Assessments to Owners, no part of the net earnings of the Association shall inure to the benefit of any Owner or any other individual.

ARTICLE 9: SEVERABILITY

9.01 Severability: In the event that any of the terms, provisions, or covenants of these Bylaws are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify, or impair in any manner whatsoever any of the other terms, provisions, or covenants hereof or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

ARTICLE 10: HEADINGS

10.01 Headings: The headings used in these Bylaws have been inserted for administrative convenience only and do not constitute a matter to be construed in interpretation.

EXECUTED this the _____

By: La Concha Owners' Association, Inc.