

Mary Louise Nicholson
MARY LOUISE NICHOLSON
COUNTY CLERK

INSTRUMENT TO RECORD DEDICATORY INSTRUMENTS

This Instrument is being recorded by Enchanted Bay Homeowners Association, a Texas non-profit corporation (the "Association") pursuant to Section 202.006 of the Texas Property Code.

Section 202.006 of the Texas Property Code requires a property owners' association to record each dedicatory instrument in the real property records of the County in which the property to which the dedicatory instrument relates is located, if such instrument has not previously been recorded; and

Restrictive covenants and other matters concerning the Enchanted Bay Subdivision are set forth in the Enchanted Bay Declaration of Covenants, Conditions and Restrictions, recorded in the Real Property Records of Tarrant County, Texas, under Clerk's File No. D221150717.

The Association is currently subject to the following dedicatory instruments which have not previously been recorded, to-wit:

Certificate of Formation of the Association
By-Laws of the Association.

Pursuant to Section 202.006 of the Texas Property Code, the Association does hereby record such dedicatory instruments, copies of which are attached hereto in the order set forth hereinabove.

Executed on the 30 day of June, 2021.

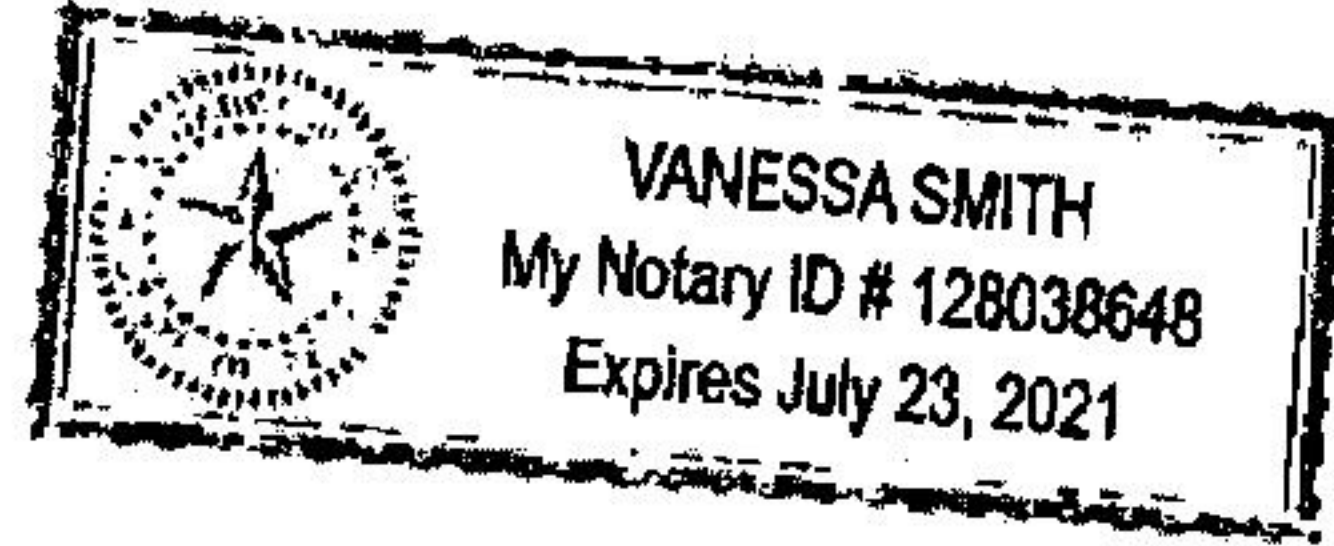
**ENCHANTED BAY HOMEOWNERS
ASSOCIATION**, a Texas non-profit
corporation

By:

Kevin Morse
Kevin Morse, President

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This instrument was acknowledged before me on June 3^o. 2021, by Kevin Morse, President of Enchanted Bay Homeowners Association, a Texas non-profit corporation, on behalf of said entity.



Vanessa Smith
Notary Public, State of Texas

WHEN RECORDED RETURN TO:

Mark K. Knop
Hoover Slovacek LLP
Galleria Tower II
5051 Westheimer, Suite 1200
Houston, Texas 77056

Unofficial Copy

Filing#: 803880454 Document#: 1016145080002 Filed On 12/28/2020 received by Upload

**CERTIFICATE OF FORMATION
OF
ENCHANTED BAY HOMEOWNERS ASSOCIATION**

The undersigned natural person, being of the age of eighteen (18) years or more, a citizen of the State of Texas, acting as incorporator of a nonprofit corporation under the Texas Business Organizations Code, does hereby adopt the following Certificate of Formation for such corporation:

ARTICLE I

NAME

The name of the corporation is: **ENCHANTED BAY HOMEOWNERS ASSOCIATION** (hereinafter called the "Association").

ARTICLE II

NONPROFIT CORPORATION

The Association is a nonprofit corporation.

ARTICLE III

DURATION

The Association shall exist perpetually.

ARTICLE IV

PURPOSE AND POWERS OF THE ASSOCIATION

The Association is organized in accordance with, and shall operate for nonprofit purposes pursuant to the Texas Business Organizations Code, and does not contemplate pecuniary gain or profit to its members. The Association is formed for the purpose of exercising all of the powers and privileges, and performing all of the duties and obligations, of the Association as set forth in those certain covenants, conditions and restrictions for Enchanted Bay subdivision recorded or to be recorded in the Official Public Records of Tarrant County, Texas, as the same may be amended from time to time (herein, for convenience called the "Declaration"). Without limiting the generality of the foregoing, the Association is organized for the following general purposes:

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

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

**ARTICLE V
REGISTERED OFFICE; REGISTERED AGENT**

The street address of the initial registered office of the Association is 10410 Windermere Lakes Blvd., Houston, TX 77065. The name of its initial registered agent at such address is Lauren Sullivan.

**ARTICLE VI
MEMBERSHIP**

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

**ARTICLE VII
VOTING RIGHTS**

Voting rights of the members of the Association shall be determined as set forth in the Declaration. No owner, other than the Declarant under the Declaration, shall be entitled to vote at any meeting of the Association until such owner has presented to the Association evidence of ownership of a qualifying property interest in the Property.

**ARTICLE VIII
INCORPORATOR**

The name and street address of the incorporator is:

NAME

ADDRESS

Louis Trapolino

10410 Windermere Lakes Blvd.
Houston, Texas 77065

**ARTICLE IX
BOARD OF DIRECTORS**

The affairs of the Association shall be managed by an initial Board of Directors consisting of three (3) individuals, who need not be members of the Association. The Board shall fulfill all of the functions of, and possess all powers granted to, Boards of Directors of nonprofit corporations pursuant to the Texas Business Organizations Code. The number of Directors of the Association may be changed by amendment of the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of initial Directors until the selection of their successors are:

<u>NAME</u>	<u>ADDRESS</u>
Kyle Kirkland	10410 Windermere Lakes Blvd. Houston, Texas 77065
Kevin Morse	10410 Windermere Lakes Blvd. Houston, Texas 77065
Lyndsey Marrie	10410 Windermere Lakes Blvd. Houston, Texas 77065

All of the powers and prerogatives of the Association shall be exercised by the initial Board of Directors named above until the first annual meeting of the Association.

**ARTICLE X
LIMITATION OF DIRECTOR LIABILITY**

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

**ARTICLE XI
INDEMNIFICATION**

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

**ARTICLE XII
DISSOLUTION**

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

**ARTICLE XIII
ACTION WITHOUT MEETING**

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

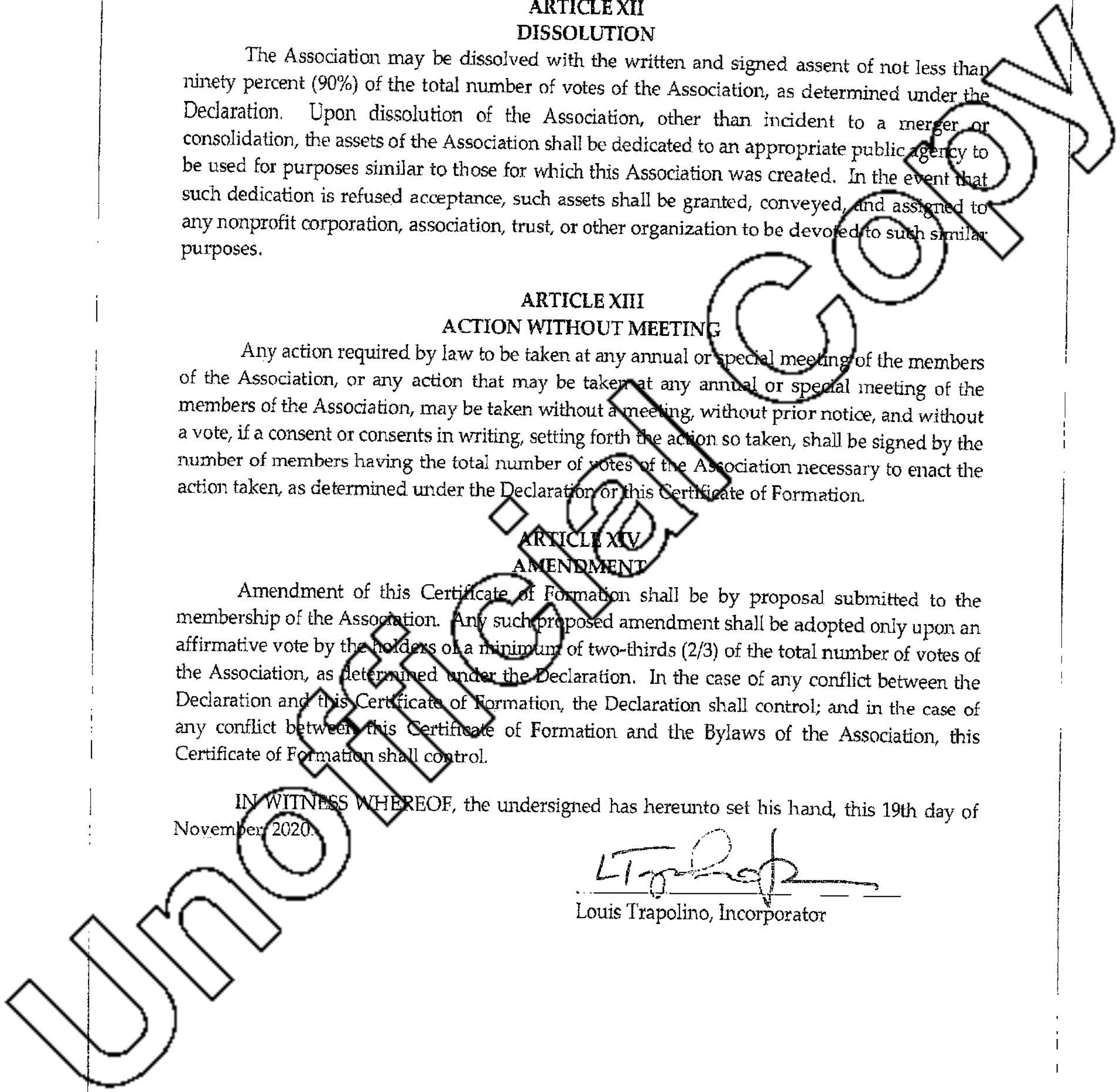
**ARTICLE XIV
AMENDMENT**

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

IN WITNESS WHEREOF, the undersigned has hereunto set his hand, this 19th day of November, 2020.



Louis Trapolino, Incorporator



**BY-LAWS
OF
ENCHANTED BAY HOMEOWNERS ASSOCIATION**

**ARTICLE I
Name, Principal Office, and Definitions**

Section 1. Name. The name of the corporation is Enchanted Bay Homeowners Association (the "Association").

Section 2. Principal Office. The principal office of the Association shall be located in Tarrant County, Texas. The Association may have such other offices, either within or outside the State of Texas, as the Board of Directors may determine or as the Association's affairs may require.

Section 3. Definitions. The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain recorded Enchanted Bay Declaration of Covenants, Conditions, and Restrictions (as it may be amended and supplemented from time to time, the "Declaration"), unless the context indicates otherwise.

**ARTICLE II
Members, Meetings, and Voting**

Section 1. Eligibility. Membership in the Association shall be as set forth in the Declaration.

Section 2. Regular Meetings. The first meeting of the Members shall be held within one (1) year after the date of formation of the Association or sooner at the option of Declarant; thereafter, annual meetings of Members shall be held by October 1 of each year. All such meetings of Members shall be held at the time and place in or out of the State of Texas, stated in the notice of the meeting or in a waiver of notice or the Board of Directors may, in its sole discretion, designate holding any such meeting(s) by conference telephone or similar communications equipment, or other suitable electronic communications system, including videoconferencing technology or the internet, or any combination thereof ("Electronic Means"). Attendance at any meeting by Electronic Means shall constitute presence at the meeting for all purposes, including but not limited to quorum purposes regardless as to whether or not voting is allowed during the meeting. Written notice of such meeting which shall be given to all Members at least ten (10) days, but not more than sixty (60) days, prior to the date of such meeting. At such meetings, the Members shall transact such other business of the Association as may properly come before them and, after the expiration of the Development Period (or sooner as provided below), the Members shall elect, by written and signed ballots, a Board of Directors in accordance with the requirement of Article III, Section 1, of these By-Laws.

Section 3. Special Meetings. Special meetings of the Members may be called by the President as directed by a resolution of the Directors of the Board, or upon petition signed by a majority of Members and having been presented to the Secretary or Assistant Secretary of the

Association. Said special meetings shall be called by delivering written notice to all Members not less than ten (10) days or more than sixty (60) days prior to the date of said meeting stating the date, time and place of said special meeting and the matters to be considered. Any such meetings shall be held after the first annual meeting and shall be held within thirty (30) days of receipt by the President of such resolution or petition.

Section 4. Delivery of Notice of Meetings. Notices of meetings may be delivered either personally or by mail, facsimile or email to a Member at the address given to the Board by said Member for such purpose.

Section 5. Proxies, Electronic Ballots, Absentee Ballots and Other Methods of Representative or Delegated Voting. All Members may attend meetings of the Association in the manner prescribed by the Board of Directors, in its sole discretion, and Members may exercise their vote at such meeting in any of the following methods, as authorized by the Board of Directors, in its sole discretion: in person, by proxy, absentee ballot, electronic ballot or any other method of representative or delegated voting authorized by the Board of Directors, in its sole discretion. The Board of Directors is not required to afford Members with more than one (1) voting method. As used elsewhere in these Bylaws, the word "proxy" or "proxies" shall, in the sole discretion of the Board of Directors, mean a paper proxy or proxies, and at the sole discretion of the Board of Directors, electronic ballot(s), absentee ballot(s), or any other method of representative or delegated voting authorized by the Board of Directors, in its sole discretion. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her Lot.

Section 6. Quorum. A quorum of Members for any meeting shall be constituted by Members represented in person or by proxy and holding at least ten percent (10%) of the votes entitled to be cast at said meeting. Notwithstanding anything contained herein to the contrary, the quorum requirement for a meeting of the Members, as such meeting pertains to the election of Directors, shall be those Members present in person or by proxy, absentee ballot, electronic ballot or any other method of representative or delegated voting approved by the Board of Directors of the Association (the "Board" or "Board of Directors"), at such meeting.

Section 7. Rules of Meetings. The Board may prescribe reasonable rules for the conduct of all meetings of the Board and Members.

Section 8. Proxies. Votes may be cast in person or by written proxy. No proxy shall be valid after eleven (11) months from the date of its execution. All proxies must be filed with the Secretary of the Association before the appointed time of such meeting.

ARTICLE III **Board of Directors**

Section 1. Number, Election and Term of Office. The Board shall initially consist of three (3) Members ("Directors"). Until the expiration of the Development Period (however such right to appoint may be subject to earlier termination according to the terms hereof), the Board governing the affairs of the Association shall be appointed by the Declarant acting in its sole discretion and shall

serve at the pleasure of the Declarant, unless the Declarant shall earlier surrender this right to appoint the Directors. The names of the initial Directors appointed by Declarant are set forth in the Certificate of Formation of the Association (the "Certificate of Formation"). At the first meeting of the Association after the expiration of the Development Period (or earlier as set forth below), there shall be elected to the Board by vote of the Members any five (5) Members of the Association, who shall thereafter govern the affairs of the Association until their successors have been duly elected and qualified. Those candidates for election as Director receiving the greatest percentage of the votes cast either in person or by proxy at the meeting shall be elected.

Notwithstanding anything to the contrary above, even though the Development Period may not yet have terminated, at least one-third of the members of the Board of Directors must be elected by the Class A Members on or before the earlier of: (i) 120 days after 75% of the lots that may be created and made subject to the Declaration (including all additional lots that are anticipated by the Declarant to be annexed into the Properties and into the jurisdiction of the Association) are conveyed to Class A Members other than those Class A Members who are builders in the business of constructing homes or who purchased the Lot(s) from the Declarant for the purpose of selling completed homes built on the Lot(s); or (ii) ten years from the date the Declaration is recorded.

At the first meeting of the Association after the expiration of the Development Period (or earlier as set forth above), the term of office of three (3) Directors shall be fixed at two (2) years and the term of office of two (2) Directors shall be fixed at one (1) year, and all Directors shall hold office for such term and until the Director's successor shall be elected and qualified; and at each annual meeting thereafter, the Members shall elect a Director for a term of two (2) years to fill each expiring term.

The number of Directors may be increased or decreased by resolution of the Board; provided however, that the number of Directors shall not be reduced to less than three (3) nor increased to more than seven (7).

Section 2. Solicitation of Director Candidates. At least ten (10) days before the date the Association disseminates absentee ballots, proxy/ballots or other ballots to Members for purposes of voting in a Board member election, the Association shall provide notice to the Members soliciting candidates interested in running for a position on the Board in the manner provided in Chapter 209 of the Texas Property Code.

Section 3. Qualifications. Each Director (except a Director appointed by the Declarant) shall be a Member (or, if a Member is a trustee of a trust, a Director may be a beneficiary of such trust, and if a Member or such beneficiary is a corporation or partnership, a Director may be an officer, partner or employee of such Member or beneficiary). If a Director shall cease to meet such qualifications during his or her term, he or she shall thereupon cease to be a Director and be deemed to have resigned and his or her place on the Board shall be deemed vacant.

Section 4. Vacancies. Any vacancy occurring on the Board caused by death, disability or resignation shall be filled by majority vote of the remaining Directors thereof, even though they may constitute less than a quorum. Any Director so elected or appointed to fill a vacancy shall hold office for a term equal to the unexpired term of the Director whom he or she succeeds.

Section 5. Meetings. A regular annual meeting of the Board shall be held within thirty (30) days following the regular annual meeting of Members and thereafter as determined by the Board, in its sole discretion. Special meetings of the Board shall be held upon a call by the President or by a majority of the Board on not less than seventy-two (72) hours' notice in writing to each Director, delivered personally or by mail or telegram. Any Director may waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action proposed to be taken by the Board without a meeting. A Director's attendance at a meeting shall constitute his or her waiver of notice of said meeting. If required by law, Board meetings shall be open to the Members and notice shall be given to all Members as required.

Section 6. Removal. Any Director (except a Director appointed by the Declarant) may be removed from office for cause by a majority vote of Members entitled to vote at any annual or special meeting of the Association, duly called, if allowed by law. If removed, then a replacement shall be elected as Director at such annual or special meeting by majority vote of Members entitled to vote, after nominations from the floor.

Section 7. Compensation. Directors shall receive no compensation for their services as Directors, unless expressly provided for in resolutions duly adopted by a majority of the Members.

Section 8. Board of Directors' Quorum. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and, except as herein set out, the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board. If at any meeting of the Board there be less than a quorum present, the majority of those present may adjourn the meeting from time to time for periods of no longer than 30 days until a quorum is obtained or until a conclusion can be reached. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 9. Voting. An affirmative vote of a majority of those Directors present at a meeting at which a quorum is in attendance shall be necessary to transact business.

Section 10. Powers and Duties. The Board shall have the following powers and duties:

- (a) to elect and remove the officers of the Association as hereinafter provided;
- (b) to administer the affairs of the Association and the Property, and to change the name of the Association, if appropriate;
- (c) to formulate policies for the administration, management and operation of the property held for the use and benefit of all Members ("Common Properties");
- (d) to adopt rules and regulations, with written notice thereof to all Members, governing the administration, management, operation and use of the Common Properties, and to amend such rules and regulations from time to time;
- (e) to provide for the maintenance, repair and replacement of the Common Properties and

payments therefor, and to approve payment vouchers or delegate such approval to the officers or a managing agent;

(f) to provide for the designation, hiring and removal of employees and other personnel, including accountants and attorneys, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Common Properties and to delegate any such powers to a managing agent (and any such employees or other personnel who may be the employees of a managing agent);

(g) to appoint committees of the Board and to delegate to such committees the Board's authority to carry out certain duties of the Board;

(h) to determine the fiscal year of the Association and to change said fiscal year from time to time as the Board deems advisable;

(i) to collect all assessments, fees and charges provided for in any covenants and restrictions imposed in the Enchanted Bay Subdivision and to use the proceeds therefrom for the purposes set forth in such covenants and restrictions and in the Certificate of Formation of the Association.

(j) to establish bank accounts which are interest bearing or non-interest bearing, and to otherwise invest the funds of the Association, as may be deemed advisable by the Board;

(k) to borrow money, including but not limited to borrowing money from the Declarant to fund and operate the Association, execute and deliver promissory notes and execute and deliver any and all other documentation necessary to properly document such borrowing, except that no mortgages shall be granted that encumber the Common Properties;

(l) to enter such contracts and agreements relating to the providing of maintenance, management and operational services as the Board may deem advisable;

(m) to enter such leases and easements of portions of the Common Properties as the Board may deem advisable; and

(n) to exercise all powers and duties of the Members as a group referred to in Chapter 22, Nonprofit Corporations, of the Texas Business Organizations Code, and all powers and duties of the Board referred to in these By-Laws;

(o) in general, to carry on the administration of the Association and to do all of those things necessary and/or desirable in order to carry out the governing and operating of the Association; and

(p) to exercise all powers and duties of the Association under the Declaration which are not otherwise specifically reserved to the Members.

Section 11. Non-Delegation. Nothing in this Article or elsewhere in these By-Laws shall be considered to grant to the Board, the Association or to the officers of the Association any powers or duties which, by law, have been delegated to the Members.

Section 12. Electronic/Telephone Attendance. At any meeting of the Board, a Director may attend by telephone, radio, television or other similar means of communication, provided the means permit the Director personally to participate in the meeting such that all Directors can hear and be heard by every other Director attending the meeting. A Director so attending shall be deemed to be present at the meeting for all purposes, including a determination as to whether a quorum is present. Except for any portion of the meeting conducted in executive session, all Members in attendance at the meeting may hear all Board members, Members are allowed to listen using any electronic or telephone communication method used or expected to be used by a Board member to participate, and the notice of the meeting shall include instructions for Members to access any communication method being use.

ARTICLE IV Officers

Section 1. Designation. At each regular annual meeting of the Board, the Directors present at said meeting shall elect the following officers of the Association by a majority vote:

(a) a President who shall be a Director and who shall preside over the meetings of the Board and of the Members, and who shall be the chief executive officer of the Association;

(b) a Secretary, who shall keep the minutes of all meeting of the Board and of the Members, and who shall, in general, perform all the duties incident to the office of Secretary, and who may be a representative of the Managing Agent and who may also be Treasurer;

(c) a Treasurer, who shall be responsible for financial records and books of account and the manner in which such records and books are kept and reported;

(d) such additional officers as the Board shall see fit to elect.

Section 2. Powers. The respective officers shall have the general powers usually vested in such officers; provided that the Board may delegate any specific powers to any other officer or impose such limitations or restrictions upon the powers of any officer as the Board may see fit.

Section 3. Term of Office. Each officer shall hold office for the term of one year and until his successor shall have been appointed or elected and qualified.

Section 4. Vacancies. Vacancies in any office shall be filled by the Board by a majority vote of the Board at a special meeting of said Board. Any officer so elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer he succeeds. Any officer may be removed for cause at any time by vote of a majority of the total membership of the Board at a special meeting thereof.

Section 5. Compensation. The officers shall receive no compensation for their services as officers, unless expressly provided for in a resolution duly adopted by a majority of the Members.

ARTICLE V
Amendments

The By-Laws may be altered, amended, or repealed and new By-Laws may be adopted by the vote of a majority of all of the members of the Board of Directors; and the provisions of these By-Laws which are covered by the Certificate of Formation of the Association may not be amended except as provided in the Certificate of Formation or applicable law.

ARTICLE VI
Fiscal Year

The fiscal year of the Association shall be the calendar year unless otherwise fixed by the Board from time-to-time.

ARTICLE VII
Indemnification

Section 1. When Indemnification is Required, Permitted and Prohibited.

(a) The Association shall indemnify a Director, officer, committee member, employee, or agent of the Association who was, is, or may be named defendant or respondent in any proceeding as a result of his or her actions or omissions within the scope of his or her official capacity in the Association. For the purposes of this article, an agent includes one who is or was serving at the request of the Association as a Director, officer, partner, venturer, proprietor, trustee, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise. However, the Association shall indemnify a person only if he or she acted in good faith and reasonably believed that the conduct was in the Association's best interests. In a case of a criminal proceeding, the person may be indemnified only if he or she had no reasonable cause to believe that the conduct was unlawful. The Association shall not indemnify a person who is found liable to the Association or is found liable to another on the basis of improperly receiving a personal benefit. A person is conclusively considered to have been found liable in relation to any claim, issue, or matter if the person has been adjudged liable by a court of competent jurisdiction and all appeals have been exhausted.

(b) The termination of a proceeding by judgment, order, settlement, conviction or on a plea of nolo contendere or its equivalent does not necessarily preclude indemnification by the Association.

(c) The Association shall pay or reimburse expenses incurred by a Director, officer, Member, committee member, employee, or agent of the Association in connection with the person's appearance as a witness or other participation in a proceeding involving or affecting the Association when the person is not a named defendant or respondent in the proceeding.

(d) In addition to the situations otherwise described in this paragraph, the Association may indemnify a Director, officer, Member, committee member, employee, or agent of the Association to the extent permitted by law. However, the Association shall not indemnify any person in any situation in which indemnification is prohibited by the terms of Section 1(a) above.

(e) Before the final disposition of a proceeding, the Association may pay indemnification expenses permitted by the By-Laws and authorized by the Association. However, the Association shall not pay indemnification expenses to a person before the final disposition of a proceeding if the person is a named defendant or respondent in a proceeding brought by the Association or one or more Members, or the person is alleged to have improperly received a personal benefit or committed other willful or intentional misconduct.

(f) If the Association may indemnify a person under the By-Laws, the person may be indemnified against judgments, penalties, including excise and similar taxes, fines, settlements, and reasonable expenses (including attorney's fees) actually incurred in connection with the proceeding. However, if the proceeding was brought by or on behalf of the Association, the indemnification is limited to reasonable expenses actually incurred by the person in connection with the proceeding.

Section 2. Procedure Relating to Indemnification Payments.

(a) Before the Association may pay any indemnification expenses (including attorney's fees), the Association shall specifically determine that indemnification is permissible, authorize indemnification, and determine that expenses to be reimbursed are reasonable, except as provided in Section 2(c) below. The Association may make these determinations and decisions by any one of the following procedures:

(i) Majority vote of a quorum consisting of Directors who, at the time of the vote, are not named defendants or respondents in the proceeding.

(ii) If such a quorum cannot be obtained, by a majority vote of a committee of the Board of Directors, designated to act in the matter by a majority vote of all Directors, consisting solely of two or more Directors who at the time of the vote are not named defendants or respondents in the proceeding.

(iii) Determination by special legal counsel selected by the Board of Directors by vote as provided in Section 2(a)(i) or 2(a)(ii) or if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all Directors.

(iv) Majority vote of Members, excluding Directors who are named defendants or respondents in the proceeding.

(b) The Association shall authorize indemnification and determine that expenses to be reimbursed are reasonable in the same manner that it determines whether indemnification is permissible. If the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination of reasonableness of expenses shall be made in the manner specified by Section 2(a)(iii) above, governing the selection of special legal

counsel. A provision contained in the articles of incorporation, the By-Laws, or a resolution of Members or the Board of Directors that requires the indemnification permitted by Section 1, above, constitutes sufficient authorization of indemnification even though the provision may not have been adopted or authorized in the same manner as the determination that indemnification is permissible.

(c) The Association shall pay indemnification expenses before final disposition of a proceeding only after the Association determines that the facts then known would not preclude indemnification and the Association receives a written affirmation and undertaking from the person to be indemnified. The determination that the facts then known to those making the determination would not preclude indemnification and authorization of payment shall be made in the same manner as a determination that indemnification is permissible under Section 2(a) above. The person's written affirmation shall state that he or she has met the standard of conduct necessary for indemnification under the By-Laws. The written undertaking shall provide for repayment of the amount paid or reimbursed by the Association if it is ultimately determined that the person has not met the requirements for indemnification. The undertaking shall be an unlimited general obligation of the person, but it need not be secured and it may be accepted without reference to financial ability to make repayment.

ARTICLE VIII
Conflicts

In case of any conflict between the Certificate of Formation and these By-Laws, the Certificate of Formation shall control. Should all or part of any Article of these By-Laws be in conflict with the provisions of Chapter 22, Nonprofit Corporations, of the Texas Business Organizations Code or any other Texas law, such act or law shall control.

ASSOCIATION:

ENCHANTED BAY HOMEOWNERS ASSOCIATION, a Texas non-profit corporation

By: Lyndsey Marie
Lyndsey Marie, Secretary
Effective Date: June 30, 2021

Unofficial Copy