

## BYLAWS OF MORNINGWOOD HOMEOWNERS ASSOCIATION, INC.

These Bylaws govern the affairs of Morningwood Homeowners Association, Inc., a nonprofit corporation.

### ARTICLE 1

#### OFFICES

##### Principal Office

1.01. The Corporation's principal office in Texas will be located at 3510 N. St. Mary's, Suite 300, San Antonio, Texas 78212. The Corporation may have such other offices, in Texas or elsewhere, as the Board of Directors may determine. The Board may change the location of any office of the Corporation.

##### Registered Office and Registered Agent

1.02. The Corporation will maintain a registered office and registered agent in Texas. The registered office may, but need not, be identical with the Corporation's principal office in Texas. The Board may change the registered office and the registered agent as permitted in the Texas Non-Profit Corporation Act.

### ARTICLE 2

#### MEMBERS

##### Two Classes of Members

2.01. The Corporation will have two classes of members. One class shall be the Developer and the other class shall be composed of lot owners in the subdivision. The only distinction between the classes is that the Developer shall not be liable for Membership fees on lots owned by it in the subdivision. The Developer is Acorn Land Corporation. The other class of members shall be persons who own a lot in the Morningwood Subdivision.

##### Membership Fees and Dues

2.02. Until changed by *[the Board or vote of the members]* the annual membership fee shall be \$50.00 for each lot owned in the subdivision. Membership fees are due on January 15<sup>th</sup> each year at the registered office of the corporation or such other place as the Board shall direct from time to time. The annual membership fee may be changed by a majority vote of the *[Board or Membership]*. Fees that are not paid within 30 days of the due date are delinquent and will earn interest at the rate of 18% per annum from their due date until paid. A member who has not paid membership fees by June 15<sup>th</sup> in any year shall be subject to sanctions as set forth below.

##### Voting Rights

2.03. Each member is entitled to one vote per lot on each matter submitted to a vote of the members, provided that the corporation has adopted a "one lot, one vote" rule. When a lot is owned by more than one member, only one vote is allowed, and the members shall decide among themselves how to cast that vote. If they are unable to do so, their vote shall not be counted for any purpose.

##### Resolving Disputes

2.04. In any dispute between members relating to the Corporation's activities, all parties involved

will cooperate in good faith to resolve the dispute. If the parties cannot resolve a dispute among themselves, they will cooperate to select one or more mediators to help resolve it. If no timely resolution of the dispute occurs through mediation, any party may demand binding arbitration as described in Civil Practice and Remedies Code Section 171.001 only if the parties have met together with a mediator. This paragraph will not apply to a dispute involving the Corporation as a party relating to the enforcement of the Declaration of Limitations and Restrictions (as amended from time to time) governing the subdivision, nor to the sanctioning of a member of the Corporation. The Board has discretion to authorize using corporate funds for mediating or arbitrating a dispute described in this paragraph.

### **Sanctioning Members**

2.05. The Board may impose reasonable sanctions on any member except the Developer, including the removal of voting privileges, for good cause after a hearing. A person who is sanctioned due to a delinquency related to one lot is sanctioned as to all lots that person owns in the subdivision. For example, if a member owns two lots and is sanctioned due to a delinquency as to one of those lots, that member loses his or her privileges as to all lots. Good cause includes defaulting on an obligation to the Corporation to pay fees or dues for a period of six months after the due date, or a material and serious violation of the Corporation's Articles of Incorporation, Bylaws, Declaration of Limitations and Restrictions (as amended from time to time), rules and laws. The Board may delegate powers to a regular or ad hoc committee to conduct a hearing, make recommendations to the Board, or take action on the Board's behalf. The Board, or a committee designated by the Board to handle a matter involving sanctioning, may not take any action against a member without giving the member adequate notice and an opportunity to be heard. To be deemed adequate, notice must be in writing and delivered at least 14 days before the hearing. But shorter notice may be deemed adequate if the Board or a committee designated by the Board to handle a matter involving sanctioning determines that the need for a timely hearing outweighs the prejudice caused to the member and if the notice states the need for a timely hearing. If mailed, the notice will be sent by registered or certified mail, return receipt requested. A member may be represented by counsel at and before the hearing. The Board or a committee designated by the Board to handle a matter involving sanctioning may impose sanctions by vote of a majority of directors or a committee designated by the Board to handle a matter involving sanctioning who are present and voting.

### **Reinstatement**

2.06. A sanctioned member may submit a written request for reinstatement of membership privileges. The Board or a committee designated by the Board to handle the matter may reinstate membership privilege on any reasonable terms that the Board or committee deems appropriate provided all delinquent amounts owing to the corporation have been paid or adequate provision for payment has been made.

### **Transferring Membership**

2.07. Membership in the Corporation follows title to the ownership of a lot in the subdivision. Transfer of ownership of a lot automatically transfers membership. The person who sells the last lot he or she owns in the subdivision ceases to be a member of the corporation, but all fees owing to the corporation at the time of the transfer shall remain the personal liability of the transferring member and shall be secured by a lien on the lot for which the fees are due.

### **Waiving Interest in Corporate Property**

2.08. The Corporation owns all real and personal property, including all improvements located on the property, acquired by the Corporation. A member has no interest in specific property of the Corporation. Each member waives the right to require partition of all or part of the Corporation's property.

ARTICLE 3  
MEETINGS OF MEMBERS

**Annual Meeting**

3.01. Beginning in 2002, the Board will hold an annual members' meeting at a time and place to be designated by the Board. At the annual meeting, the members will elect directors and transact any other business that may come before the meeting. If, in any year, the election of directors is not held on the day designated for the annual meeting, or at any adjournment of the annual meeting, the Board will call a special meeting of the members, as soon as possible, to elect directors.

**Special Meetings**

3.02. Special meetings of the members may be called by the president, the Board, or not less than one-fourth of the voting members.

**Place of Meeting**

3.03. The Board may designate any place within a 50 mile radius of the entrance of the subdivision as the place of meeting for any annual meeting or for any special meeting called by the Board.

**Notice of Meetings**

3.04. Written or printed notice of any members' meeting, including the annual meeting, will be delivered to each member entitled to vote at the meeting not less than 10--nor more than 60--days before the date of the meeting. The record date for determining the members entitled to notice of any meeting of members will be thirty (30) days prior to the scheduled date of the meeting. After fixing the record date, the Board will cause to be prepared an alphabetical list of all members entitled to notice of any meeting of members. Notice will be given by or at the direction of the president or secretary, or the officers or persons calling the meeting. If all of the members meet and consent to holding a meeting, any corporate action may be taken at the meeting regardless of lack of proper notice.

**Eligibility to Vote at Members' Meetings**

3.05. A member in good standing is entitled to vote at a meeting of the members of the corporation. A member in good standing is one who has paid all required fees and dues and who has not been deprived of voting privileges as of the record date.

**Quorum**

3.06. Members holding one-tenth of the votes that may be cast at a meeting who attend the meeting in person or by proxy will constitute a quorum at a meeting of members. The members present at a duly called or held meeting at which a quorum is present may continue to transact business, even if enough members leave so that less than a quorum remains. However, no action may be approved without the vote of at least a majority of the number of members required for a quorum. If a quorum is not present at any time during a meeting, a majority of the members who are present may adjourn and reconvene the meeting once without further notice.

**Actions of Membership**

3.07. The membership will try to act by consensus. However, if a consensus is not available on a matter or proposal, the vote of a majority of voting members in good standing, present and entitled to vote at a meeting at which a quorum is present, is enough to constitute the act of the membership unless law or the bylaws require a greater number. Voting will be by ballot or voice, except that any election of directors will be by ballot.

### **Proxies**

3.08. Members shall not be permitted to vote by proxy.

### **Voting by Mail**

3.09. The Board may authorize members to vote by mail on the election of directors and officers or on any other matter that the members may vote on. The Board shall have the power to adopt rules governing the election process, and those rules shall be valid and not subject to attack unless they are clearly discriminatory and capricious.

## **ARTICLE 4**

### **BOARD OF DIRECTORS**

#### **Management of Corporation**

4.01. The Board will manage corporate affairs.

#### **Number, Qualifications, and Tenure of Directors**

4.02. The number of Directors will be a number determined by the Board that is not less than five and not greater than nine. Directors need not be Texas residents. Directors will be members of the Corporation. Each director will serve for a term of two years. The directors' terms will be staggered so that the terms of half of the directors will begin in even-numbered years; the terms of the other half, in odd-numbered years. If the initial directors are unable to agree on who will serve an initial one year term, they shall do so by drawing terms from a hat. The initial directors named in the Articles of Incorporation shall have the right to appoint directors to fill any vacancies occurring by reason of the increase in the number of directors or by reason of any director who resigned prior to the organizational meeting of the corporation.

#### **Nominating Directors**

4.03. A nominating committee will consider possible nominees and make nominations for each election of directors. In addition, the Board shall adopt rules to permit members to submit nominations to be considered by the membership. The secretary will include the names nominated by that committee, and by members at large, and any report of the committee, with the notice of the meeting at which the election occurs.

#### **Electing Directors**

4.04. A person who meets the qualifications for director and who has been duly nominated may be elected as a director. Directors will be elected by the vote of the membership. Each director will hold office until a successor is elected and qualifies. A director may be elected to succeed himself or herself as director. Subject to the right of the Board to adopt rules for election by mail, the Directors will be elected at the annual meeting of the members.

#### **Vacancies**

4.05. The Board will fill any vacancy in the Board and any director position to be filled due to an increase in the number of directors. A vacancy is filled by the affirmative vote of a majority of the remaining directors, even if it is less than a quorum of the Board, or if it is a sole remaining director. A director selected to fill a vacancy will serve for the unexpired term of his or her predecessor in office.

### **Annual Meeting**

4.06. The annual meeting of the Board may be held without notice other than these Bylaws. The annual Board meeting will be held immediately after, and at the same place as, the annual members' meeting.

### **Regular Meetings**

4.07. The Board may provide for regular meetings by resolution stating the time and place of such meetings. The meetings may be held anywhere that a meeting of the members may be held. No notice of regular Board meetings is required other than a Board resolution stating the time and place of the meetings.

### **Special Meetings**

4.08. Special Board meetings may be called by, or at the request of, the president or any two directors. A person or persons authorized to call special meetings of the Board may fix the place for holding a special meeting, provided that it must be a place where a meeting of the members could be held. The person or persons calling a special meeting will inform the secretary of the corporation of the information to be included in the notice of the meeting. The secretary of the Corporation will give notice to the directors as these Bylaws require.

### **Notice**

4.09. Written or printed notice of any special meeting of the Board will be delivered to each director not less than seven, nor more than fifteen days before the date of the meeting. The notice will state the place, day, and time of the meeting; who called it; and the purpose or purposes for which it is called.

### **Quorum**

4.10. A majority of the number of directors then in office constitutes a quorum for transacting business at any Board meeting. The directors present at a duly called or held meeting at which a quorum is present may continue to transact business even if enough directors leave the meeting so that less than a quorum remains. However, no action may be approved without the vote of at least a majority of the number of directors required for a quorum. If a quorum is never present at any time during a meeting, a majority of the directors present may adjourn and reconvene the meeting once without further notice.

### **Duties of Directors**

4.11. Directors will discharge their duties, including any duties as committee members, in good faith, with ordinary care, and in a manner they reasonably believe to be in the Corporation's best interest. In this context, the term "ordinary care" means the care that ordinarily prudent persons in similar positions would exercise under similar circumstances. In discharging any duty imposed or power conferred on directors, directors may, in good faith, rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person that has been prepared or presented by a variety of persons, including officers and employees of the Corporation, professional advisors or experts such as accountants or legal counsel. A director is not relying in good faith if he or she has knowledge concerning a matter in question that renders reliance unwarranted.

Directors are not deemed to have the duties of trustees of a trust with respect to the Corporation or with respect to any property held or administered by the Corporation, including property that may be subject to restrictions imposed by the donor or transferor of the property.

### **Interested Directors**

4.12. Contracts or transactions between directors, officers, or members who have a financial interest in the matter are not void or voidable solely for that reason. Nor are they void or voidable solely because the director, officer, or member is present at or participates in the meeting that authorizes the contract or transaction, or solely because the interested party's votes are counted for the purpose. However, every director with any personal interest in the transaction must disclose all material facts concerning the transaction, including all potential personal benefit and potential conflicts of interest, to the other members of the Board or other group authorizing the transaction. The transaction must be approved by a majority of the uninterested directors or other group with the authority to authorize the transaction.

### **Actions of Board of Directors**

4.13. The Board will try to act by consensus. However, if a consensus is not available, the vote of a majority of directors present and voting at a meeting at which a quorum is present is enough to constitute the act of the Board, unless the act of a greater number is required by law or by some other provision of these Bylaws. A director who is present at a meeting and abstains from a vote is considered to be present and voting for the purpose of determining the Board's decision.

### **Proxies**

4.14. A director may not vote by proxy.

### **Compensation**

4.15. Directors may not receive salaries for their services. A director may serve the Corporation in any other capacity and receive compensation for those services. Any compensation that the Corporation pays to a director will be reasonable and commensurate with the services performed.

### **Removing Directors**

4.16. The Board may vote to remove a director at any time, only for good cause. Good cause for removal of a director includes the un-excused failure to attend three consecutive Board meetings. A meeting to consider removing a director may be called and noticed following the procedures provided in these Bylaws for a special meeting of the Board of Directors. The notice of the meeting will state that the issue of possibly removing the director will be on the agenda, and the notice will state the proposed cause for removal.

At the meeting, the director may present evidence of why he or she should not be removed and may be represented by an attorney at and before the meeting. Also, at the meeting, the Corporation will consider possible arrangements for resolving the problems that are in the mutual interest of the Corporation and the director.

A director may be removed by the affirmative vote of 51 percent of the Board.

## **ARTICLE 5**

### **OFFICERS**

#### **Officer Positions**

5.01. The Corporation's officers will be a president, a secretary, one vice president, and a treasurer. The Board may create additional officer positions, define the authority and duties of each such position, and elect or appoint persons to fill the positions. The same person may hold any two or more offices, except for president and secretary.

### **Election and Term of Office**

5.02. The Corporation's officers will be appointed annually by the Board at the annual Board meeting. If officers are not appointed at this time, they will be appointed as soon thereafter as possible.

Each officer will hold office until a successor is duly selected and qualifies. An officer may be elected to succeed himself or herself in the same office.

### **Removal**

5.03. Any officer elected or appointed by the Board may be removed by the Board with or without good cause.

### **Vacancies**

5.04. The Board may select a person to fill a vacancy in any office for the unexpired portion of the officer's term.

### **President**

5.05. The president is the Corporation's chief executive officer. He or she will supervise and control all of the Corporation's business and affairs and will preside at all meetings of the members and of the Board. The president may execute any deeds, mortgages, bonds, contracts, or other instruments that the Board authorizes to be executed. However, the president may not execute instruments on the Corporation's behalf if this power is expressly delegated to another officer or agent of the Corporation by the Board, these Bylaws, or statute. The president will perform other duties prescribed by the Board and all duties incident to the office of president.

### **Vice President**

5.06. When the president is absent, cannot act, or refuses to act, a vice president will perform the president's duties. When acting in the president's place, the vice president has all the powers of--and is subject to all the restrictions on--the president. If there is more than one vice president, the vice presidents will act for the president in the order of appointment. A vice president will perform other duties as assigned by the president or Board.

### **Treasurer**

5.07. The treasurer will:

- (a) Have charge and custody of--and be responsible for--all the Corporation's funds and securities.
- (b) Receive and give receipts for moneys due and payable to the Corporation from any source.
- (c) Deposit all moneys in the Corporation's name in banks, trust companies, or other depositories as these Bylaws provide or as the Board or president directs.
- (d) Write checks and disburse funds to discharge the Corporation's obligations. However, funds may not be drawn from the Corporation or its accounts for amounts greater than \$250.00 without the signature of the president or a vice president in addition to that of the treasurer.
- (e) Maintain the Corporation's financial books and records.
- (f) Prepare financial reports at least annually.
- (g) Perform other duties as assigned by the president or the Board.

(h) If the Board requires, give a bond for faithfully discharging his or her duties in a sum and with a surety as determined by the Board.

(i) Perform all of the duties incident to the office of treasurer.

#### **Secretary**

5.08. The Secretary will:

(a) Give all notices as provided in the bylaws or as required by law.

(b) Take minutes of the meetings of the members and the Board and keep the minutes as part of the corporate records.

(c) Maintain custody of the corporate records and seal.

(d) Affix the corporate seal to all documents as authorized.

(e) Keep a register of the mailing address of each member, director, officer, and employee of the Corporation.

(f) Perform duties as assigned by the president or the Board.

(g) Perform all duties incident to the office of secretary.

#### **ARTICLE 6**

#### **COMMITTEES**

##### **Establishing Committees**

6.01. The Board may adopt a resolution establishing one or more committees delegating specified authority to a committee, and appointing or removing members of a committee. A committee will include two or more directors and may include persons who are not directors. If the Board delegates any of its management authority to a committee, the majority of the committee will consist of directors. The Board may also delegate to the president its power to appoint and remove members of a committee that has not been delegated any management authority of the Board. The Board may establish qualifications for membership on a committee.

Establishing a committee or delegating authority to it will not relieve the Board, or any individual director, of any responsibility imposed by these Bylaws or otherwise imposed by law. No committee has the authority of the Board to:

(a) Amend the articles of incorporation.

(b) Adopt a plan of merger or of consolidation with another corporation.

(c) Authorize the sale, lease, exchange, or mortgage of all or substantially all of the Corporation's property and assets.

(d) Authorize voluntary dissolution of the Corporation.

(e) Revoke proceedings for voluntary dissolution of the Corporation.

(f) Adopt a plan for distributing the Corporation's assets.

(g) Amend, alter, or repeal these Bylaws.



- (h) Elect, appoint, or remove a member of a committee or a director or officer of the Corporation.
- (i) Approve any transaction to which the Corporation is a party and that involves a potential conflict of interest as defined in paragraph 7.04, below.
- (j) Take any action outside the scope of authority delegated to it by the Board.

#### **Term of Office**

6.02. Each committee member will continue to serve on the committee until a successor is appointed. However, a committee member's term may terminate earlier if the committee is terminated, or if the member dies, ceases to qualify, resigns, or is removed as a member. A vacancy on a committee may be filled by an appointment made in the same manner as an original appointment. A person appointed to fill a vacancy on a committee will serve for the unexpired portion of the terminated committee member's term. A committee member may be removed by the Board at any time with or without cause.

#### **Chair and Vice-Chair**

6.03. One member of each committee will be designated as the committee chair, and another member of each committee will be designated as the vice-chair. The chair and vice-chair will be appointed by the president. The chair will call and preside at all meetings of the committee. When the chair is absent, cannot act, or refuses to act, the vice-chair will perform the chair's duties. When a vice-chair acts for the chair, the vice-chair has all the powers of--and is subject to all the restrictions on--the chair.

#### **Notice of Meetings**

6.04. Written or printed notice of a committee meeting will be delivered to each member of a committee not less than seven nor more than fifteen days before the date of the meeting. The notice will state the place, day, and time of the meeting, and the purpose or purposes for which it is called.

#### **Quorum**

6.05. One-half of the number of committee members constitutes a quorum for transacting business at any meeting of the committee. The committee members present at a duly called or held meeting at which a quorum is present may continue to transact business even if enough committee members leave the meeting so that less than a quorum remains. However, no action may be approved without the vote of at least a majority of the number of committee members required for a quorum. If a quorum is never present at any time during a meeting, the chair may adjourn and reconvene the meeting once without further notice.

#### **Actions of Committees**

6.06. Committees will try to take action by consensus. However, if a consensus is not available, the vote of a majority of committee members present and voting at a meeting at which a quorum is present is enough to constitute the act of the committee unless the act of a greater number is required by statute or by some other provision of these Bylaws. A committee member who is present at a meeting and abstains from a vote is considered to be present and voting for the purpose of determining the act of the committee.

#### **Proxies**

6.07. A committee member may not vote by proxy.

#### **Compensation**

6.08. Committee members may not receive salaries for their services, unless the committee

member is a professional retained by the Board to advise the committee. A committee member may serve the Corporation in any other capacity and receive compensation for those services. Any compensation that the Corporation pays to a committee member will be reasonable and commensurate with the services performed.

### **Rules**

6.09. Each committee may adopt its own rules, consistent with these Bylaws or with other rules that may be adopted by the Board.

## **ARTICLE 7**

### **TRANSACTIONS OF CORPORATION**

#### **Contracts**

7.01. The Board may authorize any officer or agent of the Corporation to enter into a contract or execute and deliver any instrument in the name of, and on behalf of, the Corporation. This authority may be limited to a specific contract or instrument, or it may extend to any number and type of possible contracts and instruments.

#### **Deposits**

7.02. All the Corporation's funds will be deposited to the credit of the Corporation in banks, trust companies, or other depositories that the Board selects.

#### **Gifts**

7.03. The Board may accept, on the Corporation's behalf, any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Corporation. The Board may make gifts and give charitable contributions not prohibited by these bylaws, the articles of incorporation, state law, and provisions set out in federal tax law that must be complied with to maintain the Corporation's federal and state tax status.

#### **Potential Conflicts of Interest**

7.04. The Corporation may not make any loan to a director or officer of the Corporation. A member, director, officer, or committee member of the Corporation may lend money to--and otherwise transact business with--the Corporation except as otherwise provided by these bylaws, the articles of incorporation, and applicable law. Such a person transacting business with the Corporation has the same rights and obligations relating to those matters as other persons transacting business with the Corporation. The Corporation may not borrow money from--or otherwise transact business with--a member, director, officer, or committee member of the Corporation unless the transaction is described fully in a legally binding instrument and is in the Corporation's best interests. The Corporation may not borrow money from--or otherwise transact business with--a member, director, officer, or committee member of the Corporation without full disclosure of all relevant facts and without the Board's or the members' approval, not including the vote of any person having a personal interest in the transaction.

#### **Prohibited Acts**

7.05. As long as the Corporation exists, and except with the Board's prior approval, no member, director, officer, or committee member of the Corporation may:

- (a) Do any act in violation of these Bylaws or a binding obligation of the Corporation.
- (b) Do any act with the intention of harming the Corporation or any of its operations.

(c) Do any act that would make it impossible or unnecessarily difficult to carry on the Corporation's intended or ordinary business.

(d) Receive an improper personal benefit from the operation of the Corporation.

(e) Use the Corporation's assets, directly or indirectly, for any purpose other than carrying on the Corporation's business.

(f) Wrongfully transfer or dispose of Corporation property, including intangible property such as good will.

(g) Use the Corporation's name (or any substantially similar name) or any trademark or trade name adopted by the Corporation, except on behalf of the Corporation in the ordinary course of its business.

## ARTICLE 8

### BOOKS AND RECORDS

#### **Required Books and Records**

8.01. The Corporation will keep correct and complete books and records of account as required by the Texas Non Profit Corporation Act and any federal law regulating this matter.

#### **Inspection and Copying**

8.02. Any member, director, officer, or committee member of the Corporation may inspect and receive copies of all the corporate books and records required to be kept under the bylaws. Such a person may, by written request, inspect or receive copies if he or she has a proper purpose related to his or her interest in the Corporation. He or she may do so through his or her attorney or other duly authorized representative. The inspection may take place at a reasonable time, no later than ten working days after the Corporation receives a proper written request. The Board may establish reasonable copying fees, which may cover the cost of materials and labor but may not exceed fifteen cents per page. The Corporation will provide requested copies of books or records no later than fifteen working days after receiving a proper written request.

## ARTICLE 9

### FISCAL YEAR

The fiscal year of the Corporation will begin on the first day of January and end on the last day in December in each year.

## ARTICLE 10

### INDEMNIFICATION

#### **When Indemnification Is Required, Permitted, and Prohibited**

10.01. (a) The Corporation will indemnify a director, officer, member, committee member, employee, or agent of the Corporation 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 Corporation. For the purposes of this article, an agent includes one who is or was serving at the Corporation's request as a director, officer, partner, venturer, proprietor, trustee, partnership, joint venture, sole proprietorship, trust, employee-benefit plan, or other enterprise.

(b) The Corporation will indemnify a person only if he or she acted in good faith and reasonably believed that his or her conduct was in the Corporation's best interests. In 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 Corporation will not indemnify a person who is found liable to the Corporation or is found liable to another on the basis of improperly receiving a personal benefit from the Corporation. 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. 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 Corporation.

(c) The Corporation will pay or reimburse expenses incurred by a director, officer, member, committee member, employee, or agent of the Corporation in connection with the person's appearance as a witness or other participation in a proceeding involving or affecting the Corporation 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 Corporation may indemnify a director, officer, member, committee member, employee, or agent of the Corporation to the extent permitted by law. However, the Corporation will not indemnify any person in any situation in which indemnification is prohibited by paragraph 10.01(a), above.

(e) The corporation may advance expenses incurred or to be incurred in the defense of a proceeding to a person who eventually might be entitled to indemnification, even though there has been no final disposition of the proceeding. Advancement of expenses may occur only when the procedural conditions specified in paragraph 10.03(c), below, have been satisfied. Furthermore, the Corporation will never advance expenses to a person before final disposition of a proceeding if the person is a named defendant or respondent in a proceeding brought by the Corporation or one or more members or if the person is alleged to have improperly received a personal benefit or committed other willful or intentional misconduct.

#### **Extent and Nature of Indemnity**

10.02. The indemnity permitted under these Bylaws includes indemnity against judgments, penalties, (including excise and similar taxes), fines, settlements, and reasonable expenses (including attorney's fees) actually incurred in connection with the proceeding. If the proceeding was brought by or on behalf of the Corporation, the indemnification is limited to reasonable expenses actually incurred by the person in connection with the proceeding.

#### **Procedures Relating to Indemnification Payments**

10.03. (a) Before the Corporation may pay any indemnification expenses (including attorney's fees), the Corporation must specifically determine that indemnification is permissible, authorize indemnification, and determine that expenses to be reimbursed are reasonable, except as provided in subparagraph (c), below. The Corporation 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, 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 by the same vote as provided in subparagraphs (i) or (ii), above, or if such a quorum cannot be obtained and such a committee cannot be

established, by a majority vote of all directors.

Majority vote of members, excluding directors or other members who are named defendants or respondents in the proceeding.

(b) The Corporation will authorize indemnification and determine that expenses to be reimbursed are reasonable in the same manner that it determines whether indemnification is permissible. If special legal counsel determines that indemnification is permissible, authorization of indemnification and determination of reasonableness of expenses will be made as specified by subparagraph (a)(iii), above, governing selection of special legal counsel. A provision contained in the articles of incorporation, or a resolution of members or the Board that requires the indemnification permitted by paragraph 10.01, 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 Corporation will advance expenses before final disposition of a proceeding only after it determines that the facts then known would not preclude indemnification. The determination that the facts then known to those making the determination would not preclude indemnification and authorization of payment will be made in the same manner as a determination that indemnification is permissible under subparagraph (a), above.

In addition to this determination, the Corporation may advance expenses only after it receives a written affirmation and undertaking from the person to receive the advance. The person's written affirmation will state that he or she has met the standard of conduct necessary for indemnification under these Bylaws. The written undertaking will provide for repayment of the amounts advanced by the Corporation if it is ultimately determined that the person has not met the requirements for indemnification. The undertaking will be an unlimited general obligation of the person, but it need not be secured and may be accepted without reference to financial ability to repay.

Any indemnification or advance of expenses will be reported in writing to the Corporation's members. The report will be made with or before the notice or waiver of notice of the next membership meeting, or with or before the next submission to members of a consent to action without a meeting. In any case, the report will be sent within the 12-month period immediately following the date of the indemnification or advance.

## ARTICLE 11

### NOTICES

#### Notice by Mail or Telegram

11.01. Any notice required or permitted by these Bylaws to be given to a member, director, officer, or member of a committee of the Corporation may be given by mail or telegram. If mailed, a notice is deemed delivered when deposited in the mail addressed to the person at his or her address as it appears on the corporate records, with postage prepaid. If given by telegram, a notice is deemed delivered when accepted by the telegraph company and addressed to the person at his or her address as it appears on the corporate records. A person may change his or her address in the corporate records by giving written notice of the change to the secretary of the corporation.

#### Signed Waiver of Notice

11.02. Whenever any notice is required by law or under the articles of incorporation or these Bylaws, a written waiver signed by the person entitled to receive such notice is considered the equivalent to giving the required notice. A waiver of notice is effective whether signed before or after the time stated in the notice being waived.

### **Waiving Notice by Attendance**

11.03. A person's attendance at a meeting constitutes waiver of notice of the meeting unless the person attends for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

## **ARTICLE 12**

### **SPECIAL PROCEDURES CONCERNING MEETINGS**

#### **Meeting by Telephone**

12.01. The Board of Directors, and any committee of the Corporation may hold a meeting by telephone conference-call procedures. In all meetings held by telephone, matters must be arranged in such a manner that all persons participating in the meeting can hear each other; the notice of a meeting by telephone conference must state the fact that the meeting will be held by telephone as well as all other matters required to be included in the notice; and a person's participating in a conference-call meeting constitutes his or her presence at the meeting.

#### **Decision Without Meeting**

12.02. Any decision required or permitted to be made at a meeting of the Board, or any committee of the Corporation may be made without a meeting. A decision without a meeting may be made if a written consent to the decision is signed by the number of members, directors or committee members whose vote would be necessary to take the action if a meeting were held. The original signed consents will be placed in the Corporation minute book and kept with the corporate records. Each written consent must be signed and bear the date of signature of the person signing it. A telegram, telex, cablegram, or similar transmission by a director, or committee member, or a photographic, facsimile, or similar reproduction of a signed writing, will be treated as an original being signed by the member, director, or committee member.

Consents must be delivered to the Corporation. A consent signed by fewer than all members, directors, or committee members is not effective to take the intended action unless the required number of consents are delivered to the Corporation within 60 days after the date that the earliest-dated consent was delivered to the Corporation. Delivery must be made by hand, or by certified or registered mail, return receipt requested. The delivery may be made to the Corporation's registered office, registered agent, principal place of business, transfer agent, registrar, exchange agent, or an officer or agent having custody of books in which the relevant proceedings are recorded. If the delivery is made to the Corporation's principal place of business, the consent must be addressed to the president or principal executive officer.

The Corporation will give prompt notice of the action taken to persons who do not sign consents. If the action taken requires documents to be filed with the secretary of state, the filed documents will indicate that these written consent procedures were followed to authorize the action and filing.

## **ARTICLE 13**

### **AMENDING BYLAWS**

These Bylaws may be altered, amended, or repealed, and new bylaws may be adopted by the Board of Directors. The notice of any meeting at which these Bylaws are altered, amended, or repealed, or at which new bylaws are adopted will include the text of the proposed bylaw provisions as well as the text of any existing provisions proposed to be altered, amended, or repealed. Alternatively, the notice may include a fair summary of those provisions.

## ARTICLE 14

### MISCELLANEOUS PROVISIONS

#### Legal Authorities Governing Construction of Bylaws

14.01. These Bylaws will be construed under Texas law. All references in these Bylaws to statutes, regulations, or other sources of legal authority will refer to the authorities cited, or their successors, as they may be amended from time to time.

#### Legal Construction

14.02. To the greatest extent possible, these Bylaws shall be construed to conform to all legal requirements and all requirements for obtaining and maintaining all tax exemptions that may be available to nonprofit corporations. If any bylaw provision is held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision, and the bylaws will be construed as if they had not included the invalid, illegal, or unenforceable provision.

#### Headings

14.03. The headings used in the bylaws are for convenience and may not be considered in construing the bylaws.

#### Number

14.04. All singular words include the plural, and all plural words include the singular.

#### Seal

14.05. The Board of Directors may provide for a corporate seal.

#### Power of Attorney

14.06. A person may execute any instrument related to the Corporation by means of a power of attorney if an original executed copy of the power of attorney is provided to the secretary to be kept with the corporate records.

#### Parties Bound

14.07. The bylaws will bind and inure to the benefit of the members, directors, officers, committee members, employees, and agents of the Corporation and their respective heirs, executors, administrators, legal representatives, successors, and assigns except as the bylaws otherwise provide.

#### Parliamentary Rules

14.08. Robert's Rules of Order, Newly Revised are hereby adopted as the corporation's parliamentary rules, but only to the extent they do not conflict with these bylaws. In the case of any such conflict, these bylaws will control.

#### CERTIFICATE OF SECRETARY

I certify that I am the duly elected and acting secretary of Morningwood Homeowners Association, Inc. and that these Bylaws constitute the Corporation's Bylaws. These Bylaws were duly adopted at a meeting of the Board of Directors held on 3/18/02.

Dated: 3/18/02

Judy By  
Secretary of the Corporation