

2/10/09

**SECOND AMENDED BYLAWS**

**OF**

**LAMAR POINTE PRESERVE HOME OWNER'S ASSOCIATION, INC.**

**ARTICLE I**

**NAME AND LOCATION**

The name of the corporation is **LAMAR POINTE PRESERVE HOME OWNER'S ASSOCIATION, INC.**, hereinafter referred to as the "Association". The principal office of the corporation and the initial registered office of the corporation shall be 14955 Bulverde Road, San Antonio, Texas 78247-2631, but meetings of Members and Directors may be held at such places within the State of Texas, County of Aransas or County of Nueces, as may be designated by the Board of Directors.

**ARTICLE 11**

**DEFINITIONS**

Section 2.1. Definitions. All capitalized words and phrases used herein shall have the meanings and definitions set forth in the Declaration of Covenants, Conditions, and Restrictions recorded in File No. 284444, of the Real Property Records of Aransas County, Texas, and any subsequent amendments to it (said First Amendment and all subsequent amendments being herein called the "Declaration").

**ARTICLE III**

**ASSOCIATION MEMBERSHIP AND  
VOTING RIGHTS**

Section 3.1. Membership. Every Owner of a Lot in Lamar Pointe Preserve as it is described in the Declaration shall be a Member of the Association; provided, however, that any person or entity holding an interest in any such Lot or Lots merely as security for the performance of an obligation shall not be a Member. Membership shall be appurtenant to and shall not be separated from ownership of any Lot.

Section 3.2. Suspension of Membership. During any period in which a Member shall be in default in the payment of any annual or special assessment levied by the Association, the voting rights and right to use of the Common Areas of such Member may be suspended by the Board of Directors until such assessment shall be paid. Such rights of a Member may also be suspended after notice and hearing, for a period not to exceed sixty (60) days, for violation of any rules and

regulations established by the Board of Directors governing the use of any Common Facilities.

Section 3.3. Voting, Rights. There shall be two (2) classes of voting membership, Class A and Class B, as set forth in Article 8 of the Certificate of Formation of the Association. Class A Members shall be entitled to the number of votes set forth in the Certificate of Formation. Class B Members shall be entitled to the number of votes set forth in the Declaration. In the event the Class B membership should cease pursuant to the terms of the Declaration, it shall be revived automatically each time additional lands are annexed to the Subdivision by the Declarant. When ownership of any Lot is held by more than one person or by a legal entity which is not a natural person, all such owners shall be Members of the Association; however, the voting rights of such Members shall be limited to the number of votes set forth in the Declaration exercised as they among themselves shall determine.

#### ARTICLE IV

##### PROPERTY RIGHTS: RIGHTS OF ENJOYMENT

Section 4.1. The Members acknowledge that there are no Common Facilities other than the entry way and the landscaped areas along the entry road.

#### ARTICLE V

##### MEETINGS OF MEMBERS

Section 5.1. Annual Meetings. The annual meetings of the Members shall be held on either the next to last Saturday or the last Saturday in February each year at an hour determined by the Board of Directors to best serve the needs of the Members, provided that upon written notice to the Members at least ten (10) days prior to the regular annual meeting date, the Board of Directors may schedule the annual meeting date for a date not more than fourteen (14) days subsequent to the regular annual meeting date. If the day for the annual meeting of the Members is a legal holiday, the meeting may, at the option of the Board of Directors, be held at the same hour on the first Saturday following which is not a legal holiday.

Section 5.2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to cast one-fourth (1/4) of all the votes of the entire membership.

Section 5.3. Notice of Meetings. Except as otherwise provided in the Articles of Incorporation or these By-Laws, written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, as set out in the Certificate of Formation to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such a notice shall

specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

Section 5.4. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, ten percent (10%) of the votes of the Membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid, shall be present or be represented.

Section 5.5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon cessation of membership, restriction of the Member's voting rights or conveyance by the Member of his Lot.

Section 5.6. Canvass in Lieu of Meeting. In the event that a quorum of Members is not achieved at any scheduled meeting, the Board of Directors may authorize a door-to-door canvass of all Members whose votes shall be duly recorded, and any action taken shall have the same force and effect as if taken at a meeting at which a quorum of Members was present. Any such canvass must be completed within thirty (30) days of the Board's decree.

Section 5.7. Majority Vote; Withdrawal of Quorum. When a quorum is present at any meeting of the Members, a majority of the votes, present in person or represented by proxy, shall decide any question brought before such meeting; unless the question is one upon which by express provision of the statutes, the Declaration, the Articles of Incorporation or these Bylaws, a different vote is required, in which case such express provision shall govern and control the deciding of such question. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

## ARTICLE VI

### BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 6.1. Number. The affairs of the Association shall be managed by a Board of not less than three (3) nor more than five (5) Directors, who need not be Members of the Association.

Section 6.2. Election and Term of Office. A new Board of Directors shall be elected by the incorporator(s) at the 2009 meeting; one for a term of two (2) years, and two for a term of three (3) years. Thereafter the Directors shall be elected by the Members at the annual meeting for a term of two years to fill any expiring or vacant terms. Election to the Board of Directors shall be by secret written ballot cast at the annual meeting. The persons receiving the largest

number of votes shall be elected for each vacancy. Cumulative voting is not permitted.

Section 6.3. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations also may be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a Member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-members.

Section 6.4. Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a Director, his successors shall be selected by the remaining Members of the Board and shall serve for the unexpired term of his predecessor. In the event of the death, resignation or removal of all of the Directors, the Members shall elect new Directors in accordance with the procedure set forth in Section 6.2 above.

Section 6.5. Compensation. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

## ARTICLE VII

### MEETINGS OF DIRECTORS

Section 7.1. Regular Meetings. Regular meetings of the Board of Directors shall be held annually without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday that meeting shall be held at the same time on the next day which is not a legal holiday. Telephonic meetings are permitted.

Section 7.2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two Directors, after not less than three (3) days notice to each Director. Telephonic meetings are permitted.

Section 7.3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 7.4. Action Taken Without a Meeting. In the absence of a meeting the Directors

shall have the right to take any action which they could take at a meeting, by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors. Telephonic meetings are permitted.

## ARTICLE VIII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 8.1. Powers. The Board of Directors shall have the power:

(a) To exercise for the Association all power, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws and the Certificate of Formation;

(b) To declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive meetings of the Board of Directors without just cause having been furnished to and accepted by the Board;

(c) To establish, and disburse and maintain such petty cash fund as necessary for efficiently carrying on the business of the Association; and

(d) To engage the services of a manager, an independent contractor, or such employees as it deems necessary, and to prescribe the conditions, compensation and duties of their work. Such power shall include authority to enter into management agreements with other parties to manage, operate or perform all or any part of the affairs and business of the Association.

(e) To foreclose its lien as created by Article VI of the Declaration against any property for which assessments are not paid within thirty (30) days after the due date or to bring an action at law against the Owner personally obligated to pay the same.

Section 8.2. Duties. It shall be the duty of the Board of Directors:

(a) To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members or at any special meeting, when such statement is requested in writing by one-fourth (1/4) of the Class A Members who are entitled to vote;

(b) To supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) To establish membership fees or assessments;

(d) To procure and maintain adequate hazard insurance covering properties owned by

the Association; general liability insurance covering the Association with coverage of not less than \$500,000.00; and directors' and officers' liability insurance with coverage of not less than \$500,000.00;

(e) To cause all officers, employees or agents, having fiscal responsibility to be bonded, as it may deem appropriate; and

(f) To cause the Common Facilities to be maintained;

(g) As more fully provided in the Declaration, to:

1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period; and

(2) send an invoice describing each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period.

(h) To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. (A reasonable charge may be made by the Board of Directors for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment); and

(i) To exercise other rights and duties set forth herein or in the Articles of Incorporation or in the Declaration.

## ARTICLE IX

### COMMITTEES

Section 9. 1. The Board of Directors may appoint committees as deemed appropriate in carrying out its purposes, which may include for example, but not by way of limitation, the following:

(a) A Nominating Committee as described in Article VI, Section 6.3 hereof.

(b) A Maintenance Committee to advise the Board of Directors on all matters pertaining to the maintenance, repair or improvement of Common Facilities, if any, and to perform such other functions as the Board in its discretion determines; and

(c) An Audit Committee to supervise the annual audit of the Association's books and approve the annual budget and statement of income and expenditures to be presented to the membership at its regular annual meeting, as provided in Article X, Section 10.8(d). The Treasurer shall be an ex-officio member of this committee when formed.

Section 9.2. It shall be a function of each committee to receive complaints from Members on any matter involving Association duties and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, Director or officer of the Association as is further concerned with the matter presented.

## ARTICLES X

### OFFICERS AND THEIR DUTIES

Section 10.1. Enumeration of Officers. The officers of this Association shall be a President, a Vice-President, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create, all of whom shall at all times be Members of the Board of Directors.

Section 10.2. Election of Officers. The Board of Directors shall elect its officers at its organizational meeting. Thereafter the Board shall elect officers at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 10.3. Term. The officers of the Association shall be elected annually by the Board and shall hold office for one (1) year unless he should sooner resign, or should be removed, or otherwise should be disqualified to serve.

Section 10.4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 10.5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein. The acceptance of such resignation shall not be necessary to make it effective.

Section 10.6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer elected to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 10.7. Multiple Offices. Any two or more offices may be held by the same person, except no person may hold the offices of President and Secretary at the same time.

Section 10.8. Duties. The duties of the officers are as follows:

#### President

a) The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds, and other written instruments and shall co-sign all checks and promissory notes.

#### Vice-President

b) The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

#### Secretary

c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

#### Treasurer

(d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of each to the Members.

### ARTICLE XI

#### INDEMNITY

Section 11. 1. Indemnification. The Association shall indemnify any person (and the heirs, executors, administrators, personal representatives, successors and assigns of each person) who is or was a Director, officer, manager or employee of the Association or of any other corporation which he served as such at the request of the Association and of which the Association directly or indirectly is a shareholder or creditor, or in which it is in any way interested, against any and all liabilities, costs and expenses including, but not limited to, counsel fees, that may be incurred by him in connection with -or resulting from any claim, action, suit or other proceeding (whether brought by or in the right of the Association or otherwise), civil or criminal, or in connection with an appeal relating thereto, in which he may become involved as a party or otherwise by reason of being or having been such a Director, officer, manager or employee (whether or not a Director, officer, manager or employee at the time such liability and expense may be incurred) except in



relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for or guilty of negligence or misconduct in the performance of his duty. The Association may also reimburse to any such Director, officer, manager or employee the reasonable costs of settlement, including reasonable expenses, of any such action, suit or proceeding, if it shall be found by a majority of a committee of Directors composed of all of the Directors not involved in the matter in controversy, whether or not a quorum, that it is to the best interest of the Association that such settlement be made and that such Director, officer, manager or employee was not guilty of gross negligence or willful misconduct. This indemnification shall be to the fullest extent permitted by, and subject to the required findings and procedures of Article 1396-2.22 A, Vernon's Texas Revised Civil Statutes Annotated, as it exists on the date of Incorporation of the Association. The Association shall be entitled to obtain insurance to cover the Association's obligation of indemnification.

Section 11.2. Indemnification Not Exclusive. The rights of indemnification and reimbursement provided for in Section 11.1 of this Article shall not be deemed exclusive of any other rights to which such Director, officer or employee may be entitled under any Bylaws, agreement, vote of Members, or as a matter of law or otherwise.

Section 11.3. Nothing in this Article XI shall obligate the Association to indemnify any Member who is or has been a Director, officer, manager or employee for any duties or obligations assumed or liabilities incurred by such Member simply by virtue of his becoming a Member pursuant to the terms of the Declaration.

## ARTICLE XII

### ASSESSMENTS

Section 12.1. Creation of the Lien and Personal Obligation of Assessments. By the Declaration each Member is deemed to covenant and agree to pay to the Association: (1) annual assessment charges, and (2) special assessments for capital improvements. The annual and special assessments, together with such interest thereon and costs of collection thereof shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest, cost of collection and reasonable attorney's fees as provided in the Declaration, also shall be the personal obligation of the person who was the Owner of such Lot at the time when the obligation accrued and shall not pass to his successors in title unless expressly assumed by them.

Section 12.2. Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Members, and for the improvement, maintenance and operation of the Common Facilities and providing services related to the use and enjoyment of the Properties by the Members.

Section 12.3. Assessments to be Levied by Board. After consideration of current costs of

maintenance and operation and anticipated needs of the Association during the year for which the assessment is being made, the Board of Directors may levy the annual assessments at an amount set by the Board.

Section 12.4. Special Assessments for Working Capital Fund, Nonrecurring Maintenance and Capital Improvements. In addition to the annual assessments authorized above, the Association may levy special assessments as follows:

(a) In any assessment year, a Special Assessment may be levied on improved Lots only applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any nonrecurring maintenance, or the acquisition, construction, reconstruction, repair or replacement of a capital improvement on or which is a part of the Common Facilities, including fixtures and personal property related thereto, in accordance with the terms of Article VI of the Declaration and the provisions of these Bylaws. The Association shall not commingle the proceeds of such Special Assessments with the maintenance funds. Such proceeds shall be used solely and exclusively to fund the nonrecurring maintenance or improvements in question.

(b) The Board of Directors shall determine the necessity and the amount of any Special Assessment. Special Assessments shall not be effective unless approved by two-thirds (2/3) of the votes of the Members who are Owners of improved Lots and who are voting in person or by proxy at a meeting duly called for the purpose of approving the Special Assessments and conducting other business, if any. Written notice of such meeting shall have been sent to all Members who are Owners of improved Lots at least thirty (30) days in advance of the meeting and shall have set forth the purpose of the meeting.

Section 12.5. Uniform Rate. Except for the difference in assessments to improved and unimproved Lots as set forth in Section 3 of Article VI of the Declaration, both annual and Special Assessments must be fixed at a uniform rate for all single family Lots and may be collected on a monthly, quarterly or annual basis.

Section 12.6. Effect of Non-payment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the Association shall have the authority to impose late charges to compensate for the administrative and processing costs of late payments and the assessment shall bear interest from the date of delinquency at the highest lawful rate of interest permitted in the State of Texas during the period of delinquency, or at such lesser rate as may be set by the Board of Directors from time to time, and the Association may bring an action at law or in equity against the Owner personally obligated to pay the same or foreclose the lien against the Lot, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. The Association or its agents shall have the right and power to bring all actions against such owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in like manner as a mortgage or deed of trust lien

on real property. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other owners. The Association acting on behalf of the owners shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same; and to subrogate so much of its right to such liens as may be necessary or expedient to an insurance company continuing to give total coverage notwithstanding non-payment of such defaulting Owner's portion of the premium. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Facilities, Private Streets or abandonment of his Lot.

Section 12.7. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages granted or created by the Owner of any Lot to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such Lot; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the mortgagor from personal liability for payment of such delinquent assessment and additional charges as provided herein above. Such sale or transfer shall not relieve the new Owner of such Lot from liability for any assessments becoming due after such foreclosure sale or sale in lieu of foreclosure, nor from the lien of any such subsequent assessment.

### ARTICLE XIII

#### BOOKS AND RECORDS

The books, records and papers of the Association shall be subject to inspection by any Member from 9:00 a.m. to 12:00 noon and from 1:00 p.m. to 5:00 p.m. on all regular business days. The Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Members at the principal office of the Association, where copies may be purchased at reasonable cost.

### ARTICLE XIV

#### CORPORATE SEAL

There shall be no corporate seal.

### ARTICLE XV

#### FISCAL YEAR

The Fiscal Year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of organization

of the corporation.

## ARTICLE XVI

### AMENDMENTS

Section 1. These Bylaws may be amended, at a regular or special meeting of the Members, by a majority of the votes of both Class A and Class B Members making up a quorum of Members present in person or by proxy, provided that, if any Lot is encumbered by a mortgage loan insured by FHA or guaranteed by VA, any such amendment may be subject to approval by such agencies.

Section 2. In case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control. In case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

## ARTICLE XVII

### GENDER AND GRAMMAR

The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provision hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

## ARTICLE XVIII

### ENFORCEMENT

In the event that the Association institutes legal action to enforce any restrictive covenants or other condition of the Declaration, Articles of Incorporation or Bylaws, and the violator voluntarily corrects or abates such violation after litigation has been filed, the Association shall not dismiss or abandon such legal action until it has been reimbursed all of its expenses, including reasonable attorney's fees and court costs.

## ARTICLE XIX

### ALTERNATIVE DISPUTE RESOLUTION

It is the policy of the State of Texas to encourage the peaceable resolution of disputes through alternative dispute resolution procedures. Therefore, if a dispute arises in relation to the construction of the Declaration, the Articles of Incorporation, these Bylaws or actions of the Board of Directors, its officers or agents, which cannot be resolved in good faith through informal discussion, the parties agree to submit the dispute to mediation or some other mutually agreeable

alternative dispute resolution process.

IN WITNESS WHEREOF, and after the approval of the Membership of the Association at its annual meeting for 2009, we, being all the Directors of the Association have hereunto set our hands this the \_\_\_\_\_ day of February, 2009.

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director