

**FILED**  
In the Office of the  
Secretary of State of Texas

FEB 21 2007

**CERTIFICATE OF FORMATION  
OF  
LAMAR POINTE PRESERVE HOME OWNER'S ASSOCIATION, INC.  
PURSUANT TO § 3.005 AND § 3.009 OF THE CORPORATIONS SECTION  
TEXAS BUSINESS ORGANIZATIONS CODE**

**Article 1 - Corporate Name**

The corporation formed is a non-profit corporation. The name of the corporation is Lamar Pointe Preserve Home Owner's Association, Inc. (the "Association").

**Article 2 - Registered Agent and Registered Office**

The initial registered agent is Clay W. Jarvis. The business address of the registered agent and the registered office address is 11815 IH-10 West, Suite 107, San Antonio, Texas, 78230.

**Article 3 - Board of Directors**

The affairs of the Association will initially be managed by a Board of three (3) Directors, who need not be members of the Association. The number of directors 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 directors until the selection of their successors are:

Clay W. Jarvis	11815 IH-10 West, Suite 107 San Antonio, Texas 78230
Randy Dym	11815 IH-10 West, Suite 107 San Antonio, Texas 78230
Mark Herzberg	11815 IH-10 West, Suite 107 San Antonio, Texas 78230

At the first annual meeting the members will elect one (1) member to serve on the Board of Directors. The Board may have as many as five (5) members. The members of the Board of Directors may consist of a President, Vice-President, Secretary, Treasurer and one at-large Director. All members of the Board of Directors will serve terms of two (2) calendar years.

**Article 4 - Membership**

The Association will have members. Every person or entity who is a recorded owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, will be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership will be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

**Article 5 - Duration**

The period of duration is perpetual.

**Article 6 - Purpose**

This Association does not contemplate pecuniary gain or profit for its members, and the specific

purposes for which it is formed are to provide for maintenance, preservation and architectural control of the residence Lots and Common Areas within that certain tract of property described as:

Please see Exhibit "A" attached hereto and incorporated herein by reference for a true and complete copy of the proposed plat to be recorded for record in the Real Property Records of Aransas County, Texas.

and to promote the health, safety and welfare of the residents within this property and any additions brought within the jurisdiction of this Association, and for this purpose to:

- (a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as stated in the Declaration of Covenants, Conditions, and Restrictions ("Declaration") applicable to the property and recorded or to be recorded with the County Clerk of Aransas County, Texas, and as amended, the Declaration being incorporated here as if set forth at length;
- (b) Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses connected with assessments and all office and other expenses connected with assessments and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association.
- (c) Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;
- (d) Borrow money, and with the assent of 75% of each class of members mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (e) Dedicate, sell or transfer all or any part of the Common Area to any public agency, authority, or utility for the purposes and subject to the conditions as agreed to by the members. No dedications or transfer will be effective unless an instrument has been signed by 75% of each class of members, agreeing to the dedication, sale or transfer.
- (f) Participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property and Common Area, provided that any merger, consolidation or annexation must have the assent of 75% of each class of members; and
- (g) Have and exercise any and all powers, rights and privileges which a corporation organized under the nonprofit corporation laws of the State of Texas by law may have and exercise.

#### Article 7 - Restrictions

Notwithstanding the foregoing or anything to the contrary herein, the Association may not:

- A. Engage in any activity or take any action prohibited by the Texas Non-Profit Corporation Act.
- B. Pay any dividend or distribute any part of the income of the Association to its members, if any, directors, if any, or officers. However, the Association may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, provided such compensation and benefits are reasonable.
- C. Make loans to the Association's directors.
- D. Engage in any activities, except to an insubstantial degree, that are not in furtherance of the purpose or purposes of the Association.

E. Conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and its regulations, or by an organization, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code and regulations.

F. Serve any private interest except if clearly incidental to the public benefit provided by the Association.

G. Allow any of the Association's net earning to inure to the benefit of the members, if any of the Association, or any private individual.

H. Engage in more than an insubstantial degree in the carrying on of propaganda, or otherwise attempting, to influence legislation, and the Association shall not directly or indirectly participate in, or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office, except as allowed by Internal Revenue Code and its regulations.

I. Allow upon dissolution of the Association or the winding up of its affairs, the assets of the Association to be distributed to anyone other than an organization which would then qualify as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code for use in furtherance of the purpose or purposes for which the Association was organized or to the State of Texas for public purposes.

J. Make distributions at such time and in such manner as to subject it to tax under Section 4942 of the Internal Revenue Code of 1986 (the "Code").

K. Engage in any act of self-dealing which would be subject to tax under Section 4941 of the Code.

L. Retain any excess business holdings which would subject it to tax under Section 4943 of the Code.

M. Make any investments which would subject it to tax under Section 4944 of the Code.

N. Make any taxable expenditures which would subject it to tax under Section 4945 of the Code.

#### **Article 8 - Voting Rights**

The Association will have two classes of voting membership:

**Class A:** Class A members will be all Owners with the exception of the Declarant and will be entitled to one vote for each Lot owned. When more than one person holds an interest in a Lot, all those persons will be members. The vote for that Lot will be exercised as they among themselves determine, but no more than one vote will be cast with respect to any Lot.

**Class B:** The Class B member will be the Declarant (as defined in the Declaration), and will be entitled to three (3) votes for each Lot owned. The Class B membership will cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; or

(b) on December 31, 2010.

#### **Article 9 - Power to Amend Bylaws Reserved by Members**

The power to amend the bylaws is reserved exclusively to the members.

#### **Article 10 - Indemnification**

The Association shall indemnify and advance expenses to the full extent permitted by Article 1396-2.22A of the Texas Non-Profit Corporation Act and other applicable law, present and former

notice, stating the purpose of the meeting shall be given to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The presence of members or of proxies entitled to cast seventy-five percent (75%) of the votes of each class of membership will constitute a quorum. If the required quorum is not achieved at any meeting, another meeting may be called, subject to the above notice requirement, and the required quorum at the subsequent meeting will be one-half of the required quorum of the preceding meeting.

**Incorporator**

The name and address of the incorporator is:

Eric D. Sherer

11124 Wurzbach Road, Suite 100  
San Antonio, Texas 78230

The undersigned incorporator signs these articles of incorporation subject to the penalty imposed by § 4.008, Texas Business Organization Code, for the submission of a false or fraudulent document.



Eric D. Sherer, Organizer