

Rocky Creek Maintenance Corporation  
A Non-Profit Property Owners Association

Affidavit

**BYLAWS**

Adopted March 14, 2020

|               |  |
|---------------|--|
| Article I     | Definitions  |
| Article II    | Offices  |
| Article III   | Purpose & Functions  |
| Article IV    | Membership   |
| Article V     | Directors and Officers                                     |
| Article VI    | Committees   |
| Article VII   | Compensation and Indemnification                           |
| Article VIII  | Meetings, Sessions, Workshops                              |
| Article IX    | Notice   |
| Article X     | Voting, Recounts and Tabulation                            |
| Article XI    | Rules of Order   |
| Article XII   | Source, Use and Control of Funds and Property              |
| Article XIII  | Books and Records  |
| Article XIV   | Waiver of Notice   |
| Article XV    | Alterations, Amendment, Repeal and Adoption of Bylaws      |
| Article XVI   | Foreclosure Procedures                                     |
| Article XVII  | Contracts  |
| Article XVIII | Procedures for Initiating Changes to the Deed Restrictions |

**ARTICLE I**  
**Definitions**

**Assessment** - A regular payment, special payment, or other amount a property owner is required to pay a property owners' association under the dedicatory instrument or by law.

**Board** - The governing body composed of 9 Directors of the property owners' association.

**Board meeting** - A deliberation between a quorum of the voting board of the property owners' association, or between a quorum of the voting board and another person, during which property owners' association business is considered and the board takes formal action; and does not include the gathering of a quorum of the board at a social function unrelated to the business of the association or the attendance by a quorum of the board at a regional, state, or national convention, ceremonial event, or press conference, if formal action is not taken and any discussion of association business is incidental to the social function, convention, ceremonial event, or press conference.

**Corporation** - Rocky Creek Ranch property owners association

**Capital Fund** – Monies set aside for the purchase of additional equipment, structures or projects not covered by the operating funds. Monies used on items that can be considered assets of the Corporation once the item is acquired and placed into service.

**Dedicatory instrument** - Each governing instrument covering the establishment, maintenance, and operation of a residential subdivision. The term includes restrictions or similar instruments subjecting property to Restrictive Covenants, Bylaws, or similar instruments governing the administration or operation

of a property owners' association, to properly adopted rules and regulations of the property owners' association, and to all lawful amendments to the covenants, Bylaws, rules, or regulations.

**Declaration** - An instrument filed in the real property records of a county that includes restrictive covenants governing a residential subdivision.

**Deed Restriction** – A governing document, initially created by a developer outlining intended use of land within a residential sub-division.

**Director** – 1. An administrative position filled by a member who is elected by the membership, for a term of two years.

2. An administrative position filled by a member who is elected by the Board to fill a vacancy on the Board until the next scheduled election by the membership.

**Enforceable Guideline** – A document that is supported by Federal, State, Local law or a specific deed restriction. The document cannot be arbitrary, capricious or discriminatory.

**Executive Session** – A closed door meeting of the board, held during a regular meeting, to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the property owners' association's attorney, matters involving the invasion of privacy of individual owners, or matters that are to remain confidential by request of the affected parties and agreement of the board.

**Guideline** - A document that is developed by the Architectural Control Committee at the request of the Board of Directors. The document can be either informational and/or enforceable.

**Lot** - Any designated parcel of land located in a residential subdivision, including any improvements on the designated parcel.

**Membership** - Owners of residential lots in "Rocky Creek Ranch" Subdivision of Comal County, Texas

**Owner** - A person who holds record title to property in a residential subdivision and includes the personal representative of a person who holds record title to property in a residential subdivision.

**Operating Fund** – Monies set aside to cover the routine, day-to-day expenses of the Corporation.

**Present** – With respect to voting, all absentee and electronic ballots may be counted as an owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot.

**Property Owners Association or Association** - An incorporated or unincorporated association that:

- A. Is designated as the representative of the owners of property in a residential subdivision;
- B. Has a membership primarily consisting of the owners of the property covered by the dedicatory instrument for the residential subdivision; and
- C. Manages or regulates the residential subdivision for the benefit of the owners of property in the residential subdivision.

**Proxy** - A formal power of attorney document that may be signed by a member to authorize another member, a representative of the member or a member of the Board of Directors, to vote on behalf of the member at the annual meeting.

**Quorum** – A presence of the required number of persons entitled to cast a vote. The minimum number of voting members who must be present at a properly called meeting in order to conduct business in the name of the group.

**Regular assessment** - An assessment, a charge, a fee, or dues that each owner of property within a residential subdivision is required to pay to the property owners' association on a regular basis and that is designated for use by the property owners' association for the benefit of the residential subdivision as provided by the restrictions.

**Residential subdivision or subdivision** - A subdivision, planned unit development, townhouse regime, or similar planned development in which all land has been divided into two or more parts and is subject to restrictions that:

- A. Limit a majority of the land subject to the dedicatory instruments, excluding streets, common areas, and public areas, to residential use for single-family homes, townhomes, or duplexes only;
- B. Are recorded in the real property records of the county in which the residential subdivision is located; and

- (C) Require membership in a property owners' association that has authority to impose regular or special assessments on the property in the subdivision.

**Restrictions** - One or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the real property records or map or plat records. The term includes any amendment or extension of the restrictions.

**Restrictive covenant** - Any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

**Special Meeting** – Any meeting of the Association other than a regular Board Meeting called to discuss matters that due to time constraints cannot be held over to the next Regular Board Meeting.

**Tenant** – A person who rents or lives in a home in the Rocky Creek Ranch subdivision who does not own property here and does not live in the same household as a voting member.

**Workshop** – An informal gathering of Association members and/or Board Members for the purpose of educational or legislative matters. There is no formal action taken during this type of meeting.

## **ARTICLE II**

### **Offices**

- A. The principal office of the Corporation in the State of Texas shall be located in Comal County, Texas. The Corporation may have such other offices, either within or outside the State of Texas, as the Board of Directors may determine or as the affairs of the Corporation may require from time to time.
- B. The Corporation shall have and continuously maintain in the State of Texas a registered office, and a registered agent whose office is identical with such registered office, as required by the Texas Non-Profit Corporation Act. The registered Office may be, but need not be, identical with the principal office of the Corporation in the State of Texas. The Board of Directors can change the registered agent and/or the location of the registered office when necessary.

## **ARTICLE III**

### **Purpose & Functions**

- A. Rocky Creek Maintenance Corporation is established as a non-profit corporation organized for the purpose of constructing, owning, operating and maintaining the commonly owned parks, common use areas and recreational facilities of "Rocky Creek Ranch" subdivision and all usual and necessary accessories thereto, assessing and collecting the regular assessment for the maintenance thereof as prescribed in the Restrictions, Assessments and Easements of Rocky Creek Ranch (all phases), hereinafter referred to as deed restrictions, administering the Subdivision restrictions and regulations, and engaging in such other activities as are intended to promote the general welfare and common interests of the lot owners.
- B. The principal functions of the Corporation shall include, but not be limited to the following:
  - a. Assess, collect, and disburse the regular assessment provided for by the Subdivision Restrictions.
  - b. Assure proper operation, maintenance, and use of the common areas, parks, and recreational facilities of the Corporation. Establish and enforce the rules and regulations regarding the use of these facilities, to include prevention of unauthorized use by outsiders and/or ineligible owners.
  - c. The Corporation shall not be responsible for police or fire protection within the Subdivision.
  - d. Provide for proper architectural control and upkeep of properties in the Subdivision by assuring adherence to established restrictions and building standards.
  - e. Represent the Corporation in dealing with the Corps of Engineers, County Commissioners, law enforcement authorities, tax agencies, public utilities, and other public authorities and agencies.
  - f. Cooperate with other similar organizations in pursuing common interest and objectives.

- g. Promote social interchange and community spirit among residents.

## **ARTICLE IV**

### **Membership**

- A. The members of the Corporation shall be the owners of residential lots in "Rocky Creek Ranch" Subdivision of Comal County, Texas. Membership in this Corporation shall not be transferable or assignable except by a recorded sale or other such recorded transfer of ownership of a lot in (Rocky Creek Ranch) Subdivision.
- B. The membership shall be shared equally by owners when deeds are recorded in the name of more than one owner. The voting rights shall also be shared; however, fractional voting shall not be allowed. If such owners cannot agree as how to cast their vote on a particular matter, they shall lose their right to vote on such matter.
- C. Each membership shall have one vote on each matter submitted to a vote of the members. Owner(s) having deed to more than one lot are entitled to only one membership and one vote on all matters except when voting on amendments or changes to deed restrictions.
- D. Non-payment of the regular assessment as specified in the Subdivision Restrictions shall make those members ineligible for use of the park, pool, and related facilities, until such time as assessments have been paid in full.
- E. Associate Membership status that allows tenants and their households, who pay an annual fee, the use of the park and pool facilities, including rental of the clubhouse and pavilions is available to all tenants. This membership does not give any tenant voting rights in any matters. Application for this membership shall include an agreement to follow all rules and regulations established by the Board and/or dedicatory documents.
- F. The Board of Directors may provide for the issuance of certificates, cards or other such evidence of membership in the Corporation, which shall be in such form and signed by such Officers of the Corporation as may be determined by the Board. The name and address of each member and the date of issuance of the said certificate or card(s) shall be entered in the records of the Corporation. If any certificate, cards or other such evidence of membership in the Corporation shall become lost, mutilated or destroyed, then a new certificate, card or other such evidence of membership in the Corporation may be issued therefore on such terms and conditions as the Board may determine.

## **ARTICLE V**

### **Directors and Officers**

#### **A. Board of Directors**

- 1. The affairs of the Corporation shall be managed by a Board of Directors consisting of nine (9) members to be elected by the membership at the Annual Membership Meeting. Directors will serve alternating terms of two years.
- 2. Directors of the Corporation must be owners of lot(s) in "Rocky Creek Ranch" Subdivision. If the Board of Directors are presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a board member has been convicted of a felony or crime involving moral turpitude, the board member is immediately ineligible to serve on the board of the property owners' association, automatically considered removed from the board, and prohibited from future service on the board.
- 3. A person may not serve on the Board of the Corporation if the person cohabits at the same primary residence with another board member of the association.
- 4. Vacancies in the Board of Directors, because of death, resignation, disqualification, or otherwise, may be filled by the Board of Directors on an interim basis until the next Annual Membership Meeting at which time the members shall elect a replacement.

5. Any Director that has been elected by the Board in an interim basis to fill a vacated position may be removed from the board, when in the judgment of the Board the best interests of the Corporation would be served thereby. Such action would require a majority vote of the Board.
6. Any Director elected by the membership may be removed by the members of the Corporation, when in their judgment the best interests of the Corporation would be served thereby. Such action must be taken at a published meeting and will require a majority vote of the quorum.

#### B. Officers

1. At its first meeting following the Annual Membership Meeting, members of the Board of Directors may go into Executive Session to select from among themselves, a President and a Vice-President of the Corporation. The Secretary and the Treasurer of the Corporation will also be selected to serve as Officers of the Corporation, but need not be from the Board of Directors. Only the members of the Board will qualify to vote on corporate affairs.
2. The Board of Directors may elect to appoint such other officers or assistants as it deems desirable, to have such duties and authority as it may prescribe.
3. Any two or more offices may be held by the same person, except for the President, who may hold only that one office.
4. The officers so elected or appointed shall hold office until the next election of Directors, after which new officers will be selected.
5. Any Officer elected or appointed by the Board may be removed from that office by the Board, whenever in its judgment the best interests of the Corporation would be served thereby.

#### C. The principal duties of the Officers and Board of Directors of the Corporation shall be as follows:

##### The President

1. Shall be the principal executive officer of the Corporation and shall in general supervise control and coordinate all of the business and affairs of the Corporation.
2. Shall preside at all meetings of the Members and of the Board of Directors.
3. May sign, with the Secretary or any other officer of the Corporation so authorized by the Board, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors have authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws or by statute to some other officer or agent of the Corporation.
4. Shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors.

##### The Vice-President

1. Shall, in the absence of the President or in the event of the President's inability or refusal to act, perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President.
2. Shall perform such other duties as from time to time may be assigned by the President or Board of Directors.

##### The Secretary

1. Shall keep the minutes and the records of attendance at the meetings of the Members and of the Board of Directors.
2. Give all notices in accordance with the provisions of these Bylaws or as required by law.
3. Be custodian of the corporate records and of the seal of the Corporation, and affix the seal of the corporation to all documents, the execution of which on behalf of the corporation is duly authorized in accordance with the provisions of these Bylaws.
4. Keep a register of the post office address of each member which shall be furnished to the Secretary by each member.
5. Perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the President or by the Board of Directors.

##### The Treasurer

1. Shall have charge and custody and be responsible for all funds and securities of the Corporation, receive and give receipts for moneys due and payable to the Corporation,

and deposit all such moneys in the name of the Corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article XII, E of these Bylaws.

2. Oversee the assessment and collection of the regular assessment to be paid by all "Rocky Creek Ranch" lot owners and the records kept thereof.
3. Perform all the duties incident to the office of Treasurer and such other duties as may be assigned by the President or Board of Directors.
4. If required by the Board of Directors, the Treasurer shall give bond for the faithful discharge of duties in such sum and with such surety as the Board shall determine.

The Board of Directors

1. Shall oversee the operations and activities of the standing committees and all non-board members that are performing duties directly for the Corporation.
2. The chairmanships of all committees will be a member of the Board.
3. Assure proper operation, maintenance, and use of the common areas, parks, and recreational facilities of the corporation.
4. Ensure compliance with all Bylaws of the Corporation.
5. Establish and enforce the rules and regulations regarding the use of these facilities, to include prevention of unauthorized use by outsiders and/or ineligible owners.
6. Shall not be responsible for police or fire protection within the Subdivision.
7. Provide guidance and procedures for the proper architectural control and upkeep of properties in the Subdivision by assuring adherence to established restrictions.
8. Represent the Corporation in dealing with the Corps of Engineers, County Commissioners, law enforcement authorities, tax agencies, public utilities, and other public authorities and agencies.
9. Cooperate with other similar organizations in pursuing common interest and objectives.
10. Act in the appellant capacity for appeals to the Board for the placement of liens, the start of foreclosure procedures, the initiation of enforcement actions, Architectural Control Committee decisions and violations of the Rocky Creek Ranch Deed Restrictions and Articles of Incorporation.
11. Strive to promote social interchange and community spirit among residents.
12. Adopt, manage and present the annual budget at the annual membership meeting.
13. Adopt and present all special assessments to the members.
14. Set the amount of the regular assessment as prescribed in the deed restrictions.
15. Be educators and a source of information for the association concerning policies and rules affecting all members within the association.

## **ARTICLE VI**

### **Committees**

- A. Decisions and policies of the Board of Directors shall be carried out by five Standing Committees consisting of a minimum of three members each and shall include an Administrative Committee, an Architectural Control Committee, a Finance Committee, Operations Committee and a Rules Committee. With the exception of the Rules Committee, at least one Director shall serve on each Standing Committee.
- B. The Board of Directors may establish other Special Committees from time to time, as deemed necessary to perform such duties or functions as the Board may prescribe.
- C. Members of the Committees may be appointed by the President, with the Committee Chairman to be a Director. Insofar as possible, the members of the Committees may be selected from the Board of Directors or the association membership in accordance with their individual abilities and personal preferences.

D. The duties and responsibilities of the Standing Committees shall include, but not be limited to, the following:

1. Administrative Committee

- a. As directed by the Board, oversee all general office functions of the Corporation, other than financial.
- b. Notify all members of vacancies on the Board so that applications may be submitted to the Committee.
- c. May establish a Nominations Sub-committee and oversee elections.
- d. Coordinate all matters pertaining to keeping the membership informed, including newsletter, website, etc.
- e. Create, distribute and monitor the tabulation of votes cast by the association.

2. Architectural Control Committee

- a. As directed by the Board provides guidelines. Guidelines may be either informational or enforceable. Guidelines that are meant to be enforceable must be supported by Federal, State or local legislation or by a specific deed restriction.
- b. Review and approve plans for all construction in the Subdivision to assure conformance to Subdivision Restrictions.
- c. Assure adherence to established restrictions with respect to proper use and upkeep of Subdivision properties, reporting to the Board any violation of the recorded restrictions for the subdivision together with its recommendations.
- d. Present plans to the Board for beautification projects.
- e. Keep up to date on local building code and permit requirements and advise lot owners in this regard. This information can be incorporated into the newsletter.

3. Finance Committee

- a. At least once each calendar year, conduct an audit of the corporate finances, reporting conclusions to the Board.
- b. As directed by the Board, and in conjunction with the Treasurer, arrange for an annual audit, tax return, 1099's, etc. Assure completion of all required financial reports to the State of Texas and to the Federal Government.
- c. With the Treasurer, develop a financial plan for the Corporation.
- d. Work with all committees to develop the annual budget.
- e. Assist the Treasurer in assuring an accurate and comprehensive system of recording and maintaining a record of all regular assessments, fees and special assessments received.
- f. Work with the Treasurer and the Secretary in sending out the regular assessment and special assessment notices to all members, as well as helping receive, record, and deposit said assessments.

4. Operations Committee

- a. Oversee the maintenance and operation of the pool, parks, and common areas of the Corporation.
- b. Advise the Board as to maintenance requirements and costs.
- c. Define duties of, select, and monitor the work of the Caretaker.
- d. Obtain bids, purchase supplies and equipment, and arrange maintenance and repair work as authorized by the Board of Directors; supervise work performed and assure conformance to specifications.
- e. Procure and coordinate voluntary assistance for maintenance and construction work.
- f. Deal with County Commissioners regarding the maintenance of County Roads within the Subdivision and with any other County Officials and matters pertaining to their jurisdiction.
- g. Develop plans for future improvements to the park, with cost projections, for presentation to the Board.

5. Rules Committee

- a. Conduct a periodic review of all dedicatory instruments to ensure continued compliance.
  - b. Oversee all suggestions for changes to the Deed Restrictions and Bylaws.
  - c. Adopt and present to the association at a special or regular Board meeting all recommended changes to be considered.
  - d. Work with the Administrative Committee to develop the ballot concerning any changes to the bylaws or deed restrictions that meet the threshold for conducting a vote.
- E. Where there is any overlapping of functions of the committees, the chairperson of those committees are responsible for insuring proper coordination.
- F. In addition to the above duties, the Standing Committees shall carry out other related functions as instructed by the Board of Directors.

## **ARTICLE VII**

### **Compensation and Indemnification**

- A. Directors shall receive no monetary compensation for their services as a Director, except for reimbursement of reasonable out-of-pocket expenses incurred in the performance of their duties. Additionally, in recognition of their time and efforts, they may be exempted from the payment of the annual maintenance fee. This exemption will be determined at the first meeting of the new Board.
- B. The President and Vice President shall receive no monetary compensation for their services in those offices. Initially this will be true of the Treasurer and the Secretary, as well. If the board determines in the future that circumstances warrant the hiring of a Treasurer, a Secretary-Treasurer, then the Board shall at that time determine the job requirements and the compensation. The job(s) will be advertised and the Board will interview applicants and select from among them.
- C. Directors and Officers of the Corporation shall not be subject to any personal liability in connection with the performance of their corporate duties, and every Director or Officer shall be indemnified by this Corporation against all expenses and liabilities, including counsel fees, reasonably incurred or imposed upon him, in connection with any controversy to which he may be made a party or in which he may become involved, by reason of his being or having been a Director or Officer of this Corporation, whether or not he is a Director or Officer at the time such expenses are incurred, unless the Director or Officer involved is adjudged guilty of negligence or misconduct in the performance of his duties in connection with the subject of such controversy, provided, that in the event of a voluntary settlement of any such controversy by the Officer or Director involved; the indemnification provided herein shall apply only when the Board of Directors approves such settlement and any reimbursement to such involved Director or Officer as being in the best interests of the Corporation. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

## **ARTICLE VIII**

### **Meetings, Sessions, Workshop**

- A. Annual Membership Meeting- A general meeting of the members of the Corporation will be held each year to review activities and financial status of the Corporation, consider proposed changes in the Subdivision Restrictions and Regulations, amend Bylaws, consider any changes in fees and assessments, and to conduct such other business as may properly be brought before the meeting.
- 1. Such meeting will be held on the second Saturday in March. The time and/or the place of the meeting may be changed from time to time by the Board of Directors, as it deems advisable, with proper notification to members.
  - 2. Notice of the Annual Membership Meeting and election of Directors will be published to lot owners no less than ten (10) days nor more than sixty (60) days before the date of such meeting. This can be by U.S. Postal Service, by e-mail, through the newsletter and/or by posting on the corporate website.

3. Election of Directors will occur on the second Saturday in March. Elections may coincide with but need not be part of the Annual Membership Meeting.
- B. Special Meetings- Special meetings may be called by the President, a majority of the Board of Directors or by members having not less than 1/10 of the votes entitled to be cast at such meeting, as required, with notice of time, place and purpose of the meeting. Notification of the meeting will be in accordance with Article IX section A. subsections 1 or 2.
- C. Regular meetings of the Board of Directors shall be held monthly to transact the normal business of the Corporation. The time and place of these meetings may be established and/or changed by the Board as circumstances dictate. Notification of the meeting will be in accordance with Article IX section A. subsections 1 or 2.
- D. Special circumstance - A board may meet by any method of communication, including electronic and telephonic.
1. Without prior notice to owners, if each director may hear and be heard by every other director,  
or
  2. The board may take action by unanimous written consent to consider routine and administrative matters or a reasonably unforeseen emergency or urgent necessity that requires immediate board action. Any action taken without notice to owners must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular board meeting. The board may not, without prior notice to owners consider or vote on:
    - a. Fines
    - b. Damage assessments
    - c. Initiation of foreclosure actions
    - d. Initiation of enforcement actions
    - e. Excluding temporary restraining orders or violation involving a threat to health or safety
    - f. Increases in assessments
    - g. Levying of special assessments
    - h. Appeals from a denial of architectural control approval; or
    - i. A suspension of a right of a particular owner before the owner has an opportunity to attend a board meeting to present the owner's position, including any defense, on the issue.
- E. Executive Session – An Executive session may be called by either the President or a board member during a regular meeting or special meeting, to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the property owners' association's attorney, matters involving the invasion of privacy of individual owners, or matters that are to remain confidential by request of the affected parties and agreement of the board. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.
- F. Workshop – A workshop session may be called by the Board whenever there is a need for an informal or educational session. There will be no formal action taken at such a session. Depending on the subject matter, the Board may open the session up to invited guests and/or members of the Corporation. An example of a workshop session could be the National Night Out held annually in October.
- G. Quorum- A majority of the Board of Directors shall constitute a quorum for the transaction of business at any regular meeting or special meeting where only the Board of Directors are entitled to vote. The presence of at least 15 members, notice for which has been duly given, shall constitute a quorum of all meetings where members are entitled to vote.
- H. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the board of Directors, unless the act of a greater number is required by law or by these Bylaws.

## **ARTICLE IX**

### **Notice**

- A. Members shall be given notice of the date, hour, place, and general subject of a regular meeting of the Board or special meetings, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be:
1. Mailed to each property owner not later than the 10th day or earlier than the 60th day before the date of the meeting; or
  2. Provided at least 72 hours before the start of the meeting by:
    - a. Posting the notice in a conspicuous manner reasonably designed to provide notice to Property owners' association members:
      - (1) In a place located on the association's common property or, with the property owner's consent, on other conspicuously located privately owned property within the Subdivision; or
      - (2) On any Internet website maintained by the association or other Internet media; and
    - b. Sending the notice by e-mail to each owner who has registered an e-mail address with the association.
- It is an owner's duty to keep an updated e-mail address registered with the property owners' association. (See Texas State Property Code 209.0051).
- B. The monthly Board of Directors meetings and special meetings shall be open to the general membership. However, any member wishing to bring up a matter at the meeting must notify the Secretary 7 days in advance so that it may be placed on the agenda.

## **ARTICLE X**

### **Voting, Re-counts and Tabulation**

- A. Voting Procedures- Voting rights at all meetings of the members and election of Directors shall be in accordance with Article IV of these Bylaws. Nonpayment of the regular assessment does not constitute ineligibility to vote.
1. All matters other than Subdivision Regulations or Amendments to the Bylaws shall be decided by a majority of the votes entitled to be cast by the members.
  2. Changes to Subdivision Deed Restrictions requires approval of the record owners of legal title of fifty-one (51%) percent of the lots.
  3. Altering, amending, or repealing and adopting new Bylaws requires approval by a two-thirds (2/3) majority of the cast vote as specified in Article XV below.
    - a. An Absentee or Electronic ballot may:
      1. Be counted as an owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot.
      2. May not be counted even if properly delivered, if the owner attends any meeting to vote in person, so that any vote cast at a meeting by a property owner supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal.
      3. May not be counted on the final vote of a proposal if the motion was amended at the meeting to be different from the exact language on the absentee or electronic ballot.
    - b. Solicitation for votes by absentee ballot must include:
      1. An absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action.
      2. Instructions for the delivery of the completed absentee ballot, including the delivery location; and the following language "By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these

proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail.”

4. Any vote cast in an election or vote by a member of this property owners' association must be in writing and signed by the member.
  5. Electronic votes cast under Chapter 209, Texas Residential Property Owners Protection Act (Section 209.00592) constitute written and signed ballots
- B. Notice of election or association vote -Not later than the 10th day or earlier than the 60th day before the date of an election or vote, a property owners' association shall give written notice of the election or vote to:
1. Each owner of property in the property owners' association, for purposes of an association-wide election or vote; or
  2. Each owner of property in the property owners' association entitled under the dedicatory instruments to vote in a particular representative election, for purposes of a vote that involves election of representatives of the association who are vested under the dedicatory instruments of the property owners' association with the authority to elect or appoint board members of the property owners' association.
- C. Proxies- At any meeting of the members, a member entitled to vote may vote by proxy executed in writing by the member or his duly authorized attorney-in-fact. No proxy shall be valid after three (3) months from the date of its execution, and no proxy shall be valid after the meeting for which it is intended.
- D. Recount of votes - Any owner may, not later than the 15th day after the date of the meeting at which the election was held, require a recount of the votes.
1. A demand for a recount must be submitted in writing either:
    - (a) By certified mail, return receipt requested, or by delivery by the USPS with signature confirmation service to the property owners' association's mailing address as reflected on the latest management certificate filed under Section 209.004; or
    - (b) In person to the property owners' Secretary at the office of the Corporation.
  2. The property owners' association shall, at the expense of the owner requesting the recount, retain for the purpose of performing the recount, the services of a person(s) agreed on by the association and the persons requesting the recount.
  3. Any recount must be performed on or before the 30th day after the date of receipt of a request. If the recount changes the results of the election, the property owners' association shall reimburse the requesting owner for the cost of the recount. The property owners' association shall provide the results of the recount to each owner who requested the recount. Any action taken by the board in the period between the initial election vote tally and the completion of the recount is not affected by any recount.
- E. Tabulating of votes – Notwithstanding any other provision of this dedicatory instrument or any other law, a person who is a candidate in a property owners' association election or who is otherwise the subject of an association vote, may not tabulate or otherwise be given access to the ballots cast in that election or vote except as provided by this section.
- A person other than a person described in the above section may tabulate votes in an association election or vote but may not disclose to any other person how an individual voted.
- Notwithstanding any other provision of this dedicatory instrument or any other law, a person other than a person who tabulates votes, may be given access to the ballots cast in the election or vote only as part of a recount process authorized by this dedicatory instrument.

## **ARTICLE XI**

### **Rules of Order**

The rules in *Roberts Rules of Order* shall govern the organization in all cases in which they are applicable and in which they are not inconsistent with these Bylaws.

## **ARTICLE XII**

### **Source, Use and Control of Funds and Property**

#### **A. Source of Funds**

1. The principal source of funds to be used by the Corporation in carrying out its activities shall be the Regular Assessment as provided in the Subdivision Restrictions.
2. No other fees, or assessments, shall be imposed, unless approved by a majority of votes cast by the members at a regular or special meeting.
3. Existing fees may be increased, eliminated or reduced by the majority vote of the Board of Directors at any monthly Board of Directors meeting.
4. The Board of Directors may accept on behalf of the Corporation any contributions, gifts, bequests or devises, monetary, material, or otherwise to be used for the general purposes or special purpose of the Corporation, and may engage in special fund raising campaigns as it deems necessary to meet the financial needs of the Corporation.

#### **B. Use of Funds-** the Corporation shall:

1. Under the direction of the Board of Directors set up various categories within the Operating budget. These categories could consist, but not necessarily be limited to the following: Operating, Capital Projects/Building, Emergency.
2. Authority to expend funds:
  - a. The Board of Directors shall have authority to expend funds, under the Operating Category, as the Board of Directors deems necessary to carry out the established day-to-day operations of the Corporation.
  - b. Transfers of funds, from other categories, for Non-Budgeted spending (repairs or replacements) will be handled as follows:
    1. Up to \$1300 cumulatively for the year may be approved by the Board of Directors without approval of the membership.
    2. All non-budgeted spending over the \$1300 cumulative cap but under \$7000 requires member notification of the planned expenditure in order that comments may be heard from the members at the next regular board meeting or special meeting called for that purpose prior to a vote by the board except in the case of an emergency.
    3. All non-budgeted spending above \$7000 will require a vote of the members except in the case of an emergency.
    4. As used herein, emergency means an unforeseen circumstance requiring immediate attention to protect the health or safety of members and guests; to prevent or mitigate damage to Corporation property; or return damaged amenities to a safe, usable condition.
  - c. Authority to expend funds in the Capital Projects/Building Category, the Board will need to satisfy the following:
    1. Compile a list of projects or building proposals for public review.
    2. Each proposal will require written estimates of all associated costs, timeframe for completion and a prioritization of projects/building proposals.
    3. Presentation of the proposals to the Association either during a regular or a special meeting called for that purpose.

4. All Capital Project/Building spending up to \$7000 per item requires member notification of the planned expenditure in order that comments may be heard from the members at the next regular board meeting or special meeting called for that purpose prior to a vote by the board.
5. All projects/building proposals over \$7000, will require a vote of the members.
- d. Authority to expend funds from the Emergency Category will reside with the Board of Directors.
3. Unless otherwise approved by the members, the funds and assets of the Corporation may be used only for the general benefit of "Rocky Creek Ranch" lot owners as a whole, in accordance with the purposes and objectives as established in Article III above.
4. Expenditures shall be limited to funds currently available. No long-term debt shall be incurred or properties mortgaged except as approved by the members.
5. No Corporate properties shall be disposed of without the approval of the members.
6. The approval required for exceptions to the foregoing restrictions and limitations shall consist of a majority vote of the members present at the Annual Membership Meeting or Special Meeting of the members called for such purpose.
- D. Checks and drafts- All checks, drafts, or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the Treasurer. For instruments of \$ 250.00, or more, two authorized signatures will be required.
- E. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in depositories selected by the Board of Directors.

### **ARTICLE XIII**

#### **Books and Records**

- A. The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, Board of Directors, and Committees having any of the authority of the Board of Directors, and shall keep at the Registered or Principal Office records giving the names and addresses of the owners of all lots in "Rocky Creek Ranch" Subdivision, regular and special assessments and fees paid and due, and names and addresses of the members entitled to vote.
- B. The fiscal year of the Corporation shall begin on the first day of January and end on the last day of December each year, coinciding with the Subdivision regular assessment period.
- C. Members may request copies of Bylaws, minutes and/or financial reports of the Corporation, which will be provided within a reasonable time, but will be subject to a fee to cover administrative costs. This copy and reproduction policy will be adopted by the Board of Directors, published on the corporate website and filed at the Comal County Courthouse.
- D. A schedule of records retained by the corporation will be as follows:
  1. Certificates of formation, Bylaws, Restrictive Covenants, and all amendments to the certificates of formation, Bylaws, and covenants shall be retained permanently
  2. All other records shall be maintained for a minimum of 11 years.

### **ARTICLE XIV**

#### **Waiver of Notice**

Notice Provision (Article IX) is waived for all unscheduled or impromptu occurrences contained in Article VIII Section D.

## **ARTICLE XV**

### **Alterations, Amendment, Repeal and Adoption of Bylaws**

The Board shall be authorized to amend these Bylaws without the permission of the members for the purpose of conforming these Bylaws to any mandatory provision of the Act or other Texas Law or correct any errors or mistakes of fact, provided that any such corrections do not have a material adverse effect on the rights of the members.

Any Bylaws materials, not associated with the above paragraph, may be altered, amended, or repealed and new Bylaws may be adopted by a two-thirds (2/3) majority of the cast vote, at any regular meeting or at any special meeting, where written notice is given of an intention to alter, amend or repeal these Bylaws or to adopt new Bylaws at such meeting. Members may vote in person, or by proxy at the meeting. When a ballot question has been sent to all members prior to a vote, the member does not have to be physically present at the meeting to vote and can elect to vote either by proxy, by E-mail, by mail (absentee vote), or by facsimile.

## **ARTICLE XVI**

### **Foreclosure Procedures**

Foreclosures shall be in accordance with the Texas Property Code, Title 11, Chapter 209.

## **Article XVII**

### **Contracts**

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

- (1) The board member, relative, or company bids on the proposed contract and the association has received at least two other bids for the contract from persons not associated with the board member, relative, or company, if reasonably available in the community;
- (2) The board member:
  - (a) Is not given access to the other bids;
  - (b) Does not participate in any board discussion regarding the contract; and
  - (c) Does not vote on the award of the contract;
- (3) The material facts regarding the relationship or interest with respect to the proposed contract are disclosed to or known by the association board and the board, in good faith and with ordinary care, authorizes the contract by an affirmative vote of the majority of the board members who do not have an interest governed by this subsection; and
- (4) The association board certifies that the other requirements of this subsection have been satisfied by a resolution approved by an affirmative vote of the majority of the board members who do not have an interest governed by this subsection

B. Contracts - The Board of Directors may authorize any officer, or officers, or agent or agents of the Corporation, in addition to the Officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances.

**Article XVIII**  
**Procedures for Initiating Changes to the Deed Restrictions**

- A. Deed Restrictions within Rocky Creek Ranch Subdivision can be amended deleted or increased whenever the lot owners of 51 percent of the lots approve such action.

Initiating changes to the Deed Restrictions can be accomplished either:

1. By a Board of Directors survey of the entire association where there is at least a 10 percent level of the membership supporting the request to either amend, delete a particular Deed Restriction or add an additional Deed Restriction(s)

Or:

2. By individuals within the Association, gathering valid signatures totaling at least 10 percent of the membership of the Association to either amend, delete a particular Deed Restriction or add an additional Deed Restriction(s)

- B. The period to initiate and complete a survey or signature petition will be 120 days. All valid surveys or signature petitions must be submitted to the rules committee no later than one month (30 days) before the Annual Meeting, so that sufficient time may be provided to prepare the presentation to inform the association of the upcoming proposed Deed Restriction vote.

The vote on any Deed Restriction proposal will be held on the second Saturday in May. All changes to the Deed Restrictions resulting from the vote will become effective 60 days after the approval.

C. Withdrawal of Signature

1. A signature may be withdrawn from a petition authorized to be filed in connection with terminating restrictive covenants, as provided by this section. To withdraw a signature, the signer must request that the signature be withdrawn. To be effective, a withdrawal request must:
  - a. Be in writing and be signed and acknowledged by the signer of the petition;
  - b. Be filed with the authority with whom the petition is required to be filed not later than the day before the petition filing deadline, if any; and
  - c. Be delivered in the form of a copy of the request to the circulator of the petition not later than the date the request is filed or by the effective date of this petition, whichever is later.
2. A withdrawal request or copy filed or delivered by mail is considered to be filed or delivered at the time of its receipt by the appropriate person. The filing of an effective withdrawal request nullifies the signature on the petition and places the signer in the same position as if the signer had not signed the petition.
3. The Board may create a written policy establishing the method of conducting a survey and petition in accordance with the deed restrictions and these bylaws.

IN WITNESS WHEREOF, the undersigned has executed this certificate on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Signature

STATE OF TEXAS  
COUNTY OF COMAL

BEFORE ME, the undersigned Notary Public on the \_\_\_\_\_ of \_\_\_\_\_, 2020, by MYRA ZUMWALT, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes of consideration therein expressed, on behalf of said corporation.

This instrument was given to me under my hand and seal of this office this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public Signature