

ByLaw  
Outside  
Opinion



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**CLAYTON HEARN**  
Attorney and Counselor at Law  
Shareholder  
Board Certified by the  
Texas Board of Legal Specialization  
Labor and Employment

[chearn@rmwbhlaw.com](mailto:chearn@rmwbhlaw.com)

January 12, 2018

*Via E-mail: [becky@pipoa.net](mailto:becky@pipoa.net)*

Board of Directors

Padre Isles Property Owners Association, Inc.

c/o Mrs. Becky Perrin, Executive Director

**RE: Padre Isles Property Owners Association, Inc.**  
**Our File No: to be assigned**

Dear Mrs. Perrin:

We are pleased that Padre Isles Property Owners Association, Inc. (the "Association") has invited us to respond to its request for information regarding our firm as relates to legal services. Our firm has been representing developers, builders, property owners associations, and non-profit corporations for thirty years. Our firm enjoys the distinction of being AV rated and being listed in the roster of Preeminent Law Firms by [Martindale Hubbell](#).

The purpose of this letter is to clarify the terms and conditions of our engagement agreement. It is our understanding that the scope of legal services my firm will perform at this time will be to review your dedicatory instruments and render a legal opinion on the legality of a bylaw amendment that occurred in 2013. It is my understanding that initially, the Board would like an opinion about the Board's authority to amend bylaws pursuant to Section 22.102 of the Texas Business Organizations Code and/or any other statutory authority and whether a bylaw amendment limiting further amendments proposed by an owner and being circulated is proper under the governing documents and established law.

We understand that the Association's day to day legal needs are being ably handled by Mr. Bell and we do not seek to change that relationship and expect to attend to the project described above and any special projects that are assigned to us in the future for which the Board wants a second opinion or desires our specialized knowledge and perspective on a matter. Charges are based on an hourly fee of \$105.00 for paralegal time, \$150.00 for board certified paralegal/senior paralegal time, \$125.00 for law clerk time, \$225.00 - \$250.00 for associate attorney time, \$300.00 - \$325.00 shareholder/senior counsel time, and \$375.00 for equity shareholder time. It is my expectation and intention that this project will primarily be handled by myself at an hourly rate of \$325.00 and is not expected to exceed \$1,500.00. If it appears that charges will exceed \$1,500.00 I will contact the Executive Director and give a revised budget in advance. Billing rates for both attorneys and paralegal personnel are, from time to time, reviewed and adjusted on a firm-wide basis. Fees for services and other charges are billed monthly and are payable within thirty days of receipt.

We provide cost efficient and customer satisfaction oriented service, our firm also has thirty years of expertise and has an established reputation as an industry leader in the field of community association law. Our depth of experience in this area of the law is what differentiates our firm from our competition.

Possessing the ability to see how such situations evolve full circle will provide the Association with our legal knowledge to accomplish your goals while minimizing the associated risks.

In order for us to be successful as your attorneys, we will need full documentation of the matters we will handle. This will include all governing documents, especially the bylaws at issue and the declaration.

All information must be provided to our office in writing, including instructions from the Board giving authority to proceed with specific legal actions, however, by executing this engagement, we are assuming you wish for us to proceed with the project referenced above. Additionally, the Association is authorizing the undersigned to rely upon the data and documentation provided.

The firm is now paperless. The firm may utilize software and/or programs as well as storage that reside in "the cloud" and/or off -premises. The firm exercises reasonable care in using internet off-premises based and/or cloud based computing and storage. The Association recognizes that data breaches can occur even with the exercise of reasonable care. By entering into this engagement the Association understands and agrees to the use and risk of cloud storage.

We endeavor to provide prompt, efficient service at a competitive rate. We have provided association representation for over thirty years, and we are dedicated to not only continuing, but improving our tradition of excellence. Thank you for considering Roberts Markel Weinberg Butler Hailey PC as your legal advocates. We would be pleased to meet and provide answers to any questions you may have. We look forward to assisting the Association with its legal needs.

Please do not hesitate to contact us at your convenience if we can further clarify any of the information contained herein. If you agree to the terms of this letter, please sign in the space provided and return to our office at your earliest convenience.

Sincerely,

ROBERTS MARKEL WEINBERG BUTLER HAILEY PC



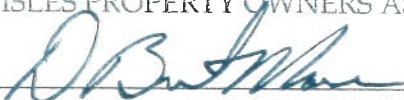
CLAYTON HEARN

CH:

AGREED AND ACCEPTED:

PADRE ISLES PROPERTY OWNERS ASSOCIATION, INC.

By: \_\_\_\_\_



Printed: \_\_\_\_\_

D. BRENT MOORE

Its: \_\_\_\_\_



Date: \_\_\_\_\_

01/18/18

**From:** [Becky Perrin](#)  
**To:** ["Clayton Hearn"; "Ashley Koirtvohann"](#)  
**Cc:** [bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)  
**Subject:** RE: 5478-00001 Padre Isles Property Owners Association, Inc.- General: KLR Position Memo  
**Date:** Friday, January 26, 2018 8:26:55 AM  
**Attachments:** [image002.png](#)  
[image003.png](#)  
[ERRATA LIST \(3\).docx](#)

Clayton,

Please add the attachment ERRATA LIST to the review of the Bylaw review for the Padre Isles Property Owners Association as requested by Karl Rubinstein.

Thank you,  
Becky Perrin

**From:** Clayton Hearn [<mailto:chearn@rmwbhlaw.com>]  
**Sent:** Tuesday, January 23, 2018 1:29 PM  
**To:** Ashley Koirtvohann; Becky Perrin  
**Cc:** [bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)  
**Subject:** RE: 5478-00001 Padre Isles Property Owners Association, Inc.- General: KLR Position Memo

Becky,

I've reviewed the materials you sent and am reviewing some legal authority to formulate my opinion. I don't know how the Board feels about letting Mr. Rubinstein know who I am, but I think there's no harm in doing so. I know and respect his attorney and can politely tell him that I'm giving my opinion absent any lobbying from any of the stakeholders.

*Roberts Markel Weinberg Butler Hailey PC is a debt collector attempting to collect a debt, and any information obtained as a result of this correspondence shall be used for that purpose.*

Clayton Hearn  
Shareholder  
[chearn@rmwbhlaw.com](mailto:chearn@rmwbhlaw.com)

Clayton Hearn  
2000 West 10th Avenue, Suite 200  
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**BOARD CERTIFIED**  
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Appellate Law / Commercial Litigation / Community Association / Construction Litigation / Corporate Transactions / Government and Offshore Litigation  
Energy Arbitration / Estate Planning / Insurance and Real Estate Litigation / Intellectual Property / Labor and Employment / Professional Liability / Real Estate  
Roberts Markel Weinberg Butler Hailey PC is a law firm with offices in Colorado Springs, Colorado, and Denver, Colorado. The firm is a member of the American Bar Association and the Colorado Bar Association. The firm is also a member of the American College of Trust and Estate Counsel and the American College of Real Estate Counsel. The firm is a member of the American College of Bankruptcy and the American College of Tax Counsel. The firm is a member of the American College of Arbitrators and the American College of Mediators. The firm is a member of the American College of Trial Advocates and the American College of Legal Writing. The firm is a member of the American College of Legal Research and the American College of Legal Education. The firm is a member of the American College of Legal Ethics and the American College of Legal History. The firm is a member of the American College of Legal Philosophy and the American College of Legal Science. The firm is a member of the American College of Legal Medicine and the American College of Legal Arts. The firm is a member of the American College of Legal Literature and the American College of Legal Music. The firm is a member of the American College of Legal Sports and the American College of Legal Games. The firm is a member of the American College of Legal Entertainment and the American College of Legal Media. The firm is a member of the American College of Legal Technology and the American College of Legal Innovation. The firm is a member of the American College of Legal Research and the American College of Legal Education. The firm is a member of the American College of Legal Ethics and the American College of Legal History. The firm is a member of the American College of Legal Philosophy and the American College of Legal Science. The firm is a member of the American College of Legal Medicine and the American College of Legal Arts. The firm is a member of the American College of Legal Literature and the American College of Legal Music. The firm is a member of the American College of Legal Sports and the American College of Legal Games. The firm is a member of the American College of Legal Entertainment and the American College of Legal Media. The firm is a member of the American College of Legal Technology and the American College of Legal Innovation.



## Becky Perrin

---

**From:** Becky Perrin <becky@pipoa.net>  
**Sent:** Friday, January 26, 2018 8:29 AM  
**To:** 'Karl Rubinstein'; 'Brent Moore'  
**Subject:** RE: Errata List

Your attachment was sent to the attorney reviewing you Position Memo at 8:27am this morning.

Becky

**From:** Karl Rubinstein [<mailto:karl.rubinstein@gmail.com>]  
**Sent:** Friday, January 26, 2018 8:17 AM  
**To:** Brent Moore; Becky Perrin  
**Subject:** Errata List

Please forward the attached Errata List to the attorney reviewing my Position Memo. I'm sure there are other typos.

## ERRATA LIST

Re Karl L. Rubinstein January 22, 2018 Summary of Position.

I note several typos in my Summary of Position, a result of being my own assistant.

Please forward the following errata list to the attorney who is reviewing my summary:

1. Page 2:

Second full paragraph change "provisions "in" the then" to "provisions of the then."

2. Page 3:

First line of paragraph beginning a. Procedure: Change Exhibit B to Exhibit B-2.

Fifth line from the bottom, the phrase "Despite, it" strike the comma and the word "it."

2. Page 7:

Third paragraph, last line substitute "nor were they then."

4. Page 12:

The reference to Exhibit B should be Exhibit C.

5. Page 13:

The reference to Section 2.03 should be 2.3.



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January 31, 2018

For Ms. Becky Perrin's review

Board of Directors

Padre Isles Property Owners Association, Inc.

c/o Ms. Becky Perrin, Executive Director

RE: **Padre Isles Property Owners Association, Inc. (the "Association")**  
**Our File No: 5478-00001**  
**Legal Opinion on questions regarding bylaw amendments**

Dear Ms. Perrin:

Thank you for giving me the opportunity to review materials and render an opinion relative to the ongoing dispute regarding the legality of the Association's 2013 amendment to its Bylaws and to determine if the effort that is underway by some members to reverse in part that amendment is proper under your governing documents and statutory authority.

In preparation of this opinion I reviewed the following:

- 1) The original, 1994 and 2013 Bylaws
- 2) Various Covenants for the neighborhoods within the Association
- 3) Articles of Incorporation, and the 1980 and 1990 amendments thereto
- 4) Karl Rubinstein's January 22, 2018, memorandum setting forth his position on the subject
- 5) Peter Kilpatrick's September 29, 2017, letter laying out Mr. Rubinstein's position
- 6) John Bell's January 22, 2018, letter setting forth his position
- 7) Errata List (undated) from Mr. Rubinstein correcting some typographical errors in his memorandum (4 above)
- 8) The Texas Business Organizations Code

I understand my role is that of independent legal counsel engaged by the Association to review the questions posed without regard to the Board's position or which side is taking which position. In the spirit of full disclosure I would like to say that I know and have worked with both John Bell and Mr. Rubinstein's attorney, Peter Kilpatrick. Both are excellent and highly respected attorneys and there is nothing in my experience that would bias me one way or another, but I wanted to get the fact that I know them out of the way.

**Question 1: Was the Board empowered to amend the bylaws in 2013?**

Short Answer: Yes.

It is undisputed that the Business Organizations Code ("BOC") allows a non-profit board to amend Bylaws, unless the Certificate of Formation (aka Articles of Incorporation) or the Bylaws themselves prohibit it. The precise language is as follows:

BOC §22.102 BYLAWS

- (a) The initial bylaws of a corporation shall be adopted by the corporation's board of directors or, if the management of the corporation is vested in the corporation's members, by the members.
- (b) The bylaws may contain provisions for the regulation and management of the affairs of the corporation that are consistent with law and the certificate of formation.
- (c) *The board of directors may amend or repeal the bylaws, or adopt new bylaws, unless:*
  - (1) *this chapter or the corporation's certificate of formation wholly or partly reserves the power exclusively to the corporation's members;*
  - (2) *the management of the corporation is vested in the corporation's members; or*
  - (3) *in amending, repealing, or adopting a bylaw, the members expressly provide that the board of directors may not amend or repeal the bylaw.*

Nothing in Chapter 22 of the BOC or the Articles of Incorporation for the Association wholly or partly reserves the power to amend bylaws to the members.

The management of the Association is explicitly vested in the Board of Directors (Article Six of the Articles of Incorporation).

The real conflict occurs when the two sides seek to reconcile Section 22.102(c)(3) with the following amendment language in the original Bylaws, which states:

6.1 These bylaws may be amended at any regular or special meeting of the members of a vote of a majority of the votes entitled to be cast by all of the Voting Members of the corporation, provided that no amendment inconsistent with the provisions of the Articles of Incorporation, applicable law, the applicable deed restrictions and Protective Covenants and Landowners' Agreements, or any covenant or restriction applicable to the subject property, shall be valid. The Voting Members may delegate to the Board of Directors the power to amend the bylaws of the corporation.

While an argument can, and has, been made that the last sentence expressly provides that the board of directors may not amend or repeal the Bylaw, the permissive use of "may" in both the beginning of Section 6.1 and the lack of an express prohibition of the Board's authority in the original, or any subsequent, Bylaw render BOC 22.102(c)(3) inapplicable to the present situation. Therefore, I see nothing meeting the exceptions to the statutory power of the Board to amend Bylaws.

There seems to be some dispute over whether alleged irregularities in the process undertaken render the 2013 Bylaws void or voidable. The Texarkana Court of Appeals in 2007 upheld a lower court's decision that Bylaws challenged on the grounds of improper procedures were valid due to the

Ms. Becky Perrin  
January 31, 2018  
Page 3

challenge being made too late, thus holding that the membership ratified them.<sup>1</sup> I think this case law would apply to the situation in Padre Isles, however, a court in Corpus Christi could conceivably find otherwise when examining the facts of this case.

**Question 2: Does the membership have the authority to further amend the bylaws to strip the Board's power to make future amendments?**

Short Answer: Yes

The very language of the amendment provision in the original and amended Bylaws specifically allows for the Bylaws to be amended by the membership, and sets forth the requisite votes to do so. Additionally, the BOC allows for such power by the membership. See Section 22.102(c)(3) – “in amending, repealing, or adopting a bylaw, the members expressly provide that the board of directors may not amend or repeal the bylaw.”

To the extent that either party is taking the position that the BOC preempts the ability of the membership to limit the board's power in this regard, I respectfully disagree. The governing documents cited herein and the plain language of the BOC clearly allow for the membership to wrest this power from the Board. I will refrain on opining on the wisdom of removing this power from the Board, because such is outside the scope of my engagement and I have not been asked to do so.

Please contact me if the Association would like me to expand the scope of my opinion or clarify any of the above.

Sincerely,

ROBERTS MARKEL WEINBERG BUTLER HAILEY PC



CLAYTON HEARN

---

<sup>1</sup> *City of Hughes Springs v. Hughes Springs Volunteer Ambulance Serv.*, 223 S.W.3d 707 (Tex.App.—Texarkana 2007, no pet.)

## Becky Perrin

---

**From:** Clayton Hearn <chearn@rmwbhlaw.com>  
**Sent:** Thursday, February 01, 2018 11:47 AM  
**To:** 'Becky Perrin'  
**Cc:** Ashley Koirtyohann  
**Subject:** RE: 5478-00001 Padre Isles Property Owners Association, Inc.- General:

Becky,

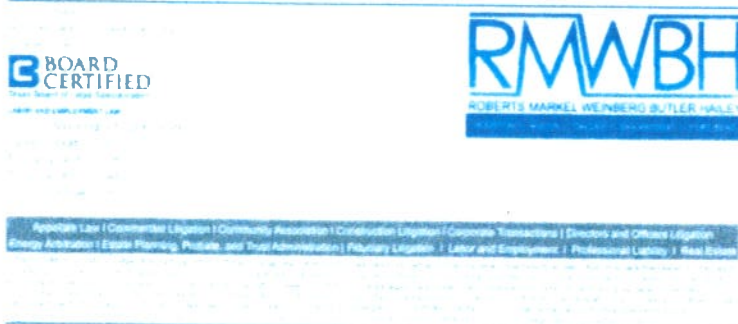
I'll prepare a supplemental letter addressing the points below.

Briefly,

- 1) Yes, if the membership voted to amend the bylaws to take away the Board's right to amend it would be valid, enforceable and consistent with the Business Organizations Code.
- 2) Boards are made up of volunteers who regularly attend to association matters and the standard bylaws in Texas are amendable by the Boards (in a non-profit setting). When the state legislature meets every two years or significant case law comes to light, it is preferable in my opinion to empower the Board with the authority to modify the bylaws to match those changes. With 5300 plus owners, it would be extremely difficult to make even the most minor revision.
- 3) The Court of Appeals case I reference involved a challenge to the process for amending bylaws. The court held that too much time had elapsed without a challenge and that the membership had essentially ratified the actions even if there were irregularities. I'll elaborate on this in my more formal supplement.

*Roberts Markel Weinberg Butler Hailey PC is a debt collector attempting to collect a debt, and any information obtained as a result of this correspondence shall be used for that purpose.*

Clayton Hearn  
Shareholder  
[chearn@rmwbhlaw.com](mailto:chearn@rmwbhlaw.com)



**From:** Becky Perrin [<mailto:becky@pipoa.net>]  
**Sent:** Thursday, February 1, 2018 10:23 AM  
**To:** Clayton Hearn  
**Cc:** Ashley Koirtyohann  
**Subject:** RE: 5478-00001 Padre Isles Property Owners Association, Inc.- General:

Clayton, I have been asked by the Board to obtain further clarification.

- 1) It is our understanding from your letter/opinion that it is legal to allow the membership to vote to prohibit the board from amending future bylaws and if that is voted in that it would be enforceable by State Law. Are we understanding this to be correct?
- 2) Please provide us with your opinion related to your comment, "I will refrain on opining on the wisdom of removing this power from the board..."
- 3) Please clarify the information referencing the Texarkana Court of Appeals in 2007. What are you telling us with this information?

The PIPOA has no problem including a vote of any membership on any issue. However, if there is a chance that it can be deemed illegal or unenforceable we are against that.

Thank you,  
Becky Perrin

**From:** Clayton Hearn [<mailto:chearn@rmwbhlaw.com>]  
**Sent:** Wednesday, January 31, 2018 7:48 PM  
**To:** Becky Perrin  
**Cc:** Ashley Koirtyohann  
**Subject:** 5478-00001 Padre Isles Property Owners Association, Inc.- General:

Ms. Perrin,

Please find my opinion regarding the Padre Isles Bylaws attached for the Board's consideration. Please let me know if you have any questions. Thank you.

*Roberts Markel Weinberg Butler Hailey PC is a debt collector attempting to collect a debt, and any information obtained as a result of this correspondence shall be used for that purpose.*

Clayton Hearn  
Shareholder  
[chearn@rmwbhlaw.com](mailto:chearn@rmwbhlaw.com)





## Becky Perrin

---

**From:** bmoore1@stx.rr.com  
**Sent:** Tuesday, February 13, 2018 7:55 AM  
**To:** Becky Perrin  
**Subject:** Fwd: Re: FW: 5478-00001 Padre Isles Property Owners Association, Inc.- General:

Sent via the Samsung Galaxy S86 active, an AT&T 4G LTE smartphone

----- Original message -----

**From:** [bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)  
**Date:** 2/1/18 9:24 AM (GMT-06:00)  
**To:** Becky Perrin <[becky@pipoa.net](mailto:becky@pipoa.net)>, [lesliehess@ernesthealth.com](mailto:lesliehess@ernesthealth.com)  
**Subject:** Re: FW: 5478-00001 Padre Isles Property Owners Association, Inc.- General:

Becky, Please contact the *attorney this morning and ask the following 2 questions/clarifications...*

1) It is my understanding from his letter/opinion that it is legal to allow the membership to vote to prohibit the board from amending future bylaws. And, if that is voted in...it is enforceable by State Law. Please get him to confirm that and ask for his opinion regarding the "wisdom in doing such"...as he mentions in the last sentence of his last paragraph.

To be clear, I have NO PROBLEM including a vote of the membership on ANY issue. However, if there is a chance that it can be deemed illegal or unenforceable ( which could cause the PIPOA additional legal issues) I am against it.

2) Also ask him to clarify the information referencing the Texarkana appeals, etc. What specifically is he telling us?

Thanks, Brent

Sent via the Samsung Galaxy S86 active, an AT&T 4G LTE smartphone

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Dallas, Texas 75206  
Telephone: 214-365-9290  
Toll Free: 800-713-4625

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Shareholder  
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Texas Board of Legal Specialization  
Labor and Employment

[chearn@rmwbhlaw.com](mailto:chearn@rmwbhlaw.com)

February 7, 2018

Via E-mail: [becky@pipoa.net](mailto:becky@pipoa.net)

Board of Directors

Padre Isles Property Owners Association, Inc.

c/o Ms. Becky Perrin, Executive Director

**RE: Padre Isles Property Owners Association, Inc. (the "Association")**  
**Our File No: 5478-00001**  
**Legal Opinion on questions regarding bylaw amendments**

Dear Ms. Perrin:

I am writing to follow up and elaborate on my January 31, 2018, opinion to answer additional questions that the Board had.

For clarity, I'm listing the questions as they were proposed to me in your February 1, 2018, email to me in italics and my answer for each will follow:

*It is our understanding from your letter/opinion that it is legal to allow the membership to vote to prohibit the board from amending future bylaws and if that is voted in that it would be enforceable by State Law. Are we understanding this to be correct?*

Yes. Both your original Bylaws of 1976 the subsequent amendments have the following language: "These Bylaws may be amended at any regular or special meeting of the members by a vote of a majority of the votes entitled to be cast by the Voting Members present at such meeting..." Similarly, the Business Organizations Code contemplates amendment by the members -- §22.201(a)(3) "in amending, repealing, or adopting a bylaw, the members expressly provide..." (emphasis added).

*Please provide us with your opinion related to your comment, "I will refrain on opining on the wisdom of removing this power from the board..."*

The current Bylaws and the BOC both provide the Board with the authority to amend. The reason for this is that the state legislature meets every two years and often legislation results in either mandatory or advisable changes. With a large community, it is challenging to obtain the majority involvement necessary to effectuate changes to keep the document current. Also,

published case law and other influences such as updates to Fair Housing laws could result in necessary or advisable modifications to the documents. An example of this is that the state legislature disallows the suspension of voting rights due to an assessment delinquency. The original Bylaws and the subsequent amendment in 1994 defined Voting Member in a way that was contrary to state law.

*Please clarify the information referencing the Texarkana Court of Appeals in 2007. What are you telling us with this information?*

The case referred to in my opinion explored a challenge to the procedure to amend a set of Bylaws and the Court held that the doctrine of laches was applicable when no timely challenge was made. In the *City of Hughes Springs* case, the delay was seven (7) years. Laches is an equitable doctrine that basically says that too much time has elapsed to make a challenge, similar to a statute of limitations defense. The Court in this case held that the membership basically ratified the challenged procedure because no challenge was made for the years following the amendment.

Again, thank you for presenting me with these questions and let me know if the Board would like any clarification on the information provided herein or in my recent opinion letter.

Sincerely,

ROBERTS MARKEL WEINBERG BUTLER HAILEY PC

A handwritten signature in blue ink, appearing to read "Clayton Hearn", written over a horizontal line.

CLAYTON HEARN

**From:** [becky](#)  
**To:** [bmoore1@stx.rr.com](#)  
**Subject:** Fwd: 5478-00001 Padre Isles Property Owners Association, Inc.- General:  
**Date:** Wednesday, February 7, 2018 7:42:21 PM  
**Attachments:** [Feb 7 2018 ltr re Bylaws.pdf](#)

---

Sent via the Samsung Galaxy S6 in AT&T 4G LTE smartphone

----- Original message -----

From: Ashley Koirtyohann <[akoirtyohann@rmwbhlaw.com](mailto:akoirtyohann@rmwbhlaw.com)>  
Date: 2/7/18 6:17 PM (GMT-06:00)  
To: "'becky@pipoa.net'" <[becky@pipoa.net](mailto:becky@pipoa.net)>  
Cc: Clayton Hearn <[cheam@rmwbhlaw.com](mailto:cheam@rmwbhlaw.com)>  
Subject: 5478-00001 Padre Isles Property Owners Association, Inc.- General:

Mr. Perrin,

Please see the attached letter from Clayton in response to the Board's follow-up questions.  
Thank you!

*Roberts Markel Weinberg Butler Hailey PC is a debt collector attempting to collect a debt, and any information obtained as a result of this correspondence shall be used for that purpose.*

Ashley Koirtyohann

Associate Attorney

[akoirtyohann@rmwbhlaw.com](mailto:akoirtyohann@rmwbhlaw.com)



Appellate Law / Commercial Litigation / Community Association / Construction Litigation / Corporate Transactions / Directors and Officers Litigation  
Energy Acquisition / Estate Planning, Probate, and Trust Administration / Fiduciary Litigation / Labor and Employment / Professional Liability / Real Estate

**From:** Becky Perrin [<mailto:becky@pipoa.net>]  
**Sent:** Thursday, February 1, 2018 10:23 AM  
**To:** Clayton Hearn  
**Cc:** Ashley Koirtyohann  
**Subject:** RE: 5478-00001 Padre Isles Property Owners Association, Inc.- General:

Clayton, I have been asked by the Board to obtain further clarification.

- 1) It is our understanding from your letter/opinion that it is legal to allow the membership to vote to prohibit the board from amending future bylaws and if that is voted in that it would be enforceable by State Law. Are we understanding this to be correct?
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- 3) Please clarify the information referencing the Texarkana Court of Appeals in 2007. What are you telling us with this information?

The PIPOA has no problem including a vote of any membership on any issue. However, if there is a chance that it can be deemed illegal or unenforceable we are against that.

Thank you,  
Becky Perrin

**From:** Clayton Hearn [<mailto:chearn@rmwbhlaw.com>]  
**Sent:** Wednesday, January 31, 2018 7:48 PM  
**To:** Becky Perrin  
**Cc:** Ashley Koirtyohann  
**Subject:** 5478-00001 Padre Isles Property Owners Association, Inc.- General:

Ms. Perrin,

Please find my opinion regarding the Padre Isles Bylaws attached for the Board's consideration. Please let me know if you have any questions. Thank you.

*Roberts Markel Weinberg Butler Hailey PC is a debt collector attempting to collect a debt, and any information obtained as a result of this correspondence shall be used for that purpose.*

Clayton Hearn  
Shareholder  
[chearn@rmwbhlaw.com](mailto:chearn@rmwbhlaw.com)



John D.  
Bell





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A PROFESSIONAL CORPORATION  
LAWYERS

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CORPUS CHRISTI, TEXAS 78401-0748

RALPH R. WOOD (1901-1965)  
MARSHALL BOYKIN III (1925-2014)  
ROBERT C. WOLTER\* (Of Counsel)  
STEWART N. RICE  
JOHN D. BELL\*\*  
FREDERICK J. McCUTCHON§  
PETER E. AVOTS  
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SHANNON STEEL WHITE  
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\*\*\*\*\*  
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\*\*BOARD CERTIFIED-COMMERCIAL  
REAL ESTATE LAW  
§BOARD CERTIFIED-LABOR & EMPLOYMENT LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION

Writer's email: jbell@wbwpc.com

January 22, 2018

Brent Moore  
President, Padre Isles Property Owners Association, Inc.  
Via email to becky@pipoa.net

Re: Questions Concerning Bylaws

Dear Sirs;

You have requested our position on the legality of the Bylaws amendments approved by the Board in 2013 and a proposed Bylaw amendment in "Proposition 1" being circulated by a group known as "ARCH" on Padre Island. We understand that this position paper will be provided, along with an opposition paper prepared by Karl Rubinstein, to independent legal counsel retained by the POA for an opinion on these issues. For reference, the current POA Bylaws are attached.

**2013 Bylaw Amendments**

Background. The POA Bylaws have not been amended very often since their original adoption by the initial board of directors in 1976. In 1994, the Bylaws were amended in Section 1.01 to include a provision for the addition of Cane Harbor Bay as a subdivision and in Section 4.08 to charge 6% interest on unpaid assessments. Attached are copies of the original 1976 Bylaws and the 1994 Bylaws for reference.

In early 2013, the Board of Directors began discussions on proposed amendments to the Bylaws in order to better conform them to the current requirements of the law and existing practices. With a lot of amendments to the Texas Property Code in 2009 and 2011, the Board had a desire to update the Bylaws in order to make its provisions work better in harmony with the new legal requirements. Those discussions resulted in numerous technical changes to the Bylaws in order to sync the procedures for meetings and notices with provisions in Chapter 209 of the Texas Property Code, delete provisions contrary to the law such as prohibiting voting by members not current in their assessments, and add other language to conform to the actual duties of the Board officers and staff in operating the POA. A black-lined copy of the 2013 Bylaws showing the changes from the 1994 version also is attached for reference.

Approval of Bylaws by Board of Directors. Since the POA has over 5,300 properties in its participating subdivisions, the attorney preparing the 2013 Bylaws recommended approval of

the amendments by the Board of Directors rather than scheduling a special membership meeting on this issue. All of the changes were fairly technical in nature, and the process of creating separate amendments for a membership vote on each subject would be tedious and time-consuming. Although the original language of Article Six of the 1976 Bylaws and 1994 Bylaws tracked the provisions of the Texas Nonprofit Corporation Act in effect at the time providing for amendment of the bylaws by a membership vote, the law had been changed in 1994 to authorize the board of directors to amend the bylaws of a nonprofit corporation. *Compare* Art. 2.09 of Texas Nonprofit Corporation Act of 1958 with Section 22.102 of Texas Business Organizations Code (copy attached).

Mr. Rubinstein has not objected to any of the amendments made in 2013 other than the addition of the statement in Section 7.01 (formerly Section 6.01) concerning amendment of the Bylaws by the Board of Directors. He has argued at various times that the Board had to follow the Bylaws regardless of State law, that inclusion of the phrase in the original Bylaws that the members could delegate authority to the Board was a sufficient reservation of membership rights under BOC Section 22.102(c)(3), and that the Board could not create the power to amend the Bylaws by insertion of the new clause in Section 7.01 stating that it had the right to do so.

Article 2.09 of the Texas Nonprofit Corporation Act was amended to change the primary method of amending bylaws from the membership to the board in the same manner that Article 2.23 of the Texas Business Corporation Act had been changed in 1987. The reforms were part of several governance changes clarifying the liabilities of directors and officers and even allowing a board of directors to amend the articles of incorporation in certain limited areas without the need for stockholder or membership approval.

Reference to legislative history, however, is not necessary for this analysis in that the State law plainly provides that “the board of directors may amend or repeal the bylaws, or adopt new bylaws...” unless one of three exceptions applies. The grant of authority applies regardless of whether the corporation has elected to adopt the new law or if the bylaws are silent on this issue.

For example, when the BOC was enacted in 2006, for the first four years its changed provisions indeed were optional for existing entities which could “voluntarily elect to adopt and become subject to this code...” BOC Section 402.003. Effective as of January 1, 2010, however, the provisions of the BOC became binding on all existing entities regardless of whether they had taken prior action to voluntarily conform to the new code. Section 402.005 specifically provided that “this code applies to the entity and all actions taken by the managerial officials, owners, or members of the entity, except as otherwise expressly provided by this title.”

Further, there is no authority to suggest that Section 22.102 only applies to the extent the bylaws of a corporation are silent on the subject. Several sections in Chapter 22 of the BOC specifically provide that the statute only applies “unless otherwise provided by the certificate of formation or bylaws...” or similar language. *See* Section 22.159, Section 22.157, and Section 22.162. Some provisions, such as for cumulative voting, only apply if they are in the certificate

of formation. In contrast, the language of Section 22.102 does not contain any qualification that the plain meaning of the law does not apply if the bylaws are different.

In *Masterson v Diocese of Northwest Tex.*, 422 S. W.3d 594 (Tex. 2013), the Texas Supreme Court noted that “the current statutory scheme changes the default rule on who is authorized to amend the bylaws” and references the provisions in Section 22.102. Although that statement is *dicta* since neither the old law nor the new law supported the Diocese’s position, it confirms the legal change that took place. Mr. Rubinstein has argued that in noting the “default rule” had changed the Supreme Court was endorsing his position, but nothing in the opinion abrogates the basic law that the Legislature has authorized boards of directors to amend corporate bylaws.

As a result, the Board of Directors of the POA and I have reasonably believed that Section 22.102(c) of the BOC means exactly what it says: “The board of directors may amend or repeal the bylaws” unless one of the three listed conditions apply. None of those three listed conditions apply to the Padre Isles POA: (a) the certificate of formation does not reserve that right to the members (a copy of the articles of incorporation are attached); (b) management of the POA is not vested in the members; and (c) the members have not enacted any bylaws that expressly provide they cannot be amended or repealed by the board.

In this last respect, Mr. Rubinstein has argued that the original language of Section 6.01 constituted a reservation of that right by the members in compliance with BOC Section 22.102(c)(3). That argument fails for several reasons. First, the language of Section 6.01 was adopted by the initial board of directors in 1976, not by the membership. Second, the language deals with a permissive delegation of authority to the board to amend bylaws – not an express reservation of a right; and third, the language of subsection (3) pertains to dealing with “a bylaw” adopted by the members and not the bylaws as a whole.

The POA has never contended that the board *created* its authority to amend the Bylaws by including the new statement in Section 7.01. The inclusion of that statement was made simply as a reminder as to what the law provided, in similar fashion to a number of other changes made in the Bylaws to conform to the requirements of Chapter 209 of the Texas Property Code. The Texas Legislature provided in 1994 that a board of directors may amend or repeal the bylaws or adopt new bylaws, and that is the sole source of this authority.

Notice of September 24, 2013 Meeting. An additional question has been raised concerning the notice of the September 24, 2013, Board meeting at which the new Bylaws were adopted. Texas Property Code Section 209.0051(e) requires that notices of the “date, hour, place and general subject of a regular or special Board meeting” be provided in one of the following ways:

- (1) Mailed to each property owner no later than 10 days or earlier than 60 days before the meeting, or

- (2) ~~Provided at least 72 hours before the meeting by posting the notice in a conspicuous manner reasonably designed to provide notice to owners and sending the notice by email to each owner who has registered an email address with the Association, or~~
- (3) Providing at least 72 hours' notice by posting it on any internet website maintained by the Association and sending the notice by email to each owner who has registered an email address with the Association.

Although in 2013 the agendas were posted at the POA offices in a manner accessible to the owners, the practice of sending the email blasts to registered email addresses simply stated the date, hour, place and general statement that a regular or special Board meeting was being conducted. The statute says "general subject of" the meeting and does not specifically require providing the detailed agenda or notice of specific items to be considered unless it is a matter to be brought up for deliberation in executive session. While that distinction does not make much logical sense, the Legislature was not clear in specifying exactly what the emailed notice needed to include. Nevertheless, subsequently the POA began including the complete agenda as part of the email blasts to the membership and also post the agenda on its website at least 72 hours prior to the meeting.

Unlike the Texas Open Meetings Act in Chapter 551 of the Texas Government Code, nothing in Section 209.005.1 states that failure to give a particular email notice invalidates the Board action taken. Chapter 209 does not impose any penalties or sanctions for noncompliance. In response to the question raised about notice in 2013, the POA Board of Directors included in the agenda for its November 28, 2017, meeting, an item "ratifying and confirming the Bylaws as amended in 2013 ..." and that motion was approved by the Board. The emailed notices for the meeting included the agenda item specifically referencing the ratification and the different prior amendments approved.

Signature of Bylaws. An additional question has been raised about the POA not retaining a signed copy of the Bylaws as amended in 2013. The minutes of the Board meeting reflected that the amendments were approved by the unanimous vote of the Board, and the POA began releasing that version of the Bylaws in response to all requests for documents and in connection with management certificates provided to new owners. The updated Bylaws additionally were posted on the POA's website.

No signature is required for the validity of any bylaws in that in order to be valid bylaws must be approved in the manner provided by State law. The only time bylaws must be signed is when they are being certified by an officer of the organization for filing either with the IRS or another entity. Typically, bylaws are effective when adopted in the manner provided by law and duly recorded in the minutes of the organization.

Filing Bylaws with County Clerk. Another question raised pertains to the requirement in Chapter 202 of the Texas Property Code entitled "Construction and Enforcement of Restrictive

Covenants” stating that dedicatory instruments (as defined in that Chapter) must be filed in the real property records of each county in which the property to which the dedicatory instruments relate is located. The POA’s Bylaws were not filed with the Nueces County Clerk until 2017. The definition of a “dedicatory instrument” in Chapter 202 includes “a declaration *or similar instrument subjecting real property to:* (A) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners association....” (emphasis added) All of the restrictive covenants applicable in the Padre Isles subdivisions are contained in the various documents entitled Protective Covenants and Landowners’ Agreement recorded for the various identified subdivisions on Padre Island. All of those Protective Covenants specifically relate to different subdivisions of real property and impose various restrictions upon them. In contrast, the POA Bylaws do not impose any restrictive covenants on any identified real properties within the Bylaws.

While Bylaws could, in some cases, include the levy of particular assessments, use restrictions, and other matters typically included in restrictive covenants, the POA Bylaws do not. Since the entirety of Chapter 202 of the Texas Property Code deals with the enforcement of restrictive covenants, the impact of the requirement in Section 202.006 that dedicatory instruments be filed of record in order to be in “effect” applies to the issue of enforcing any restrictive covenants contained in such instruments against real property.

The case of *Storck vs. Tres Lagos Property Owners’ Association*, 442 S.W.3d 730, 737 (Tex. App. – Texarkana 2014, pet denied) notes that not all bylaws are dedicatory instruments under Chapter 202. In that case, the bylaws specifically were incorporated by reference in other dedicatory instrument filings, but such is not the case for the Padre Isles POA. Nevertheless, the current Bylaws have been filed of record, but the ability of the Board to amend the Bylaws is not based upon the effectiveness of the 2013 Bylaws amendments but is based upon State law as stated in BOC Section 22.102. It is a *non sequitur* to argue that the Board somehow created the power to amend the Bylaws on its own motion in 2013 by adding a provision in Section 7.01, but that authority was not effective because the Bylaws were not filed of record.

#### **Proposed Bylaw Amendment Prohibiting Amendments by the Board**

A proposed amendment to the Bylaws styled “Proposition 1” states that “the PIPOA Bylaws may not be amended, adopted, or otherwise effected (sic) by the PIPOA Board.” A complete copy of Proposition 1 and Proposition 2 as proposed by the ARCH organization is attached. This appears to directly contradict the law in BOC Section 22.102 (c) providing that “the board of directors may amend or repeal the bylaws.”

Section 22.102(b) provides that a corporation’s bylaws may contain any provisions “that are consistent with law” then immediately follows with the above-quoted statement in Section 22.102(c). It’s hard to argue that stating the board “may not” somehow is consistent with the law saying that “the board of directors may....” The full text of Proposition 1 makes it clear that it is an attempt to impose a restriction forbidding the Board from amending or repealing the proposed Bylaw as provided in BOC Section 22.102(c)(3), but the proposed Bylaw provision itself is a

blanket denial of the Board of Directors from having any authority to amend the Bylaws whatsoever. Such is not consistent with State law as required in Section 22.102(b).

### Conclusion

Aside from addition of the statement to Section 7.01, none of the changes made in the 2013 Bylaws have generated any controversy. The issue raised in Proposition 2 concerning the removal of a director relates to original language in Section 2.3 of the 1976 Bylaws authorizing a director to be removed without cause on a unanimous vote of the rest of the Board. The POA Board of Directors only has amended the Bylaws on two other occasions since 2013. One was to change the title of the Executive Coordinator to be the Executive Director and the other was to clarify that in board elections the winners shall be determined by a plurality vote.

Some have argued that in the 2013 amendments the Board "stole" the members' rights to amend the Bylaws, but Section 7.01 retains the ability of the members to amend the Bylaws. Subsequent to the 1994 changes by the Texas Legislature, bylaws of an organization must include a right of the membership to amend the bylaws or else the right will not exist since it was eliminated under State law. As a result, most membership organizations retain in their bylaws the right of the members to adopt amendments, but that in no way abrogates the authority provided to the board of directors under State law.

Very truly yours,



John D. Bell

Attachments: Current Bylaws  
1976 Bylaws  
1994 Bylaws  
2013 Bylaws  
2013 Bylaws (Black-lined)  
Comparison of Statutes  
Articles of Incorporation  
ARCH Propositions 1 and 2



**ARTICLES OF INCORPORATION  
OF  
PADRE ISLES PROPERTY OWNERS ASSOCIATION, INC.**

We, C. G. Hofreiter, Gene Graham and M. Marvin Mesirow, natural persons of the age of twenty-one (21) years or more, all of whom are citizens of the State of Texas, acting as incorporators of a corporation under the Texas Non-Profit Corporation Act, do hereby adopt the following Articles of Incorporation for such corporation:

**ARTICLE ONE**

The name of the corporation is Padre Isles Property Owners Association, Inc.

**ARTICLE TWO**

The corporation is a non-profit corporation.

**ARTICLE THREE**

The period of its duration is perpetual.

**ARTICLE FOUR**

*(Amended April 3, 1990)*

The corporation is organized exclusively for the promotion of social welfare, including the following: providing facilities for the protection, security, pleasure, recreation and furthering the benefit or common good of all of the property owners and residents of the Padre Island Number 1, Padre Island Number 2 and the various units of Padre Island--Corpus Christi subdivision located in Nueces County, Texas; the preservation thereof as a marina type community of the highest quality; owning, constructing, operating, acquiring, developing, maintaining, repairing, replacing and protecting, as on a non-profit basis in furtherance of the aforesaid purpose of common areas, including but not limited to: greenways, recreation areas, canals, bulkheads, seawalls, seagates, lighting, parks, roads, streets, curbs, butters, drainage facilities, water access areas, boat ramps and any other facilities or property which shall be owned by it and located in the above described subdivisions; the administration and enforcement of any deed restrictions covering such property in accord with the terms thereof including the assessment and collection of maintenance fees and charges as provided thereunder. For the purposes hereof "Padre Island--Corpus Christi Subdivisions" shall be platted of record by Padre Island Investment Corporation using the name Padre Island--Corpus Christi. The corporation is not organized and shall not be operated for pecuniary gain or profit. The corporation is not authorized to provide exterior maintenance to private residences. No part of the property of the corporation and no part of its earnings shall inure to the benefit of any director or other private individual. The corporation shall never be authorized to engage in regular business of a kind ordinarily carried on for profit or in any other activity except in furtherance of the purposes stated above for which the corporation is organized, nor shall the corporation engage in any activity which is not permissible for organizations exempt from taxation described in Section 501 (C) (4) of the Internal Revenue Code of 1954, as amended. The Association shall not support, in any manner, any proposal of any entity or person(s) that could or would cause an increase in members' taxes or assessments, (except those assessments for common area maintenance of Padre Isles as outlined in the covenants of the development), without first obtaining a majority of the votes cast by the members on the proposal. The Association shall not engage in any activity involving political campaigns/candidates or attempt to influence legislation that is in conflict with any internal revenue code or regulation.

**ARTICLE FIVE**

The street address of the initial registered office of the corporation is 200 Hawn Building, 819 North Carancahua Street, Corpus Christi, Texas, and the name of its initial registered agent at such address is Texas Agent Corporation.

**ARTICLE SIX**

Affairs of this corporation shall be managed by a board of directors. The number of directors shall be fixed by the bylaws of this corporation, and until adoption of the bylaws, the number of directors shall be three (3). The names and residences of those who are appointed as the initial directors are as follows:

<u>Name</u>	<u>Address</u>
C. G. Hofreiter	14317 Emerald Street Corpus Christi, Texas
Gene Graham	14322 Emerald Street Corpus Christi, Texas
M. Marvin Mesirow	14321 Emerald Street Corpus Christi, Texas

**ARTICLE SEVEN**

The name and address of each incorporator is:  
*(the same as above directors)*

**ARTICLE EIGHT**

The corporation shall be a membership corporation. The qualifications for membership and rights of members shall be as set forth in the bylaws of the corporation.

Note: This document was signed on February 24, 1976 by all incorporators listed above and witnessed by Marilyn A. Harrison, Notary Public in and for Nueces County, Texas. On March 1, 1976, this document was filed in the Office of the Secretary of State of Texas.

**ARTICLE NINE**

*(added as amendment March 8, 1980)*

The corporation shall not expend or ratify the expenditure of more than twenty (20%) of the annual lot assessments (of the year in which such expenditures or authorization is to be made) for acquiring or developing real estate or for constructing, acquiring, or developing facilities. Expenditures for normal maintenance, operation and repair of facilities shall not be subject to such limitation.

Note: On March 8, 1980, Articles ten, eleven and twelve were added by amendment, but were subsequently deleted by an amendment adopted by the membership on March 10, 1990.

*Black-lined Copy with Executive Coordinator as COO*

# *Padre Isles*

PROPERTY OWNERS ASSOCIATION, INC.

~~INCORPORATED~~



*Bylaws*

AMENDED TO  
SEPTEMBER 8, 199424, 2013

# PADRE ISLES PROPERTY OWNERS ASSOCIATION, INC.

## BYLAWS

### SECTION 1 MEMBERS

1.01 MEMBERSHIP. ~~Padre Island Investment Corporation~~ (hereinafter referred to as "~~PHC~~") ~~and each.~~ Each person— (which term shall be construed to include partnerships, corporations and any other type of entity or organization) who shall have acquired or shall hereafter acquire the record legal title to all or any portion of the property ~~owned by PHC~~ situated on Padre Island, Nueces County, Texas ~~—(hereinafter sometimes referred to as the "subject property") including, but not limited to, the lots or tracts into which the subject property presently has been subdivided~~ Subdivisions) as shown by the following listed recorded plats thereof, to-wit:

Barataria Bay Units 1-5  
Cape Summer Units 1 & 2  
Coquina Bay  
Island Fairway Estates  
Mariners Cay Unit 2A  
Padre Island Number 1 & 2  
Sea Pines Unit 1  
Section 3 (Galleon Bay)  
Section 4 (Tradewinds)

~~\*Cane Harbor Bay~~  
Commodore's Cove Units 1 & 2  
Mariner's Cay  
Island Fairway Estates Blocks: 3 & 21-36  
Point Tesoro Units 1-5  
Ports O'Call  
Section 2 (Galleon Bay)  
Section 3A (Galleon Bay)  
~~Section 18 (Marina Site)~~ Sections A-E

Such membership shall automatically continue for the duration of such the ownership be a Voting Member of Padre Isles Property Owners property within the Subdivisions. This Association, Inc., is a membership corporation organized under the provisions of the Texas Non-Profit Corporation Act (the "corporation"). Each person who is a purchaser of any portion of the subject property under a contract for deed from PHC, its successors and assigns, shall be an Associate Member of this corporation. Reference herein to "members" shall include both Voting and Associate Members.

- ~~• To be added following receipt of \$16,000 "Buy in" payment; dedication of street to City of Corpus Christi and covenants approved by the Corporation.~~

Notwithstanding any other provision herein, the City of Corpus Christi, Nueces County, Texas, or any other political subdivision which may presently own or hereafter acquire a portion of or any interest in the subject property, and any lien holder or mortgager, trustee under a deed of trust, and any holder or owner of any right of way easement or similar interest, shall not, as such, be deemed to be the owner of record of the legal title to a portion of the subject property and shall not by reason of any such interest owned or held or acquired by them be or become a A member of this corporation.

~~A member of this corporation~~Association is not, as such, personally liable for the debts, liabilities, ~~nor~~or obligations of the ~~corporation~~Association.

1.02 EXTENSION OF TERRITORIAL ELIGIBILITY FOR MEMBERSHIP. If, at any date subsequent to the adoption of these bylaws, additional land situated on Padre Island, Nueces County, Texas, is platted of record by PHC for the purpose of being developed as an integral part of the subject property using the name Padre Island Corpus Christi, such additional land shall automatically be included within the definition of the "subject property", and owners thereof shall be eligible to become members of this corporation in accord with the rules established herein~~may be developed with protective covenants similar to the protective covenants applicable to the Subdivisions and upon the approval of the Board of Directors become part of the Subdivisions covered by these Bylaws.~~

1.03 VOTING RIGHTS. A. Only Voting Members shall have voting rights and be counted in determining a quorum at any meeting; ~~provided, however, notwithstanding any other provision in these Bylaws, no Voting Member shall have a right to vote nor be counted in determining a quorum so long as his/her lot is not being assessed or charged a maintenance fee by reason of Section 4.07 of the Bylaws.~~ Only one (1) vote may be cast with respect to or by reason of the ownership of each Lot, and in the case of ownership of less than an entire Lot, or in the case of undivided fractional interest ownership Lots, the vote attributable to a Lot only shall ~~be cast only~~ be a representative of the owners of a majority in interest or a majority of the front footage of such Lot (determined by measurement of the linear foot dimension of the Lot facing the street upon which such Lot fronts according to the plat or map designating and identifying such Lot).

B. A Voting Member may vote in person or by proxy; however, no proxy shall be valid after eleven (11) months from the date of execution unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and in no event shall it remain irrevocable for more than eleven (11) months. A proxy delivered by email or by fax may be counted if the identity of the member submitting the ballot can be confirmed. [See Texas Property Code § 209.00592].

C. Voting may be conducted by mail or electronic means in such a manner as the Board of Directors shall determine.

#### 1.04 MEETINGS.

A. Annual Meeting. The Annual Meeting of the Members of the ~~corporation~~Association shall be held at ten o'clock a.m. on the second Saturday in March each year at such place in Nueces County, Texas as shall be designated for such purposes in a notice of the meeting; ~~but if no notice be given, or if no other place be designated, then such meeting shall be held at the Padre Isles Country Club.~~ With respect to proxy voting, the Association shall provide the members with the following minimum information: When voting for Directors, a resume provided by each candidate within the space requirements as determined by the Directors and information on issues and amendments as required in Section 6, Paragraph 6.02.

B. Special Meetings. Special meetings of the members may be called at any time by the President, the Vice President, the Secretary or Treasurer, or by two (2) or more members of the Board, or upon written request of the members who have a right to vote ten percent (10%) of the votes entitled to be cast at the time of such call. Any business, which may properly be conducted at an annual or regular meeting of the members, may also be conducted at any special meeting.

C. Informational Meetings. In addition to the Annual Meeting, ~~there will be three (3) the~~ Board may schedule informational meetings ~~annually~~ to pass on and receive information on news/plans/projects/status on programs for the benefit of the members.

#### 1.05 NOTICE.

~~No notice of any annual or regular meeting of the members of the corporation shall be required, but such notice of any such meeting as the Board may deem advisable may be given.~~

~~Notice of special meetings shall be given to Voting Members (none being required to Associate Members) not less than ten (10) nor more than fifty (50) days prior to the date of any such meeting~~

~~Any notice which shall be given to a member of the corporation with respect to any meeting or for any other purpose shall be deemed to have been properly given if addressed to "owner", in care of the street address of the Lot or tract located in the subject property with respect to the ownership of which the member is entitled to vote; or, when the number of Voting Members exceeds one thousand (1,000), notice may be given by publication in any newspaper of general circulation in Nueces County, Texas.~~

A. Not later than the 10<sup>th</sup> day or earlier than the 60th day before the date of an election or vote of the membership on a matter, the Association shall give written notice of the election or vote to each member. [See Texas Property Code § 209.0056].

B. If mailed, the notice shall be deemed to be delivered when deposited in the United State mail addressed to the member at the address as it appears on the records of the corporation, with postage prepaid. If notice is given by electronic mail, such notice shall be deemed to be delivered when sent to the electronic mail address provided by the member.

1.06 QUORUM. ~~The owners of at least ten percent (10 %) of the Lots located in the subject property~~Subdivisions, present in person or by proxy, shall be requisite for and shall constitute a quorum for the transaction of business at all meetings of the members of the ~~corporation~~Association. Any meeting of members may be adjourned from time to time without notice other than announcement at the meeting, until a quorum shall be present or represented. When a quorum is present in person or by proxy, a majority vote of the members present shall decide any question brought before such meeting, except as noted in Section 2, Paragraph 2.03.

1.07 PROCEDURES. ~~All Association membership~~ meetings and Board of Directors meetings shall be conducted according to Robert's Rules of Order, newly revisedNewly Revised, as long as such rules are not inconsistent or in conflict with these Bylaws, the Articles of Incorporation, or Texas or Federal Law.

## SECTION 2 DIRECTORS

2.01 NUMBER. The number of directors of the ~~corporation~~ Association shall be seven, and those whose terms shall have expired shall be elected at the annual membership meeting. Directors shall serve for ~~three years~~ year terms until his/her successor has been duly elected and qualified. Notwithstanding the foregoing, the directors may determine that in lieu of electing the new directors whose terms shall have expired at an annual membership meeting, such election shall be conducted by mail.

2.02 QUALIFICATIONS. Directors and Officers shall be natural persons of the age of eighteen (18) or over, and must be members of the Association.

2.03 VACANCIES AND REMOVAL. Any director may be removed with or without cause by the unanimous vote of the remaining members of the Board (excluding the director to be removed). Officers and Directors may also be removed, with cause, by a 55% vote of the members voting in an Annual or Special Meeting. Upon the death, removal, resignation, or incapacity of any member of the Board, a majority of the then remaining directors shall elect his/her successor.

2.04 MEETINGS. A. An annual meeting of the Board of the ~~corporation~~ Association shall be held each year immediately following the adjournment of the annual meeting of the members, and at the same place as the annual meeting of the members; ~~and no notice of such annual meeting of the Board shall be required.~~ Special meetings of the Board may be called by any ~~director~~ three (3) directors or by the President, and shall be held at such time and place as shall be specified in the notice of such meeting. ~~No particular form of notice shall be required for the calling and holding of a special meeting of the Board, provided that actual notice thereof shall have been given to each director in advance of the time of such meeting. Proper notice shall be deemed to have been given of any special meeting of the Board if notice is in writing, or by telephone or telegraph message and shall have been sent to either the usual business or residence address of the person entitled to receive notice not less than five (5) days preceding the time of the meeting.~~

B. A director may vote in person or by proxy. No such proxy shall be valid after three (3) months from the date of its execution; and each shall be revocable unless expressly provided therein to be irrevocable.

C. The Association must give all members notice of the date, hour, place, and general subject of all Board meetings. The notice shall be provided to each member as provided by the Texas Property Code. The notice shall be: (1) mailed to each member 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 the members: (i) in a place located on the Association's common property or, with the member's consent, on other conspicuously located privately-owned property within the subdivision; or (ii) 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. [See Texas Property Code § 209.0051].

2.05 MANAGEMENT. ~~The~~ Association shall be managed and controlled by the Board. The Board shall have authority to cause the ~~corporation~~ Association to own, acquire, develop, construct, maintain, operate, repair and replace, on a non-profit basis, common areas for the protection, security, pleasure, recreation, or benefit of the ~~subject property~~ Subdivisions and the owners thereof, including but not limited to, greenways, recreation areas, canals, bulkheads, seawalls, sea gates, lighting, ~~parks, roads, streets, curbs, gutters,~~ drainage facilities, water access areas, including boat ramps, and such other facilities in the ~~subject property~~ Subdivisions for the use, enjoyment, protection and benefit if the members of the ~~corporation~~ Association, and other parties designated by the Board, as the Board may deem appropriate, and they are expressly given full powers not inconsistent with these bylaws, the Articles of Incorporation of this ~~corporation~~ Association, applicable provisions of law and the Protective Covenants and Landowners' Agreements covering the ~~subject property~~ Subdivisions to accomplish such purposes, including the power to acquire, purchase or lease any such facilities or transfer the management responsibilities for any such facilities to others in order to provide for the maximum enjoyment of such facilities by the members and such other designated persons.

~~It shall further be the duty of the Board to use their best efforts to attempt in every way to support the enforcement of the provisions of the deed restrictions and of the Protective Covenants and Landowners' Agreements covering any subject property, as well as any similar restrictions and covenants subsequently filed for record with respect to a portion of the subject property.~~

2.06 ~~AUTHORITY; COMMITTEES.~~ A. The Board shall have power to make rules for their own government and for the government of the ~~corporation~~ Association as it may deem necessary and to alter and amend the same; to prescribe and enforce penalties for violations of the rules and bylaws of the ~~corporation~~ Association; to ~~access~~ assess and fix charges to be levied against the members of the ~~corporation~~ Association subject to limitations and conditions contained in the Protective Covenants and Landowner's Agreements filed of record for the ~~subject property~~ Subdivisions; and to exercise such other powers as may be necessary or proper to attain the ~~objects~~ objectives of the ~~corporation~~ Association. The Board shall have the authority to create committees by appropriate resolutions, and may delegate to any such committee so much of its authority as it ~~shall deem advisable~~, and ~~shall specify the duties of any committee so created~~. Not less than the majority of the members of any such committee having and exercising any of the authority of the Board of Directors in the management of the ~~corporation~~ Association shall be directors of the ~~corporation~~ Association. No required percentage of the membership of any committee not exercising such authority need be directors of the ~~corporation~~ Association.

B. ~~The following standing Board may establish committees shall be established:~~  
~~A. including an Architectural Control, B. Homeowner Advisory, C. Covenants Committee and Compliance, D. Bulkheads and Canals, E. Governmental Affairs and F. Elections~~ such others as it deems necessary.



2.07 EMPLOYEES. The Board shall have responsibility and authority to employ such employees as the affairs of the ~~corporation~~Association shall require and may delegate to any such employee so much of its authority as it shall deem advisable. The Board shall likewise have power for any cause they deem sufficient to discharge any or all employees of the ~~corporation~~Association and may delegate their authority to do so to any officer of the ~~corporation~~Association.

2.08 AUDIT. The financial records of the ~~corporation~~Association shall be audited annually by an accountant, who is licensed by the Texas State Board of Public Accounting as a Certified Public Accountant, as designated by the Board of Directors.

2.09 INDEMNIFICATION. Each director and officer or former director or officer of the ~~corporation~~Association shall be indemnified by the ~~corporation~~Association against expenses reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director or officer of this ~~corporation~~Association, except in relation to matters as to which he shall be finally judged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of his duty as such director or officer. Such right of indemnification shall not be deemed exclusive of any other rights to which he may be entitled as a matter of law or under any provision of the Articles of Incorporation, ~~Bylaw~~Bylaws, Agreement, Vote of Members or otherwise; and the ~~corporation~~Association shall exercise the power to indemnify any such officer or director to the fullest extent to which such power of indemnification is permitted to be exercised under the laws of the State of Texas.

2.10 CONFLICT OF INTEREST. Officers, Directors, Committee ~~Chairmen~~Chairs, Committee Members, Employees and Consultants, before serving the Association shall be personally sensitive to conflicts of interest, and in serving shall not participate in discussions nor decision that are in conflict of interest.

### SECTION 3 OFFICERS

3.01 COMPOSITION. The officers of the ~~corporation~~Association shall consist of a President, a Vice President, a Secretary ~~and~~ a Treasurer, ~~and an Executive Coordinator~~, plus such assistant officers as the Board may deem appropriate, each of whom shall be elected by the Board at its annual meeting. The Board shall have full authority to remove any officer ~~of the corporation~~ from office by the vote of a majority of the members of the entire Board at any time; and the election of each officer ~~of the corporation~~ shall be subject to such power of the Board. If any office shall become vacant, the Board shall select an individual to fill such office for the non-expired term thereof. Any two offices may be held by the same person except the office of President and Secretary.

3.02 DUTIES. The duties of the officers of the ~~corporation~~Association shall be as follows:

A. President. The President shall be the chief executive officer of the ~~corporation~~. ~~He shall Association and preside at all meetings~~ of the members and directors ~~and be~~

~~responsible for.~~ The President shall supervise the Executive Coordinator in carrying out ~~of~~ ~~the~~ ~~the~~ Board's decisions and in the administration of the affairs of the ~~corporation~~ Association. The President shall also execute contracts, conveyances and other documents on behalf of the ~~corporation~~ Association. The President or ~~his designee~~ the Executive Coordinator shall be the only ~~spokesman for the policy~~ persons to speak on behalf of the Association.

B. Vice-President. In the absence of the President, or when it is inconvenient for the President to act, the Vice President shall perform the duties and exercise the powers of the President. At any time when the Vice President is performing a duty or exercising a power of the President, any third party dealing with the ~~corporation~~ Association may presume conclusively that the President was absent and that the Vice President was authorized to act in his place.

C. ~~The~~ Secretary. The Secretary shall ~~issue~~ oversee the issuance of notices of directors' and members' meetings if so directed by the party calling the meeting, and ~~shall be responsible for~~ the corporate minutes and records. The Secretary shall determine the membership of the ~~corporation~~ Association as of the record date of any meeting. In doing so, ~~he~~ the Secretary may use any method in which ~~he deems~~ is deemed to be reasonably calculated to determine the ownership of Lots in the ~~subject property~~ Subdivisions. Notwithstanding the foregoing, ~~he~~ the Secretary shall follow any instructions given ~~to him~~ by the Board of Directors to use a specific method in determining the membership of the ~~corporation~~ Association. The Board may, if it deems it advisable, from time to time, designate one or more persons as Assistant Secretaries, who may perform the duties and exercise the powers of the Secretary when the Secretary is absent or it is inconvenient for ~~him~~ the Secretary to act. Any third person dealing with the ~~corporation~~ Association may presume conclusively that any Assistant Secretary acting in the capacity of the Secretary was duly authorized so to act.

D. Treasurer. The Treasurer shall be responsible for overseeing the custody of corporate funds and securities and the keeping of adequate books of account. The Board may, from time to time, if it deems it advisable, designate one or more persons as Assistant ~~Treasurers~~ Treasurer who may perform the duties and exercise the powers of the Treasurer if the Treasurer is absent or if it is inconvenient for the Treasurer to act. Any third person dealing with the Association shall be entitled to presume conclusively that any Assistant Treasurer, acting in the capacity of the Treasurer, was duly authorized to do so. The Treasurer shall ~~prepare~~ oversee the preparation of a roster of the members and the assessments applicable thereto, and a record of the payment of such assessments, and such records shall be kept at the principal offices of the ~~corporation~~ Association and shall be open to inspection by any member at any reasonable time during business hours.

E. Executive Coordinator. The Executive Coordinator shall be the chief operating officer of the Association and be responsible for the implementation of the policies and programs established by the Board. The Executive Coordinator shall not be a member of the Board of Directors but shall serve as the general manager of the Association, employing the staff, contractors, and consultants necessary to accomplish the work of the Association, subject to the policies and rules established by the Board. The Executive Coordinator shall present an annual budget to the Board for approval each year, and upon approval of the budget the Executive Coordinator shall be authorized to expend funds for the budgeted purposes, subject to such rules and limitations concerning the signing of checks as may be adopted by the Board.

## SECTION 4 ASSESSMENTS

4.01 MAINTENANCE ASSESSMENTS. Pursuant and subject to the conditions and limitations of the Protective Covenants Landowners' Agreements which have been or shall be filed of record for the various portions of the ~~subject property~~Subdivisions, which provide for maintenance fees to be paid by all members hereof to a Maintenance Fund administered by this ~~corporation~~Association or its designated agent, the Board is hereby authorized and given full power and authority to assess and collect from the members of the ~~corporation~~Association such maintenance fees at any regular or special meeting in order to obtain funds required by the ~~corporation~~Association for the performance of its objectives and purposes and to meet its obligations, subject to the provisions of these ~~bylaws~~Bylaws, and the Protective Covenants and Landowners' Agreements shall have been filed of record for any portion of the ~~subject property~~Subdivisions authorizing or limiting the amount of such maintenance fees. Each assessment shall be due and payable by each member at the time and in the manner set forth in the respective Protective Covenants and Landowner's Agreements. Each assessment shall be payable ~~in cash at a bank selected by the Board of Directors; but in no event shall such bank have an aggregate of certified surplus, capital and undivided profits of less than \$1,000,000. The corporation may designate PIIC as its agent to administer the Maintenance Fund including the payment of expenditures from such Maintenance Fund and the collection and enforcement of the maintenance fee assessments herein described and to carry out such other duties as shall have been specifically designated by the corporation and accepted by PIIC. This corporation, or PIIC, if so designated, to the Padre Isles Property Owners Association office located at 14015 Fortuna Bay Drive, Corpus Christi, TX. This Association shall not be liable for the failure of any member to pay any assessed maintenance charge.~~

4.02 EXEMPTION. No assessment shall be levied against any Lot owned by PIIC held by it for sale to others.

4.03 LIENS. The ~~corporation~~Association and its successors in interest shall have an express lien against each Lot into which the ~~subject property~~Subdivisions may be subdivided as shown by the maps or plats thereof at any time recorded, to secure all obligations of the owner or owners of each such Lot to the ~~corporation~~Association. The terms of such lien shall be as stated and provided in the deed restrictions and/or the Protective Covenants and Landowners' Agreements covering the specific subdivision units within the ~~subject property~~Subdivisions.

4.04 RELEASE AND SUBORDINATION. The ~~corporation~~Association may, by instrument executed by its ~~President or Vice President and any person~~ authorized by its Board, release or subordinate such lien of the ~~corporation~~Association, or any other right of the ~~corporation~~Association created under such deed restrictions and Protective Covenants and Landowners' Agreement in whole or in part with respect to any Lot in the ~~subject property~~Subdivisions for any reason whatsoever and upon such terms as it shall deem advisable, but any such release or subordination shall not affect such lien or rights insofar as they may apply to any other Lot in the ~~subject property~~Subdivisions.

4.05 SEAWALL. Any sums paid to the ~~corporation~~Association for the maintenance and repair of a seawall pursuant to the terms of applicable Protective Covenants and Landowners' Agreements shall be used exclusively for such purpose and for the purpose of reimbursing this purpose. Amounts owing to the ~~corporation~~Association for maintenance and repair of seawalls in subdivision units under the terms of applicable Protective Covenants and Landowners' Agreements shall bear interest at the rate of ten percent (10%) per annum as provided in such Protective Covenants and Landowners' Agreements.

4.06 ~~No Voting Member who is delinquent in the payment of any assessment, charge, fee or other sum due from such member to the corporation shall be entitled to vote upon any matter unless and until all such delinquent sums shall have been paid to the corporation in full.~~

4.07 ~~Assessments shall be levied with respect to each lot only after PHC or its successors shall have fulfilled its contractual obligations, if any to:~~

- A. ~~Grade, excavate, and/or fill the lot to bring it to the elevations approved by the City of Corpus Christi, Texas in accord with the specifications filed with the City;~~
- B. ~~Install paved streets abutting the lot;~~
- C. ~~Install bulk heads on canals abutting the lot, if applicable;~~
- D. ~~Install water main and sewage disposal facilities so that the lot owner is able to, at his expense, tap into such facilities and procure water service and sewer disposal service to his lot.~~

4.084.06 DELINQUENCIES. Any assessment not paid when due shall be deemed delinquent and shall bear interest from said due date at the rate of six percent (6%) per annum. In addition to liens as described in paragraph 4.0403 above, the Association shall also have the right to foreclose on such liens and all other rights and remedies necessary to collect delinquent amounts; with all costs being added to the delinquent ~~Owners'~~member's account.

## SECTION 5 BOOKS AND RECORDS

5.01 REQUIRED BOOKS AND RECORDS. The Association will keep correct and complete books and records of account. The books and records include:

- A. A file-endorsed copy of all documents filed with the Texas Secretary of State relating to the Association;
- B. A copy of all Bylaws, and any amended version or amendments to them;
- C. A copy of the Protective Covenants and Landowners' Agreements.
- D. Minutes of the proceedings of the Board, and committees having any of the authority of the Board for the previous seven years;

E. A financial statement showing the Association's income and expenses for the seven most recent fiscal years;

F. The Association's federal, state, and local tax information or income tax returns for each of the Association's seven most recent tax years.  
[See Texas Property Code § 209.005(m)]

5.02 INSPECTION. Books and records of the Association will be made available for inspection and copying pursuant to applicable law, such as Section 22.351 of the Texas Business Organizations Code and Section 209.005 Texas Property Code. The Board may require a member to submit a written demand for inspection by certified mail to the Association, stating the purpose for which the member will inspect the books and records. The Board has the following rights: (1) to determine whether the member's purpose for inspection is proper; (2) to deny the request if the Board determines that the member's purpose is not proper; (3) if granting the request, to identify which books and records are relevant to the member's stated purpose for inspection. [See Texas Property Code § 209.005]

5.03 COPYING. A member, at member's expense, may obtain photocopies of books and records for which the Board grants the right of inspection. The Board has the right to retain possession of the original books and records, to make copies requested by the member, and to charge the member a reasonable fee for copying. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page or part of a page. Each side that has recorded information is considered a page. [See Texas Property Code § 209.005]

## SECTION 6 DISPOSITION OF ASSETS UPON DISSOLUTION

5.01 6.01. DISSOLUTION. Upon dissolution of the ~~corporation~~ Association, the assets, both real and personal of the ~~corporation~~ Association, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the ~~corporation~~ Association. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization described in Section 501-(c)-(4) of the Internal Revenue Code of ~~1954~~ 1986, as amended, to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the ~~corporation~~ Association. No such disposition of properties shall be effective to divest or diminish any right or title or any member vested in him under the covenants and deeds applicable to the ~~subject property~~ Subdivisions unless made in accordance with the provisions of such covenants and deeds.

## SECTION 7 ~~SECTION 6~~ AMENDMENTS

~~6.01—7.01~~ AMENDMENTS. ~~These bylaws may~~ Bylaws may be amended at any regular or special meeting of the members by a vote of a majority of the votes entitled to be cast by the Voting Members present at such meeting, in person or by proxy, provided that no amendment is inconsistent with the provisions of the Articles of Incorporation, applicable law, the applicable deed restrictions and Protective Covenants and Landowners' Agreements, or any covenant or restriction applicable to the ~~subject property~~ Subdivisions, shall be valid. ~~The Voting Members~~ These bylaws additionally may delegate to the be amended at any regular or special meeting of the Board of Directors the power to amend, after notice of such meeting has been provided to the membership in the manner proved in these bylaws, ~~of the corporation.~~

~~6.02—~~ AMENDMENTS OF BYLAWS AND ARTICLES OF INCORPORATION

~~Each shall be treated individually, and accompanied by a statement of why it should be accepted or rejected and its positive and negative effects on the Association and its members.~~

# *Padre Isles*

PROPERTY OWNERS ASSOCIATION  
INCORPORATED



*Bylaws*

AMENDED TO SEPTEMBER 8, 1994

PADRE ISLES PROPERTY OWNERS ASSOCIATION, INC.

BYLAWS

SECTION 1

MEMBERS

1.01 MEMBERSHIP. Padre Island Investment Corporation (hereinafter referred to as "PIIC") and each person (which term shall be construed to include partnerships, corporations and any other type of entity or organization) who shall have acquired or shall hereafter acquire the record legal title to all or any portion of the property owned by PIIC situated on Padre Island, Nueces County, Texas (hereinafter sometimes referred to as the "subject property") including, but not limited to, the lots or tracts into which the subject property presently has been subdivided as shown by the following listed recorded plats thereof, to-wit:

Barataria Bay Units 1 - 5  
Cape Summer Units 1 & 2  
Coquina Bay  
Island Fairway Estates

Mariners Cay Unit 2A  
Padre Island Number 1 & 2  
Sea Pines Unit 1  
Section 3 (Galleon Bay)  
Section 4 (Tradewinds)  
Sections A - E

\*Cane Harbor Bay  
Commodore's Cove Units 1 & 2  
Mariner's Cay  
Island Fairway Estates  
Blocks: 3 & 21 - 36  
Point Tesoro Units 1 - 5  
Ports O'Call  
Section 2 (Galleon Bay)  
Section 3A (Galleon Bay)  
Section 18 (Marina Site)

shall automatically for the duration of such ownership be a Voting Member of Padre Isles Property Owners Association, Inc., a membership corporation organized under the provisions of the Texas Non-Profit Corporation Act (the "corporation"). Each person who is a purchaser of any portion of the subject property under a contract for deed from PIIC, its successors and assigns, shall be an Associate Member of this corporation. Reference herein to "members" shall include both Voting and Associate Members.

\*To be added following receipt of \$16,000 "Buy-in" payment; dedication of street to City of Corpus Christi and covenants approved by the Corporation.

Notwithstanding any other provision herein, the City of Corpus Christi, Nueces County, Texas, or any other political subdivision which may presently own or hereafter acquire a portion of or any interest in the subject property, and any lienholder or mortgagee, trustee under a deed of trust, and any holder or owner of any right-of-way easement or similar interest, shall not, as such, be deemed to be the owner of record of the legal title to a portion of the subject property and shall not by reason of any such interest owned or held or acquired by them be or become a member of this corporation.

A member of this corporation is not, as such, personally liable for the debts, liabilities, nor obligations of the corporation.

1.02 EXTENSION OF TERRITORIAL ELIGIBILITY FOR MEMBERSHIP. If, at any date subsequent to the adoption of these bylaws, additional land situated on Padre Island, Nueces County, Texas, is platted of record by PIIC for the purpose of being developed as an integral part of the subject property using the name Padre Island-Corpus Christi, such additional land shall automatically be included within the definition of the "subject property", and owners thereof shall be eligible to become members of this corporation in accord with the rules established herein.

1.03 VOTING RIGHTS.

a. Only Voting Members shall have voting rights and be counted in determining a quorum at any meeting; provided, however, notwithstanding any other provision in these Bylaws, no Voting Member shall have a right to vote nor be counted in determining a quorum so long as his/her lot is not being assessed or charged a maintenance fee by reason of Section 4.07 of the Bylaws. Only one (1) vote may be cast with respect to or by reason of the ownership of each Lot, and in the case of ownership of less than an entire Lot, or in the case of undivided fractional interest ownership of Lots, the vote attributable to a Lot shall be cast only by a representative of the owners of a majority in interest or a majority of the front footage of such Lot (determined by measurement of the linear foot dimension of the Lot facing the street upon which such Lot fronts according to the plat or map designating and identifying such Lot).

b. A Voting Member may vote in person or by proxy; however, no proxy shall be valid after eleven (11) months from the date of execution unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and in no event shall it remain irrevocable for more than eleven (11) months.



#### 1.04 MEETINGS.

a. An Annual Meeting of the members of the corporation shall be held at ten o'clock a.m. on the second Saturday in March each year at such place in Nueces County, Texas as shall be designated for such purposes in a notice of the meeting; but if no notice be given, or if no other place be designated, then such meeting shall be held at the Padre Isles Country Club. With respect to proxy voting, the Association shall provide the members with the following minimum information: When voting for Directors, a resume provided by each candidate within the space requirements as determined by the Directors and information on issues and amendments as required in Section 6., Paragraph 6.02.

b. Special Meetings. Special meetings of the members may be called at any time by the President, the Vice President, the Secretary or Treasurer, or by two (2) or more members of the Board, or upon written request of the members who have a right to vote ten percent (10%) of the votes entitled to be cast at the time of such call. Any business which may properly be conducted at an annual or regular meeting of the members may also be conducted at any special meeting.

c. Informational Meetings. In addition to the Annual Meeting, there will be three (3) informational meetings annually to pass on and receive information on news/plans/projects/status on programs for the benefit of the members.

1.05 NOTICE. No notice of any annual or regular meeting of the members of the corporation shall be required, but such notice of any such meeting as the Board may deem advisable may be given.

Notice of special meetings shall be given to Voting Members (none being required to Associate Members) not less than ten (10) nor more than fifty (50) days prior to the date of any such meeting.

Any notice which shall be given to a member of the corporation with respect to any meeting or for any other purpose shall be deemed to have been properly given if addressed to "owner", in care of the street address of the Lot or tract located in the subject property with respect to the ownership of which the member is entitled to vote; or, when the number of Voting Members exceeds one thousand (1,000), notice may be given by publication in any newspaper of general circulation in Nueces County, Texas.

1.06 QUORUM. The owners of at least ten percent (10%) of the Lots located in the subject property, present in person or by proxy, shall be requisite for and shall constitute a quorum for the transaction of business at all meetings of the members of the corporation. Any meeting of members may be adjourned from time to time without notice other than announcement at the meeting, until a quorum shall be present or represented. When a quorum is present in person or by proxy shall decide any question brought before such meeting, except as noted in Section 2, Paragraph 2.03.

1.07 PROCEDURES. All Association meetings and Board of Directors meetings shall be conducted according to Robert's Rules of Order, newly revised, as long as such rules are not inconsistent or in conflict with these Bylaws, the Articles of Incorporation, or Texas or Federal Law.

## SECTION 2

### DIRECTORS

2.01 NUMBER. The number of directors of the corporation shall be seven, and those whose terms shall have expired shall be elected at the annual membership meeting. Directors shall serve for three years until his/her successor has been duly elected and qualified. Notwithstanding the foregoing, the directors may determine that in lieu of electing the new directors whose terms shall have expired at an annual membership meeting, such election shall be conducted by mail.

2.02 QUALIFICATIONS. Directors and Officers shall be natural persons of the age of eighteen (18) or over, and must be members of the Association.

2.03 VACANCIES AND REMOVAL. Any director may be removed with or without cause by the unanimous vote of the remaining members of the Board (excluding the director to be removed). Officers and Directors may also be removed, with cause, by a 55% vote of the members voting in an Annual or Special Meeting. Upon the death, removal, resignation, or incapacity of any member of the Board, a majority of the then remaining directors shall elect his successor.

#### 2.04 MEETINGS.

a. An annual meeting of the Board of the corporation shall be held each year immediately following the adjournment of the annual meeting of the members, and at the

same place as the annual meeting of the members; and no notice of such annual meeting of the Board shall be required. Special meetings of the Board may be called by any director or by the President, and shall be held at such time and place as shall be specified in the notice of such meeting. No particular form of notice shall be required for the calling and holding of a special meeting of the Board, provided that actual notice thereof shall have been given to each director in advance of the time of such meeting. Proper notice shall be deemed to have been given of any special meeting of the Board if notice in writing, or by telephone or telegraph message, shall have been sent to either the usual business or residence address of the person entitled to receive notice not less than five (5) days preceding the time of the meeting.

b. A director may vote in person or by proxy. No such proxy shall be valid after three (3) months from the date of its execution; and each shall be revocable unless expressly provided therein to be irrevocable.

2.05 MANAGEMENT. The affairs and property of the corporation shall be managed and controlled by the Board. The Board shall have authority to cause the corporation to own, acquire, develop, construct, maintain, operate, repair and replace, on a non-profit basis, common areas for the protection, security, pleasure, recreation, or benefit of the subject property and the owners thereof, including but not limited to, greenways, recreation areas, canals, bulkheads, seawalls, sea gates, lighting, parks, roads, streets, curbs, gutters, drainage facilities, water access areas, including boat ramps, and such other facilities in the subject property for the use, enjoyment, protection and benefit if the members of the corporation, and other parties designated by the Board, as the Board may deem appropriate, and they are expressly given full powers not inconsistent with these bylaws, the Articles of Incorporation of this corporation, applicable provisions of law and the Protective Covenants and Landowners' Agreements covering the subject property to accomplish such purposes, including the power to acquire, purchase or lease any such facilities or transfer the management responsibilities for any such facilities to others in order to provide for the maximum enjoyment of such facilities by the members and such other designated persons.

It shall further be the duty of the Board to use their best efforts to attempt in every way to support the enforcement of the provisions of the deed restrictions and of the Protective Covenants and Landowners' Agreements covering any subject property, as well as any similar restrictions and covenants subsequently filed for record with respect to a portion of the subject property.

2.06 AUTHORITY; COMMITTEES. The Board shall have power to make rules for their own government and for the government of the corporation as it may deem necessary and to alter and amend the same; to prescribe and enforce penalties for violations of the rules and bylaws of the corporation; to access and fix charges to be levied against the members of the corporation subject to limitations and conditions contained in the Protective Covenants and Landowners' Agreements filed of record for the subject property; and to exercise such other powers as may be necessary or proper to attain the objects of the corporation. The Board shall have the authority to create committees by appropriate resolutions, and may delegate to any such committee so much of its authority as it shall deem advisable, and shall specify the duties of any committee so created. Not less than the majority of the members of any such committee having and exercising any of the authority of the Board of Directors in the management of the corporation shall be directors of the corporation. No required percentage of the membership of any committee not exercising such authority need be directors of the corporation.

The following standing committees shall be established: A. Architectural Control, B. Homeowner Advisory, C. Covenants and Compliance, D. Bulkheads and Canals, E. Governmental Affairs and F. Elections.

2.07 EMPLOYEES. The Board shall have responsibility and authority to employ such employees as the affairs of the corporation shall require and may delegate to any such employee so much of its authority as it shall deem advisable. The Board shall likewise have power for any cause they deem sufficient to discharge any or all employees of the corporation and may delegate their authority to do so to any officer of the corporation.

2.08 AUDIT. The financial records of the corporation shall be audited annually by an accountant designated by the Board of Directors who is licensed by the Texas State Board of Public Accounting as a Certified Public Accountant.

2.09 INDEMNIFICATION. Each director and officer of former director or officer of the corporation shall be indemnified by the corporation against expenses reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director or officer of this corporation, except in relation to matters as to which he shall be finally judged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of his duty as such director or officer. Such right of indemnification shall not be deemed exclusive of any other rights to which he may be entitled as a matter of law or under any provision of the Articles of Incorporation, Bylaw, Agreement, Vote of

Members or otherwise; and the corporation shall exercise the power to indemnify any such officer or director to the fullest extent to which such power of indemnification is permitted to be exercised under the laws of the State of Texas.

2.10 CONFLICT OF INTEREST. Officers, Directors, Committee Chairmen, Committee Members, Employees and Consultants, before serving the Association shall be personally sensitive to conflicts of interest, and in serving shall not participate in discussions nor decisions that are in conflict of interest.

### SECTION 3

#### OFFICERS

3.01 COMPOSITION. The officers of the corporation shall consist of a President, a Vice-President, a Secretary and a Treasurer, plus such assistant officers as the Board may deem appropriate, each of whom shall be elected by the Board at its annual meeting. The Board shall have full authority to remove any officer of the corporation from office by the vote of a majority of the members of the entire Board at any time; and the election of each officer of the corporation shall be subject to such power of the Board. If any office shall become vacant, the Board shall select an individual to fill such office for the unexpired term thereof. Any two offices may be held by the same person except the office of President and Secretary.

3.02 DUTIES. The duties of the officers of the corporation shall be as follows:

a. The President shall be the chief executive officer of the corporation. He shall preside at all meetings of the members and directors and be responsible for the carrying out of their decisions in the administration of the affairs of the corporation. The President shall also execute contracts, conveyances and other documents on behalf of the corporation. The President or his designee shall be the only spokesman for the policy of the Association.

b. In the absence of the President, or when it is inconvenient for the President to act, the Vice President shall perform the duties and exercise the powers of the President. At any time when the Vice President is performing a duty or exercising a power of the President, any third party dealing with the corporation may presume conclusively that the President was absent and that the Vice President was authorized to act in his place.

c. The Secretary shall issue notices of directors' and members' meetings if so directed by the party calling the meeting, and shall be responsible for the corporate minutes and records. The Secretary shall determine the membership of the corporation as of the record date of any meeting. In doing so, he may use any method which he deems to be reasonably calculated to determine the ownership of Lots in the subject property. Notwithstanding the foregoing, he shall follow any instructions given to him by the Board of Directors to use a specific method in determining the membership of the corporation. The Board may, if it deems it advisable, from time to time, designate one or more persons as Assistant Secretaries, who may perform the duties and exercise the powers of the Secretary when the Secretary is absent or it is inconvenient for him to act. Any third person dealing with the corporation may presume conclusively that any Assistant Secretary acting in the capacity of the Secretary was duly authorized so to act.

d. The Treasurer shall be responsible for the custody of corporate funds and securities and the keeping of adequate books of account. The Board may, from time to time, if it deems it advisable, designate one or more persons as Assistant Treasurers who may perform the duties and exercise the powers of the Treasurer if the Treasurer is absent or if it is inconvenient for him to act. Any third person dealing with the corporation shall be entitled to presume conclusively that any Assistant Treasurer, acting in the capacity of the Treasurer, was duly authorized to do so.

The Treasurer shall prepare a roster of the members and the assessments applicable thereto, and a record of the payment of such assessments, and such records shall be kept at the principal offices of the corporation and shall be open to inspection by any member at any reasonable time during business hours.

### SECTION 4

#### ASSESSMENTS

4.01 Pursuant and subject to the conditions and limitations of the Protective Covenants and Landowners' Agreements which have been or shall be filed of record for the various portions of the subject property, which provide for maintenance fees to be paid by all members hereof to a Maintenance Fund administered by this corporation or its designated agent, the Board is hereby authorized and given full power and authority to assess and collect from the members of the corporation such maintenance fees at any regular or special meeting in order to obtain funds required by the corporation for the performance of its objectives and purposes and to meet its obligations, subject to the

provisions of these bylaws, and the Protective Covenants and Landowners' Agreements which shall have been filed of record for any portion of the subject property authorizing or limiting the amount of such maintenance fees. Each assessment shall be due and payable by each member at the time and in the manner set forth in the respective Protective Covenants and Landowners' Agreements. Each assessment shall be payable in cash at a bank selected by the Board of Directors; but in no event shall such bank have an aggregate of certified surplus, capital and undivided profits of less than \$1,000,000. The corporation may designate PIIC as its agent to administer the Maintenance Fund including the payment of expenditures from such Maintenance Fund and the collection and enforcement of the maintenance fee assessments herein described and to carry out such other duties as shall have been specifically designated by the corporation and accepted by PIIC. This corporation, or PIIC, if so designated, shall not be liable for the failure of any member to pay any assessed maintenance charge.

4.02 No assessment shall be levied against any Lot owned by PIIC held by it for sale to others.

4.03 The corporation and its successors in interest shall have an express lien against each Lot into which the subject property may be subdivided as shown by the maps or plats thereof at any time recorded, to secure all obligations of the owner or owners of each such Lot to the corporation. The terms of such lien shall be as stated and provided in the deed restrictions and/or the Protective Covenants and Landowners' Agreements covering the specific subdivision units within the subject property.

4.04 The corporation may, by instrument executed by its President or Vice President and authorized by its Board, release or subordinate such lien of the corporation, or any other right of the corporation created under such deed restrictions and Protective Covenants and Landowners' Agreement in whole or in part with respect to any Lot in the subject property for any reason whatsoever and upon such terms as it shall deem advisable, but any such release or subordination shall not affect such lien or rights insofar as they may apply to any other Lot in the subject property.

4.05 Any sums paid to the corporation for the maintenance and repair of a seawall pursuant to the terms of applicable Protective Covenants and Landowners' Agreements shall be used exclusively for such purpose and for the purpose of reimbursing this corporation for funds spent for such purpose which were not specifically designated for such purpose. Amounts owing to the corporation for maintenance and repair of seawalls in subdivision units under the terms of applicable Protective Covenants and Landowners' Agreements shall bear interest at the rate of ten percent (10%) per annum as provided in such Protective Covenants and Landowners' Agreements.

4.06 No Voting Member who is delinquent in the payment of any assessment, charge, fee or other sum due from such member to the corporation, shall be entitled to vote upon any matter unless and until all such delinquent sums shall have been paid to the corporation in full.

4.07 Assessments shall be levied with respect to each lot only after PIIC or its successors shall have fulfilled its contractual obligations, if any to:

a. Grade, excavate, and/or fill the lot to bring it to the elevations approved by the City of Corpus Christi, Texas in accord with the specifications filed with the City;

b. Install paved streets abutting the lot;

c. Install bulkheading of canals abutting the lot, if applicable;

d. Install water main and sewage disposal facilities so that the lot owner is able to, at his expense, tap into such facilities and procure water service and sewer disposal service to his lot.

4.08 Any assessment not paid when due shall be deemed delinquent and shall bear interest from said due date at the rate of six percent (6%) per annum. In addition to liens as described in paragraph 4.04 above, the Association shall also have the right to foreclose on such liens and all other rights and remedies necessary to collect delinquent amounts; with all costs being added to the delinquent Owners' account.

## SECTION 5

### DISPOSITION OF ASSETS UPON DISSOLUTION

5.01 Upon dissolution of the corporation, the assets, both real and personal of the corporation, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the corporation. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit

corporation, association, trust or other organization described in Section 501 (c)(4) of the Internal Revenue Code of 1954, as amended, to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the corporation. No such disposition of properties shall be effective to divest or diminish any right or title or any member vested in him under the covenants and deeds applicable to the subject property unless made in accordance with the provisions of such covenants and deeds.

## SECTION 6

### AMENDMENTS

6.01 These bylaws may be amended at any regular or special meeting of the members by a vote of a majority of the votes entitled to be cast by the Voting Members present at such meeting, in person or by proxy, provided that no amendment inconsistent with the provisions of the Articles of Incorporation, applicable law, the applicable deed restrictions and Protective Covenants and Landowners' Agreements, or any covenant or restriction applicable to the subject property, shall be valid. The Voting Members may delegate to the Board of Directors the power to amend the bylaws of the corporation.

6.02 AMENDMENTS OF BYLAWS AND ARTICLES OF INCORPORATION: Each shall be treated individually, and accompanied by a statement of why it should be accepted or rejected and its positive and negative effects on the Association and its members.

# *Padre Isles*

PROPERTY OWNERS ASSOCIATION, INC.



## *Bylaws*

As Amended Through  
November 28, 2017

# **PADRE ISLES PROPERTY OWNERS ASSOCIATION, INC.**

## **BYLAWS**

### **SECTION 1 MEMBERS**

1.01 MEMBERSHIP. Each person (which term shall be construed to include partnerships, corporations and any other type of entity or organization) who shall have acquired or shall hereafter acquire the record legal title to all or any portion of the property situated on Padre Island, Nueces County, Texas (hereinafter sometimes referred to as the "Subdivisions") as shown by the following listed recorded plats thereof, to-wit:

Barataria Bay Units 1-5  
Cape Summer Units 1 & 2  
Coquina Bay  
Island Fairway Estates  
Mariners Cay Unit 2A  
Padre Island Number 1 & 2  
Sea Pines Unit 1  
Section 3 (Galleon Bay)  
Section 4 (Tradewinds)

Commodore's Cove Units 1 & 2  
Mariner's Cay  
Island Fairway Estates Blocks: 3 & 21-36  
Point Tesoro Units 1-5  
Ports O'Call  
Section 2 (Galleon Bay)  
Section 3A (Galleon Bay)  
Sections A-E

Such membership shall continue for the duration of the ownership of property within the Subdivisions. This Association is a membership corporation organized under the provisions of the Texas Non-Profit Corporation Act. A member of this Association is not, as such, personally liable for the debts, liabilities, or obligations of the Association.

1.02 EXTENSION OF TERRITORIAL ELIGIBILITY FOR MEMBERSHIP. If, at any date subsequent to the adoption of these bylaws, additional land situated on Padre Island, Nueces County, Texas, may be developed with protective covenants similar to the protective covenants applicable to the Subdivisions and upon the approval of the Board of Directors become part of the Subdivisions covered by these Bylaws.

### **1.03 VOTING RIGHTS.**

A. Only Voting Members shall have voting rights and be counted in determining a quorum at any meeting. Only one (1) vote may be cast with respect to or by reason of the ownership of each Lot, and in the case of ownership of less than an entire Lot, or in the case of undivided fractional interest ownership Lots, the vote attributable to a Lot only shall be a representative of the owners of a majority in interest or a majority of the front footage of such Lot (determined by measurement of the linear foot dimension of the Lot facing the street upon which such Lot fronts according to the plat or map designating and identifying such Lot).

B. A Voting Member may vote in person or by proxy; however, no proxy shall be valid after eleven (11) months from the date of execution unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and in no event shall it remain irrevocable for more than eleven (11) months. A proxy delivered by email



or by fax may be counted if the identity of the member submitting the ballot can be confirmed. [See Texas Property Code § 209.00592].

C. Voting may be conducted by mail or electronic means in such a manner as the Board of Directors shall determine.

#### 1.04 MEETINGS.

A. Annual Meeting. The Annual Meeting of the Members of the Association shall be held at ten o'clock a.m. on the second Saturday in March each year at such place in Nueces County, Texas as shall be designated for such purposes in a notice of the meeting. With respect to proxy voting, the Association shall provide the members with the following minimum information: When voting for Directors, a resume provided by each candidate within the space requirements as determined by the Directors and information on issues and amendments as required in Section 6, Paragraph 6.02.

B. Special Meetings. Special meetings of the members may be called at any time by the President, the Vice President, the Secretary or Treasurer, or by two (2) or more members of the Board, or upon written request of the members who have a right to vote ten percent (10%) of the votes entitled to be cast at the time of such call. Any business, which may properly be conducted at an annual or regular meeting of the members, may also be conducted at any special meeting.

C. Informational Meetings. In addition to the Annual Meeting, the Board may schedule informational meetings to pass on and receive information on news/plans/projects/status on programs for the benefit of the members

#### 1.05 NOTICE.

A. Not later than the 10<sup>th</sup> day or earlier than the 60th day before the date of an election or vote of the membership on a matter, the Association shall give written notice of the election or vote to each member. [See Texas Property Code § 209.0056].

B. If mailed, the notice shall be deemed to be delivered when deposited in the United State mail addressed to the member at the address as it appears on the records of the corporation, with postage prepaid. If notice is given by electronic mail, such notice shall be deemed to be delivered when sent to the electronic mail address provided by the member.

1.06 QUORUM. The owners of at least ten percent (10 %) of the Lots located in the Subdivisions, present in person or by proxy, shall be requisite for and shall constitute a quorum for the transaction of business at all meetings of the members of the Association. Any meeting of members may be adjourned from time to time without notice other than announcement at the meeting, until a quorum shall be present or represented. When a quorum is present in person or by proxy, a majority vote of the members present shall decide any question brought before such meeting, except as noted in Section 2, Paragraph 2.03.

1.07 PROCEDURES. All membership meetings and Board of Directors meetings shall be conducted according to Robert's Rules of Order, Newly Revised, as long as such rules are not inconsistent or in conflict with these Bylaws, the Articles of Incorporation, or Texas or Federal Law.



## SECTION 2 DIRECTORS

2.01 NUMBER. The number of directors of the Association shall be seven, and those whose terms shall have expired shall be elected at the annual membership meeting. In the election of directors, the candidates receiving the highest number of votes (plurality) shall be declared the winners.<sup>1</sup> Directors shall serve for three-year terms until his/her successor has been duly elected and qualified. Notwithstanding the foregoing, the directors may determine that in lieu of electing the new directors whose terms shall have expired at an annual membership meeting, such election shall be conducted by mail.

2.02 QUALIFICATIONS. Directors and Board Officers shall be natural persons of the age of eighteen (18) or over, and must be members of the Association.

2.03 VACANCIES AND REMOVAL. Any director may be removed with or without cause by the unanimous vote of the remaining members of the Board (excluding the director to be removed). Officers and Directors may also be removed, with cause, by a 55% vote of the members voting in an Annual or Special Meeting. Upon the death, removal, resignation, or incapacity of any member of the Board, a majority of the then remaining directors shall elect his/her successor.

### 2.04 MEETINGS.

A. An annual meeting of the Board of the Association shall be held each year immediately following the adjournment of the annual meeting of the members, and at the same place as the annual meeting of the members. Special meetings of the Board may be called by any three (3) directors or by the President, and shall be held at such time and place as shall be specified in the notice of such meeting.

B. A director may vote in person or by proxy. No such proxy shall be valid after three (3) months from the date of its execution; and each shall be revocable unless expressly provided therein to be irrevocable.

C. The Association must give all members notice of the date, hour, place, and general subject of all Board meetings. The notice shall be provided to each member as provided by the Texas Property Code. The notice shall be: (1) mailed to each member 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 the members: (i) in a place located on the Association's common property or, with the member's consent, on other conspicuously located privately-owned property within the subdivision; or (ii) 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. [See Texas Property Code § 209.0051].

2.05 MANAGEMENT. The affairs and property of the Association shall be managed and controlled by the Board. The Board shall have authority to cause the Association to own, acquire, develop, construct, maintain, operate, repair and replace, on a non-profit basis, common

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<sup>1</sup> The amendment made by this statement was adopted to be effective as of April 2, 2017.

areas for the protection, security, pleasure, recreation, or benefit of the Subdivisions and the owners thereof, including but not limited to, greenways, recreation areas, canals, bulkheads, seawalls, sea gates, lighting, , drainage facilities, water access areas, including boat ramps, and such other facilities in the Subdivisions for the use, enjoyment, protection and benefit if the members of the Association, and other parties designated by the Board, as the Board may deem appropriate, and they are expressly given full powers not inconsistent with these bylaws, the Articles of Incorporation of this Association, applicable provisions of law and the Protective Covenants and Landowners' Agreements covering the Subdivisions to accomplish such purposes, including the power to acquire, purchase or lease any such facilities or transfer the management responsibilities for any such facilities to others in order to provide for the maximum enjoyment of such facilities by the members and such other designated persons.

## 2.06 COMMITTEES.

A. The Board shall have power to make rules for their own government and for the government of the Association as it may deem necessary and to alter and amend the same; to prescribe and enforce penalties for violations of the rules and bylaws of the Association; to assess and fix charges to be levied against the members of the Association subject to limitations and conditions contained in the Protective Covenants and Landowner's Agreements filed of record for the Subdivisions; and to exercise such other powers as may be necessary or proper to attain the objectives of the Association. The Board shall have the authority to create committees by appropriate resolutions, and may delegate to any such committee so much of its authority as it shall deem advisable, and shall specify the duties of any committee so created. Not less than the majority of the members of any such committee having and exercising any of the authority of the Board of Directors in the management of the Association shall be directors of the Association. No required percentage of the membership of any committee not exercising such authority need be directors of the Association.

B. The Board may establish committees including an Architectural Control Committee and such others as it deems necessary.

2.07 EMPLOYEES. The Board shall have responsibility and authority to employ such employees as the affairs of the Association shall require and may delegate to any such employee so much of its authority as it shall deem advisable. The Board shall likewise have power for any cause they deem sufficient to discharge any or all employees of the Association and may delegate their authority to do so to any officer of the Association.

2.08 AUDIT. The financial records of the Association shall be audited annually by an accountant, who is licensed by the Texas State Board of Public Accounting as a Certified Public Accountant, as designated by the Board of Directors.

2.09 INDEMNIFICATION. Each director and officer or former director or officer of the Association shall be indemnified by the Association against expenses reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director or officer of this Association, except in relation to matters as to which he shall be finally judged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of his duty as such director or officer. Such right of indemnification shall not be deemed exclusive of any other rights to which he may be entitled as a matter of law or under any provision of the Articles of Incorporation, Bylaws, Agreement, Vote

of Members or otherwise; and the Association shall exercise the power to indemnify any such officer or director to the fullest extent to which such power of indemnification is permitted to be exercised under the laws of the State of Texas.

2.10 CONFLICT OF INTEREST. Officers, Directors, Committee Chairs, Committee Members, Employees and Consultants, before serving the Association shall be personally sensitive to conflicts of interest, and in serving shall not participate in discussions nor decision that are in conflict of interest.

### SECTION 3 OFFICERS

3.01 COMPOSITION. The officers of the Association shall consist of a President, a Vice President, a Secretary, a Treasurer, and an Executive Director, plus such assistant officers as the Board may deem appropriate, each of whom shall be elected by the Board at its annual meeting. The Board shall have full authority to remove any officer from office by the vote of a majority of the members of the entire Board at any time; and the election of each officer shall be subject to such power of the Board. If any office shall become vacant, the Board shall select an individual to fill such office for the non-expired term thereof. Any two offices may be held by the same person except the office of President and Secretary.

3.02 DUTIES. The duties of the officers of the Association shall be as follows:

A. President. The President shall be the chief executive officer of the Association and preside at all meetings of the members and directors. The President shall supervise the Executive Director in carrying out the Board's decisions and in the administration of the affairs of the Association. The President shall also execute contracts, conveyances and other documents on behalf of the Association. The President or the Executive Director shall be the only persons to speak on behalf of the Association.

B. Vice-President. In the absence of the President, or when it is inconvenient for the President to act, the Vice President shall perform the duties and exercise the powers of the President. At any time when the Vice President is performing a duty or exercising a power of the President, any third party dealing with the Association may presume conclusively that the President was absent and that the Vice President was authorized to act in his place.

C. Secretary. The Secretary shall oversee the issuance of notices of directors' and members' meetings if so directed by the party calling the meeting, and the corporate minutes and records. The Secretary shall determine the membership of the Association as of the record date of any meeting. In doing so, the Secretary may use any method in which is deemed to be reasonably calculated to determine the ownership of Lots in the Subdivisions. Notwithstanding the foregoing, the Secretary shall follow any instructions given by the Board of Directors to use a specific method in determining the membership of the Association. The Board may, if it deems it advisable, from time to time, designate one or more persons as Assistant Secretaries, who may perform the duties and exercise the powers of the Secretary when the Secretary is absent or it is inconvenient for the Secretary to act. Any third person dealing with the Association may presume conclusively that any Assistant Secretary acting in the capacity of the Secretary was duly authorized so to act.

D. Treasurer. The Treasurer shall be responsible for overseeing the custody of corporate funds and securities and the keeping of adequate books of account. The Board may, from time to time, if it deems it advisable, designate one or more persons as Assistant Treasurer who may perform the duties and exercise the powers of the Treasurer if the Treasurer is absent or if it is inconvenient for the Treasurer to act. Any third person dealing with the Association shall be entitled to presume conclusively that any Assistant Treasurer, acting in the capacity of the Treasurer, was duly authorized to do so. The Treasurer shall oversee the preparation of a roster of the members and the assessments applicable thereto, and a record of the payment of such assessments, and such records shall be kept at the principal offices of the Association and shall be open to inspection by any member at any reasonable time during business hours.

E. Executive Director. The Executive Director shall be the chief operating officer of the Association and be responsible for the implementation of the policies and programs established by the Board. The Executive Director shall not be a member of the Board of Directors but shall serve as the general manager of the Association, employing the staff, contractors, and consultants necessary to accomplish the work of the Association, subject to the policies and rules established by the Board. The Executive Director shall present an annual budget to the Board for approval each year, and upon approval of the budget the Executive Director shall be authorized to expend funds for the budgeted purposes, subject to such rules and limitations concerning the signing of checks as may be adopted by the Board.

#### SECTION 4 ASSESSMENTS

4.01 MAINTENANCE ASSESSMENTS. Pursuant and subject to the conditions and limitations of the Protective Covenants Landowners' Agreements which have been or shall be filed of record for the various portions of the Subdivisions, which provide for maintenance fees to be paid by all members hereof to a Maintenance Fund administered by this Association or its designated agent, the Board is hereby authorized and given full power and authority to assess and collect from the members of the Association such maintenance fees at any regular or special meeting in order to obtain funds required by the Association for the performance of its objectives and purposes and to meet its obligations, subject to the provisions of these Bylaws, and the Protective Covenants and Landowners' Agreements shall have been filed of record for any portion of the Subdivisions authorizing or limiting the amount of such maintenance fees. Each assessment shall be due and payable by each member at the time and in the manner set forth in the respective Protective Covenants and Landowner's Agreements. Each assessment shall be payable to the Padre Isles Property Owners Association office located at 14015 Fortuna Bay Drive, Corpus Christi, TX. This Association shall not be liable for the failure of any member to pay any assessed maintenance charge.

4.02 EXEMPTION. No assessment shall be levied against any Lot owned by PIIC held by it for sale to others.

4.03 LIENS. The Association and its successors in interest shall have an express lien against each Lot into which the Subdivisions may be subdivided as shown by the maps or plats thereof at any time recorded, to secure all obligations of the owner or owners of each such Lot to the Association. The terms of such lien shall be as stated and provided in the deed restrictions and/or the Protective Covenants and Landowners' Agreements covering the specific subdivision units within the Subdivisions.

4.04 RELEASE AND SUBORDINATION. The Association may, by instrument executed by any person authorized by its Board, release or subordinate such lien of the Association, or any other right of the Association created under such deed restrictions and Protective Covenants and Landowners' Agreement in whole or in part with respect to any Lot in the Subdivisions for any reason whatsoever and upon such terms as it shall deem advisable, but any such release or subordination shall not affect such lien or rights insofar as they may apply to any other Lot in the Subdivisions.

4.05 SEAWALL. Any sums paid to the Association for the maintenance and repair of a seawall pursuant to the terms of applicable Protective Covenants and Landowners' Agreements shall be used exclusively for such purpose and for the purpose of reimbursing this purpose. Amounts owing to the Association for maintenance and repair of seawalls in subdivision units under the terms of applicable Protective Covenants and Landowners' Agreements shall bear interest at the rate of ten percent (10%) per annum as provided in such Protective Covenants and Landowners' Agreements.

4.06 DELINQUENCIES. Any assessment not paid when due shall be deemed delinquent and shall bear interest from said due date at the rate of six percent (6%) per annum. In addition to liens as described in paragraph 4.03 above, the Association shall also have the right to foreclose on such liens and all other rights and remedies necessary to collect delinquent amounts; with all costs being added to the delinquent member's account.

## SECTION 5 BOOKS AND RECORDS

5.01 REQUIRED BOOKS AND RECORDS. The Association will keep correct and complete books and records of account. The books and records include:

- A. A file-endorsed copy of all documents filed with the Texas Secretary of State relating to the Association;
- B. A copy of all Bylaws, and any amended version or amendments to them;
- C. A copy of the Protective Covenants and Landowners' Agreements.
- D. Minutes of the proceedings of the Board, and committees having any of the authority of the Board for the previous seven years;
- E. A financial statement showing the Association's income and expenses for the seven most recent fiscal years;
- F. The Association's federal, state, and local tax information or income tax returns for each of the Association's seven most recent tax years.  
[See Texas Property Code § 209.005(m)]

5.02 INSPECTION. Books and records of the Association will be made available for inspection and copying pursuant to applicable law, such as Section 22.351 of the Texas Business Organizations Code and Section 209.005 Texas Property Code. The Board may require a



member to submit a written demand for inspection by certified mail to the Association, stating the purpose for which the member will inspect the books and records. The Board has the following rights: (1) to determine whether the member's purpose for inspection is proper; (2) to deny the request if the Board determines that the member's purpose is not proper; (3) if granting the request, to identify which books and records are relevant to the member's stated purpose for inspection. [See Texas Property Code § 209.005]

5.03 COPYING. A member, at member's expense, may obtain photocopies of books and records for which the Board grants the right of inspection. The Board has the right to retain possession of the original books and records, to make copies requested by the member, and to charge the member a reasonable fee for copying. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page or part of a page. Each side that has recorded information is considered a page. [See Texas Property Code § 209.005]

## SECTION 6 DISPOSITION OF ASSETS UPON DISSOLUTION

6.01. DISSOLUTION. Upon dissolution of the Association, the assets, both real and personal of the Association, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, as amended, to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No such disposition of properties shall be effective to divest or diminish any right or title or any member vested in him under the covenants and deeds applicable to the Subdivisions unless made in accordance with the provisions of such covenants and deeds.

## SECTION 7 AMENDMENTS

7.01 AMENDMENTS. These Bylaws may be amended at any regular or special meeting of the members by a vote of a majority of the votes entitled to be cast by the Voting Members present at such meeting, in person or by proxy, provided that no amendment is inconsistent with the provisions of the Articles of Incorporation, applicable law, the applicable deed restrictions and Protective Covenants and Landowners' Agreements, or any covenant or restriction applicable to the Subdivisions, shall be valid. These bylaws additionally may be amended at any regular or special meeting of the Board of Directors, after notice of such meeting has been provided to the membership in the manner provided in these Bylaws.

**CERTIFICATE**

The attached and foregoing Bylaws are the current Bylaws of the Padre Isles Property Owners Association, Inc., a Texas nonprofit corporation, whose address is 14015 Fortuna Bay Drive, Corpus Christi, Texas 78418 and replace in their entirety those Bylaws previously recorded as Document No. 2017016587, Official Public Records of Nueces County, Texas.

These Bylaws are being filed as a dedicatory instrument pursuant to Texas Property Code § 209.005 (i) and pertain to the Protective Covenants and real properties of Padre Isles more particularly described on Exhibit A attached.

The records production and copying policy of the Association required under Texas Property Code § 209.005 is set forth in Section 5 of the Bylaws.

PADRE ISLES PROPERTY OWNERS ASSOCIATION, INC.

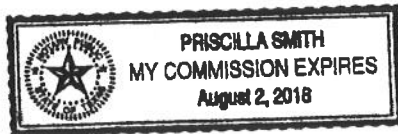
By:   
Brent Moore  
President

STATE OF TEXAS

§  
§  
§

COUNTY OF NUECES

This instrument was acknowledged before me on November 30, 2017, by Brent Moore, the President of Padre Isles Property Owners Association, Inc., a Texas nonprofit corporation, on behalf of said corporation.



  
Notary Public, State of Texas

Return to:

**WOOD, BOYKIN & WOLTER**  
615 N. UPPER BROADWAY, SUITE 1100  
CORPUS CHRISTI, TEXAS 78401-0748

## EXHIBIT A

<u>Subdivision Name</u>	<u>Covenants Filed of Record (Deed Records)</u>	<u>Map Filed of Record (Map Records)</u>
Section A	Volume 1258, Pages 215 et seq.	Volume 33, Pages 97 et seq.
Section B	Volume 1265, Pages 227 et seq.	Volume 34, Pages 15 et seq.
Section C	Volume 1323, Pages 487-94	Volume 34, Pages 133 et seq.
Section D	Volume 1335, Pages 285-92	Volume 35, Pages 24-25
Section E	Volume 1424, Pages 351-59	Volume 38, Pages 25-26
Barataria Bay Units 1 & 2	Volume 1292, Pages 114-21	Volume 34, Pages 60-63
Barataria Bay Unit 3	Volume 1300, Pages 426-33,	Volume 34, Pages 86-87
Barataria Bay Unit 4	Volume 1300, Pages 418-25	Volume 34, Pages 84-85
Barataria Bay Unit 5	Volume 1319, Pages 507-14	Volume 34, Pages 117-118
Cape Summer Unit 1	Volume 1386, Pages 1002 et seq.	Volume 36, Pages 25 et seq.
Cape Summer Unit 2	Volume 1386, Pages 1012 et seq.	Volume 36, Pages 34 et seq.
Commodore's Cove Unit One	Volume 1424, Pages 378-87	Volume 38, Pages 34-35
Commodore's Cove Unit Two	Volume 1424, Pages 388 et seq.	Volume 38, Pages 36-44
Coquina Bay	Volume 1424, Pages 407-16	Volume 38, Pages 47-54
Island Fairway Estates	Volume 1424, Pages 417 et seq.	Volume 38, Pages 55 et seq.
Island Fairway Estates	Volume 1517, Pages 100-110	Volume 40, Pages 154-59
Island Fairway Estates	Volume 1517, Pages 111 et seq.	Volume 40, Pages 181-82 Volume 40, Pages 183-84
Mariner's Cay	Volume 1292, Pages 106 et seq.	Volume 34, Pages 54-55
Mariner's Cay Unit 2	Volume 1424, Pages 398-406	Volume 38, Pages 45-46
Mariner's Cay Unit 2-A	Volume 1424, Pages 398-406	Volume 39, Pages 193-94
Point Tesoro Unit 1	Volume 1368, Pages 494-502	Volume 34, Pages 145-46



Point Tesoro Unit 2	Volume 1335, Pages 265-273	Volume 35, Pages 20-21
Point Tesoro Unit 3	Volume 1335, Pages 275-283	Volume 35, Pages 22-23
Point Tesoro Unit 4	Volume 1345, Pages 493-501	Volume 35, Pages 46-49
Point Tesoro Unit 5	Volume 1424, Pages 369-77	Volume 38, Pages 32-33
Ports O'Call	Volume 1424, Pages 427-36	Volume 38, Pages 62-68
Sea Pines Unit 1	Volume 1329, Pages 63 et seq.	Volume 34, Pages 149 et seq.
Section No. 1	Volume 1265, Pages 491-97 Volume 1280, Pages 354-59 Volume 1280, Pages 360 et seq. Volume 1384, Pages 528 et seq.	Volume 13, Pages 1-8 Volume 33, Pages 83-84 Volume 32, Pages 34 et seq. Volume 36, Pages 12 et seq.
Section No. 2 (Galleon Bay Unit 2)	Volume 1274, Pages 173-80 Volume 1491, Pages 803-10	Volume 33, Pages 80-82
Section No. 3 (Galleon Bay Unit 3)	Volume 1261, Pages 97-104	Volume 33, Pages 83-84
Section No. 3A (Galleon Bay Unit 3)	Volume 1424, Pages 349-50	Volume 38, Pages 22-23
Section No. 4 (Tradewinds)	Volume 1241, Pages 25-33	Volume 33, Pages 44-47
Tract B, Section No. 4 (Tradewinds)	Volume 1588, Pages 725-34	Volume 33, Pages 44-47
Lots 8 through 18, inclusive, Block 191, Section No. 4 (Tradewinds)	Volume 1580, Pages 512-21	Volume 42, Pages 4-5
Tract A, Section No. 4 (Tradewinds)	Volume 1856, Pages 357-365	Volume 33, Pages 44-47

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4 Pages 13

11/30/2017 4:11PM

Official Records of

NUECES COUNTY

KARA SANDS

COUNTY CLERK

Fees \$63.00

Any provision herein which restricts the Sale,  
Rental or use of the described  
REAL PROPERTY because of Race, Color,  
Religion, Sex, Handicap, Familial Status, or  
National Origin is invalid and unenforceable  
under FEDERAL LAW, 3/12/89.

STATE OF TEXAS  
COUNTY OF NUECES

I hereby certify that this instrument was FILED  
in file number sequence on the date and at the  
time stamped herein by me, and was duly RECORDED  
in the Official Public Records of  
Nueces County, Texas  
KARA SANDS



*Kara Sands*



# Padre Island ARCH Group

Amendment Revision Coalition of Homeowners

Home	<b>What is the ARCH Group proposing?</b> The ARCH Group is proposing two amendments (One) that Bylaw amending is a right reserved SOLELY to the homeowners and (Two) the Board cannot remove another Board Member without cause.
Bylaw History	
Proposed Amendments	
Goal of the ARCH	Below is the specific wording as well as a more detailed explanation of the impacts of each amendment. A full copy of our of our most recently amended Bylaws can be found <a href="#">here</a> .
FAQ	<b>Proposition 1.</b> The last sentence of Bylaw Section 7, which now states:  "These bylaws (sic.) additionally may be amended at any regular or special meeting of the Board of Directors, after notice of such meeting has been provided to the membership in the manner provided in these Bylaws,"  is hereby deleted and stricken and the following sentence is added as the last sentence of Section 7:  "The PIPOA Board is hereby forbidden to amend or repeal this Bylaw or to adopt any other PIPOA Bylaw to the same or similar effect. The PIPOA Bylaws may not be amended, repealed, adopted, or otherwise effected by the PIPOA Board, all such power being herewith reserved unto the Voting Members, and only the Voting Members."
Request a Ballot	
Upcoming Events	
Community Endorsements	
Contact Us	
Supporting Documents	
Vote Results	
	<b>Explanation</b> Proposition 1, by the deletion of the last sentence will prevent the PIPOA Board, on its own, without the Voting Members, from changing the governing rules adopted by the Voting members and thereby thwarting the will of the Voting Members. While this will make amendments more difficult, it will preserve the democratic process and prevent the PIPOA Board from changing the rules against the will of the property owners.

## Proposition 2.

The first sentence of Said Bylaws Section 2.03, which now states:

"Any director may be removed with or without cause by the unanimous vote of the remaining members of the Board (excluding the director to be removed).,"

is hereby deleted and stricken, and the following is substituted:

"Any director may be removed for cause by the unanimous vote of the remaining members of the Board (excluding the director to be removed), the term "cause" being hereby defined as the conviction of a felony or a misdemeanor involving moral turpitude, or the failure to attend more than four (4) Board meetings, absent illness or force majeure. The PIPOA Board is hereby forbidden to amend or repeal Bylaw or to adopt any other PIPOA Bylaw to the same or similar effect. All power to amend or repeal this Bylaw or to adopt any similar Bylaw is herewith reserved unto the Voting Members, and only the Voting Members."

*Explanation*

Proposition 2 will prevent incumbent Board of Directors from removing a duly elected Board member carrying out the will of those who elected him or her. A board member can still be removed "for cause." While this makes removal of a director more complicated, it also prevents other board members from exerting undue and unfair threats and influence upon other Board members. A Board member can still be removed for cause by a vote of 55% of the Voting Members.

## COMPARISON OF STATE STATUTES

### Original Texas Nonprofit Corporation Act 1958

Art. 2.09. BY-LAWS. A. The initial by-laws of a corporation shall be adopted by its board of directors or, if the management of the corporation is vested in its members pursuant to Article 2.14C of this Act, by the members. The power to alter, amend, or repeal the by-laws or to adopt new by-laws shall be vested in the members, if any, but such power may be delegated by the members to the board of directors. (underlining added)

### 1994 Revision to Texas Nonprofit Corporation Act (from H.B. 1494 in 1993)

Art. 2.09. BY-LAWS. A. The initial by-laws of a corporation shall be adopted by its board of directors or, if the management of the corporation is vested in its members [~~pursuant to Article 2.14C of this Act~~], by the members. [~~The power to alter, amend, or repeal the by-laws or to adopt new by-laws shall be vested in the members, if any, but such power may be delegated by the members to the board of directors. In the event the corporation has no members, the power to alter, amend, or repeal the by-laws or to adopt new by-laws shall be vested in the board of directors.~~] The by-laws may contain any provisions for the regulation and management of the affairs of the [a] corporation not inconsistent with law or [with] the articles of incorporation.

B. A corporation's board of directors may amend or repeal the corporation's by-laws, or adopt new by-laws, unless:

(1) the articles of incorporation or this Act reserves the power exclusively to the members in whole or in part;

(2) the management of the corporation is vested in its members; or

(3) the members in amending, repealing, or adopting a particular by-law expressly provide that the board of directors may not amend or repeal that by-law.

### Business Organizations Code Section 22.102

22.102. BY-LAWS. A. The initial by-laws of a corporation shall be adopted by its board of directors or, if the management of the corporation is vested in its members, by the members. The by-laws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

B. A corporation's board of directors may amend or repeal the corporation's by-laws, or adopt new by-laws, unless:

(1) the articles of incorporation or this Act reserves the power exclusively to the members in whole or in part;

(2) the management of the corporation is vested in its members; or

(3) the members in amending, repealing, or adopting a by-law expressly provide that the board of directors may not amend or repeal the by-law.

# *Padre Isles*

PROPERTY OWNERS ASSOCIATION, INC.



## *Bylaws*

AMENDED TO  
September 24, 2013

# **PADRE ISLES PROPERTY OWNERS ASSOCIATION, INC.**

## **BYLAWS**

### **SECTION 1 MEMBERS**

1.01 MEMBERSHIP. Each person (which term shall be construed to include partnerships, corporations and any other type of entity or organization) who shall have acquired or shall hereafter acquire the record legal title to all or any portion of the property situated on Padre Island, Nueces County, Texas (hereinafter sometimes referred to as the "Subdivisions") as shown by the following listed recorded plats thereof, to-wit:

Barataria Bay Units 1-5  
Cape Summer Units 1 & 2  
Coquina Bay  
Island Fairway Estates  
Mariners Cay Unit 2A  
Padre Island Number 1 & 2  
Sea Pines Unit 1  
Section 3 (Galleon Bay)  
Section 4 (Tradewinds)

Commodore's Cove Units 1 & 2  
Mariner's Cay  
Island Fairway Estates Blocks: 3 & 21-36  
Point Tesoro Units 1-5  
Ports O'Call  
Section 2 (Galleon Bay)  
Section 3A (Galleon Bay)  
Sections A-E

Such membership shall continue for the duration of the ownership of property within the Subdivisions. This Association is a membership corporation organized under the provisions of the Texas Non-Profit Corporation Act. A member of this Association is not, as such, personally liable for the debts, liabilities, or obligations of the Association.

1.02 EXTENSION OF TERRITORIAL ELIGIBILITY FOR MEMBERSHIP. If, at any date subsequent to the adoption of these bylaws, additional land situated on Padre Island, Nueces County, Texas, may be developed with protective covenants similar to the protective covenants applicable to the Subdivisions and upon the approval of the Board of Directors become part of the Subdivisions covered by these Bylaws.

### **1.03 VOTING RIGHTS.**

A. Only Voting Members shall have voting rights and be counted in determining a quorum at any meeting. Only one (1) vote may be cast with respect to or by reason of the ownership of each Lot, and in the case of ownership of less than an entire Lot, or in the case of undivided fractional interest ownership Lots, the vote attributable to a Lot only shall be a representative of the owners of a majority in interest or a majority of the front footage of such Lot (determined by measurement of the linear foot dimension of the Lot facing the street upon which such Lot fronts according to the plat or map designating and identifying such Lot).

B. A Voting Member may vote in person or by proxy; however, no proxy shall be valid after eleven (11) months from the date of execution unless otherwise provided in the proxy.

Each proxy shall be revocable unless expressly provided therein to be irrevocable, and in no event shall it remain irrevocable for more than eleven (11) months. A proxy delivered by email or by fax may be counted if the identity of the member submitting the ballot can be confirmed. [See Texas Property Code § 209.00592].

C. Voting may be conducted by mail or electronic means in such a manner as the Board of Directors shall determine.

#### 1.04 MEETINGS.

A. Annual Meeting. The Annual Meeting of the Members of the Association shall be held at ten o'clock a.m. on the second Saturday in March each year at such place in Nueces County, Texas as shall be designated for such purposes in a notice of the meeting. With respect to proxy voting, the Association shall provide the members with the following minimum information: When voting for Directors, a resume provided by each candidate within the space requirements as determined by the Directors and information on issues and amendments as required in Section 6, Paragraph 6.02.

B. Special Meetings. Special meetings of the members may be called at any time by the President, the Vice President, the Secretary or Treasurer, or by two (2) or more members of the Board, or upon written request of the members who have a right to vote ten percent (10%) of the votes entitled to be cast at the time of such call. Any business, which may properly be conducted at an annual or regular meeting of the members, may also be conducted at any special meeting.

C. Informational Meetings. In addition to the Annual Meeting, the Board may schedule informational meetings to pass on and receive information on news/plans/projects/status on programs for the benefit of the members

#### 1.05 NOTICE.

A. Not later than the 10<sup>th</sup> day or earlier than the 60th day before the date of an election or vote of the membership on a matter, the Association shall give written notice of the election or vote to each member. [See Texas Property Code § 209.0056].

B. If mailed, the notice shall be deemed to be delivered when deposited in the United State mail addressed to the member at the address as it appears on the records of the corporation, with postage prepaid. If notice is given by electronic mail, such notice shall be deemed to be delivered when sent to the electronic mail address provided by the member.

1.06 QUORUM. The owners of at least ten percent (10 %) of the Lots located in the Subdivisions, present in person or by proxy, shall be requisite for and shall constitute a quorum for the transaction of business at all meetings of the members of the Association. Any meeting of members may be adjourned from time to time without notice other than announcement at the meeting, until a quorum shall be present or represented. When a quorum is present in person or by proxy, a majority vote of the members present shall decide any question brought before such meeting, except as noted in Section 2, Paragraph 2.03.



1.07 PROCEDURES. All membership meetings and Board of Directors meetings shall be conducted according to Robert's Rules of Order, Newly Revised, as long as such rules are not inconsistent or in conflict with these Bylaws, the Articles of Incorporation, or Texas or Federal Law.

## SECTION 2 DIRECTORS

2.01 NUMBER. The number of directors of the Association shall be seven, and those whose terms shall have expired shall be elected at the annual membership meeting. Directors shall serve for three-year terms until his/her successor has been duly elected and qualified. Notwithstanding the foregoing, the directors may determine that in lieu of electing the new directors whose terms shall have expired at an annual membership meeting, such election shall be conducted by mail.

2.02 QUALIFICATIONS. Directors and Officers shall be natural persons of the age of eighteen (18) or over, and must be members of the Association.

2.03 VACANCIES AND REMOVAL. Any director may be removed with or without cause by the unanimous vote of the remaining members of the Board (excluding the director to be removed). Officers and Directors may also be removed, with cause, by a 55% vote of the members voting in an Annual or Special Meeting. Upon the death, removal, resignation, or incapacity of any member of the Board, a majority of the then remaining directors shall elect his/her successor.

### 2.04 MEETINGS.

A. An annual meeting of the Board of the Association shall be held each year immediately following the adjournment of the annual meeting of the members, and at the same place as the annual meeting of the members. Special meetings of the Board may be called by any three (3) directors or by the President, and shall be held at such time and place as shall be specified in the notice of such meeting.

B. A director may vote in person or by proxy. No such proxy shall be valid after three (3) months from the date of its execution; and each shall be revocable unless expressly provided therein to be irrevocable.

C. The Association must give all members notice of the date, hour, place, and general subject of all Board meetings. The notice shall be provided to each member as provided by the Texas Property Code. The notice shall be: (1) mailed to each member 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 the members: (i) in a place located on the Association's common property or, with the member's consent, on other conspicuously located privately-owned property within the subdivision; or (ii) 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. [See Texas Property Code § 209.0051].

2.05 MANAGEMENT. The affairs and property of the Association shall be managed and controlled by the Board. The Board shall have authority to cause the Association to own, acquire, develop, construct, maintain, operate, repair and replace, on a non-profit basis, common areas for the protection, security, pleasure, recreation, or benefit of the Subdivisions and the owners thereof, including but not limited to, greenways, recreation areas, canals, bulkheads, seawalls, sea gates, lighting, , drainage facilities, water access areas, including boat ramps, and such other facilities in the Subdivisions for the use, enjoyment, protection and benefit if the members of the Association, and other parties designated by the Board, as the Board may deem appropriate, and they are expressly given full powers not inconsistent with these bylaws, the Articles of Incorporation of this Association, applicable provisions of law and the Protective Covenants and Landowners' Agreements covering the Subdivisions to accomplish such purposes, including the power to acquire, purchase or lease any such facilities or transfer the management responsibilities for any such facilities to others in order to provide for the maximum enjoyment of such facilities by the members and such other designated persons.

#### 2.06 COMMITTEES.

A. The Board shall have power to make rules for their own government and for the government of the Association as it may deem necessary and to alter and amend the same; to prescribe and enforce penalties for violations of the rules and bylaws of the Association; to assess and fix charges to be levied against the members of the Association subject to limitations and conditions contained in the Protective Covenants and Landowner's Agreements filed of record for the Subdivisions; and to exercise such other powers as may be necessary or proper to attain the objectives of the Association. The Board shall have the authority to create committees by appropriate resolutions, and may delegate to any such committee so much of its authority as it shall deem advisable, and shall specify the duties of any committee so created. Not less than the majority of the members of any such committee having and exercising any of the authority of the Board of Directors in the management of the Association shall be directors of the Association. No required percentage of the membership of any committee not exercising such authority need be directors of the Association.

B. The Board may establish committees including an Architectural Control Committee and such others as it deems necessary.

2.07 EMPLOYEES. The Board shall have responsibility and authority to employ such employees as the affairs of the Association shall require and may delegate to any such employee so much of its authority as it shall deem advisable. The Board shall likewise have power for any cause they deem sufficient to discharge any or all employees of the Association and may delegate their authority to do so to any officer of the Association.

2.08 AUDIT. The financial records of the Association shall be audited annually by an accountant, who is licensed by the Texas State Board of Public Accounting as a Certified Public Accountant, as designated by the Board of Directors.

2.09 INDEMNIFICATION. Each director and officer or former director or officer of the Association shall be indemnified by the Association against expenses reasonably incurred by him

in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director or officer of this Association, except in relation to matters as to which he shall be finally judged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of his duty as such director or officer. Such right of indemnification shall not be deemed exclusive of any other rights to which he may be entitled as a matter of law or under any provision of the Articles of Incorporation, Bylaws, Agreement, Vote of Members or otherwise; and the Association shall exercise the power to indemnify any such officer or director to the fullest extent to which such power of indemnification is permitted to be exercised under the laws of the State of Texas.

2.10 CONFLICT OF INTEREST. Officers, Directors, Committee Chairs, Committee Members, Employees and Consultants, before serving the Association shall be personally sensitive to conflicts of interest, and in serving shall not participate in discussions nor decision that are in conflict of interest.

### SECTION 3 OFFICERS

3.01 COMPOSITION. The officers of the Association shall consist of a President, a Vice President, a Secretary, a Treasurer, and an Executive Coordinator, plus such assistant officers as the Board may deem appropriate, each of whom shall be elected by the Board at its annual meeting. The Board shall have full authority to remove any officer from office by the vote of a majority of the members of the entire Board at any time; and the election of each officer shall be subject to such power of the Board. If any office shall become vacant, the Board shall select an individual to fill such office for the non-expired term thereof. Any two offices may be held by the same person except the office of President and Secretary.

3.02 DUTIES. The duties of the officers of the Association shall be as follows:

A. President. The President shall be the chief executive officer of the Association and preside at all meetings of the members and directors. The President shall supervise the Executive Coordinator in carrying out the Board's decisions and in the administration of the affairs of the Association. The President shall also execute contracts, conveyances and other documents on behalf of the Association. The President or the Executive Coordinator shall be the only persons to speak on behalf of the Association.

B. Vice-President. In the absence of the President, or when it is inconvenient for the President to act, the Vice President shall perform the duties and exercise the powers of the President. At any time when the Vice President is performing a duty or exercising a power of the President, any third party dealing with the Association may presume conclusively that the President was absent and that the Vice President was authorized to act in his place.

C. Secretary. The Secretary shall oversee the issuance of notices of directors' and members' meetings if so directed by the party calling the meeting, and the corporate minutes and records. The Secretary shall determine the membership of the Association as of the record date of any meeting. In doing so, the Secretary may use any method in which is deemed to be reasonably calculated to determine the ownership of Lots in the Subdivisions. Notwithstanding

the foregoing, the Secretary shall follow any instructions given by the Board of Directors to use a specific method in determining the membership of the Association. The Board may, if it deems it advisable, from time to time, designate one or more persons as Assistant Secretaries, who may perform the duties and exercise the powers of the Secretary when the Secretary is absent or it is inconvenient for the Secretary to act. Any third person dealing with the Association may presume conclusively that any Assistant Secretary acting in the capacity of the Secretary was duly authorized so to act.

D. Treasurer. The Treasurer shall be responsible for overseeing the custody of corporate funds and securities and the keeping of adequate books of account. The Board may, from time to time, if it deems it advisable, designate one or more persons as Assistant Treasurer who may perform the duties and exercise the powers of the Treasurer if the Treasurer is absent or if it is inconvenient for the Treasurer to act. Any third person dealing with the Association shall be entitled to presume conclusively that any Assistant Treasurer, acting in the capacity of the Treasurer, was duly authorized to do so. The Treasurer shall oversee the preparation of a roster of the members and the assessments applicable thereto, and a record of the payment of such assessments, and such records shall be kept at the principal offices of the Association and shall be open to inspection by any member at any reasonable time during business hours.

E. Executive Coordinator. The Executive Coordinator shall be the chief operating officer of the Association and be responsible for the implementation of the policies and programs established by the Board. The Executive Coordinator shall not be a member of the Board of Directors, but shall serve as the general manager of the Association, employing the staff, contractors, and consultants necessary to accomplish the work of the Association, subject to the policies and rules established by the Board. The Executive Coordinator shall present an annual budget to the Board for approval each year, and upon approval of the budget, the Executive Coordinator shall be authorized to expend funds for the budgeted purposes, subject to such rules and limitations concerning the signing of checks as may be adopted by the Board.

#### SECTION 4 ASSESSMENTS

4.01 MAINTENANCE ASSESSMENTS. Pursuant and subject to the conditions and limitations of the Protective Covenants Landowners' Agreements which have been or shall be filed of record for the various portions of the Subdivisions, which provide for maintenance fees to be paid by all members hereof to a Maintenance Fund administered by this Association or its designated agent, the Board is hereby authorized and given full power and authority to assess and collect from the members of the Association such maintenance fees at any regular or special meeting in order to obtain funds required by the Association for the performance of its objectives and purposes and to meet its obligations, subject to the provisions of these Bylaws, and the Protective Covenants and Landowners' Agreements shall have been filed of record for any portion of the Subdivisions authorizing or limiting the amount of such maintenance fees. Each assessment shall be due and payable by each member at the time and in the manner set forth in the respective Protective Covenants and Landowner's Agreements. Each assessment shall be payable to the Padre Isles Property Owners Association office located at 14015 Fortuna Bay Drive, Corpus Christi, TX. This Association shall not be liable for the failure of any member to pay any assessed maintenance charge.

4.02 EXEMPTION. No assessment shall be levied against any Lot owned by PIIC held by it for sale to others.

4.03 LIENS. The Association and its successors in interest shall have an express lien against each Lot into which the Subdivisions may be subdivided as shown by the maps or plats thereof at any time recorded, to secure all obligations of the owner or owners of each such Lot to the Association. The terms of such lien shall be as stated and provided in the deed restrictions and/or the Protective Covenants and Landowners' Agreements covering the specific subdivision units within the Subdivisions.

4.04 RELEASE AND SUBORDINATION. The Association may, by instrument executed by any person authorized by its Board, release or subordinate such lien of the Association, or any other right of the Association created under such deed restrictions and Protective Covenants and Landowners' Agreement in whole or in part with respect to any Lot in the Subdivisions for any reason whatsoever and upon such terms as it shall deem advisable, but any such release or subordination shall not affect such lien or rights insofar as they may apply to any other Lot in the Subdivisions.

4.05 SEAWALL. Any sums paid to the Association for the maintenance and repair of a seawall pursuant to the terms of applicable Protective Covenants and Landowners' Agreements shall be used exclusively for such purpose and for the purpose of reimbursing this purpose. Amounts owing to the Association for maintenance and repair of seawalls in subdivision units under the terms of applicable Protective Covenants and Landowners' Agreements shall bear interest at the rate of ten percent (10%) per annum as provided in such Protective Covenants and Landowners' Agreements.

4.06 DELINQUENCIES. Any assessment not paid when due shall be deemed delinquent and shall bear interest from said due date at the rate of six percent (6%) per annum. In addition to liens as described in paragraph 4.03 above, the Association shall also have the right to foreclose on such liens and all other rights and remedies necessary to collect delinquent amounts; with all costs being added to the delinquent member's account.

## SECTION 5 BOOKS AND RECORDS

5.01 REQUIRED BOOKS AND RECORDS. The Association will keep correct and complete books and records of account. The books and records include:

- A. A file-endorsed copy of all documents filed with the Texas Secretary of State relating to the Association;
- B. A copy of all Bylaws, and any amended version or amendments to them;
- C. A copy of the Protective Covenants and Landowners' Agreements.
- D. Minutes of the proceedings of the Board, and committees having any of the authority of

the Board for the previous seven years;

E. A financial statement showing the Association's income and expenses for the seven most recent fiscal years;

F. The Association's federal, state, and local tax information or income tax returns for each of the Association's seven most recent tax years.  
[See Texas Property Code § 209.005(m)]

5.02 INSPECTION. Books and records of the Association will be made available for inspection and copying pursuant to applicable law, such as Section 22.351 of the Texas Business Organizations Code and Section 209.005 Texas Property Code. The Board may require a member to submit a written demand for inspection by certified mail to the Association, stating the purpose for which the member will inspect the books and records. The Board has the following rights: (1) to determine whether the member's purpose for inspection is proper; (2) to deny the request if the Board determines that the member's purpose is not proper; (3) if granting the request, to identify which books and records are relevant to the member's stated purpose for inspection. [See Texas Property Code § 209.005]

5.03 COPYING. A member, at member's expense, may obtain photocopies of books and records for which the Board grants the right of inspection. The Board has the right to retain possession of the original books and records, to make copies requested by the member, and to charge the member a reasonable fee for copying. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page or part of a page. Each side that has recorded information is considered a page. [See Texas Property Code § 209.005]

## SECTION 6 DISPOSITION OF ASSETS UPON DISSOLUTION

6.01. DISSOLUTION. Upon dissolution of the Association, the assets, both real and personal of the Association, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, as amended, to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No such disposition of properties shall be effective to divest or diminish any right or title or any member vested in him under the covenants and deeds applicable to the Subdivisions unless made in accordance with the provisions of such covenants and deeds.

## SECTION 7 AMENDMENTS

7.01 AMENDMENTS. These Bylaws may be amended at any regular or special meeting of the members by a vote of a majority of the votes entitled to be cast by the Voting Members present at such meeting, in person or by proxy, provided that no amendment is

inconsistent with the provisions of the Articles of Incorporation, applicable law, the applicable deed restrictions and Protective Covenants and Landowners' Agreements, or any covenant or restriction applicable to the Subdivisions, shall be valid. These bylaws additionally may be amended at any regular or special meeting of the Board of Directors, after notice of such meeting has been provided to the membership in the manner provided in these Bylaws.

PADRE ISLES PROPERTY OWNERS ASSOCIATION, INC.

BYLAWS

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SECTION 1  
MEMBERS

1.1 MEMBERSHIP. Padre Island Investment Corporation (hereinafter referred to as "PIIC") and each person (which term shall be construed to include partnerships, corporations and any other type of entity or organization) who shall have acquired or shall hereafter acquire the record legal title to all or any portion of the property owned by PIIC situated on Padre Island, Nueces County, Texas (hereinafter sometimes referred to as the "subject property"), including, but not limited to, the lots or tracts into which the subject property presently has been subdivided as shown by the following listed recorded plats thereof, to-wit:

- A. Padre Island Number 1.
- B. Padre Island Number 2.
- C. The following units or sections of "Padre Island-Corpus Christi":

Section No. 2	Section A
Section No. 3	Section B
Section No. 3A	Section C
Section No. 4	Section D
Section No. 18	Section E

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Barataria Bay Unit 1	Point Tesoro Unit 1
Barataria Bay Unit 2	Point Tesoro Unit 2
Barataria Bay Unit 3	Point Tesoro Unit 3
Barataria Bay Unit 4	Point Tesoro Unit 4
Barataria Bay Unit 5	Point Tesoro Unit 5

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Commodore's Cove Unit One	Cape Summer Unit 1
Commodore's Cove Unit Two	Cape Summer Unit 2

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Coquina Bay  
Island Fairway Estates  
Island Fairway Estates  
Blocks 21, 22 and 23  
Island Fairway Estates  
Blocks 24 through 33  
Island Fairway Estates  
Block 30

Island Fairway Estates Block 3  
Island Fairway Estates Blocks  
34, 35 and 36  
Ports O'Call  
Mariner's Cay  
Mariner's Cay Unit 2A  
Sea Pines Unit 1

shall automatically for the duration of such ownership be a Voting Member of Padre Isles Property Owners Association, Inc., a membership corporation organized under the provisions of the Texas Non-Profit Corporation Act (the "corporation"). Each person who is a purchaser of any portion of the subject property under a contract for deed from PIIC, its successors and assigns, shall be an Associate Member of this corporation. Reference herein to "members" shall include both Voting and Associate Members.

Notwithstanding any other provision herein, the City of Corpus Christi, Nueces County, Texas, or any other political subdivision which may presently own or hereafter acquire a portion of or any interest in the subject property, and any lienholder or mortgagee, trustee under a deed of trust, and any holder or owner of any right-of-way easement or similar interest, shall not, as such, be deemed to be the owner of record of the legal title to a portion of the subject property and shall not by reason of any such interest owned or held or acquired by them be or become a member of this corporation.

1.2 EXTENSION OF TERRITORIAL ELIGIBILITY FOR MEMBERSHIP. If, at any date subsequent to the adoption of these bylaws, additional land situated on Padre Island, Nueces County, Texas, is platted of record by

PIIC for the purpose of being developed as an integral part of the subject property using the name Padre Island-Corpus Christi, such additional land shall automatically be included within the definition of the "subject property", and owners thereof shall be eligible to become members of this corporation in accord with the rules established herein.

1.3 VOTING RIGHTS.

(a) Only Voting Members shall have voting rights and be counted in determining a quorum at any meeting. On all matters with respect to which Voting Members of the corporation shall be entitled to vote, each Voting Member shall be entitled to cast one (1) vote for each lot or tract (as shown by the plats of the various subdivisions of the subject property which shall have been filed for record in the Office of the County Clerk of Nueces County, Texas), legal title to which is owned of record by such Voting Member (each such lot or tract being referred to herein as a "Lot"). Only one (1) vote may be cast with respect to or by reason of the ownership of each Lot, and in the case of ownership of less than an entire Lot, or in the case of undivided fractional interest ownership of Lots, the vote attributable to a Lot shall be cast only by a representative of the owners of a majority in interest or a majority of the front footage of such Lot (determined by measurement of the linear foot dimension of the Lot facing the street upon which such Lot fronts according to the plat or map designating and identifying such Lot).

(b) A Voting Member may vote in person or by proxy; however, no proxy shall be valid after eleven (11) months from the date of execution unless otherwise provided in the proxy. Each proxy shall be revocable

unless expressly provided therein to be irrevocable, and in no event shall it remain irrevocable for more than eleven (11) months.

(c) PIIC has heretofore entered into agreements with the members of this corporation and the City of Corpus Christi with respect to the construction of certain improvements on the subject property. Because it is necessary that PIIC be free to fulfill these contractual obligations, PIIC shall have fifty-one percent (51%) of the total vote of the Voting Members of the corporation until January 1, 1984, and the remaining members shall have forty-nine percent (49%) thereof.

1.4 ANNUAL MEETING. An annual meeting of the members of the corporation shall be held at ten o'clock a.m. on the second Saturday in January each year at such place in Nueces County, Texas, as shall be designated for such purpose in a notice of the meeting; but if no notice be given, or if no other place be designated, then such meeting shall be held at the Padre Isles Country Club.

1.5 SPECIAL MEETINGS. Special meetings of the members may be called at any time by the President, the Vice President, the Secretary or Treasurer, or by two (2) or more members of the Board, or upon written request of the members who have a right to vote ten percent (10%) of the votes entitled to be cast at the time of such call. Any business which may properly be conducted at an annual or regular meeting of the members may also be conducted at any special meeting.

1.6 NOTICE. No notice of any annual or regular meeting of the members of the corporation shall be required, but such notice of any such meeting as the Board may deem advisable may be given.

Notice of special meetings shall be given to Voting Members (none being required to Associate Members) not less than ten (10) nor more than fifty (50) days prior to the date of any such meeting.

Any notice which shall be given to a member of the corporation with respect to any meeting or for any other purpose shall be deemed to have been properly given if addressed to "Owner", in care of the street address of the Lot or tract located in the subject property with respect to the ownership of which the member is entitled to vote; or, when the number of Voting Members exceeds one thousand (1,000), notice may be given by publication in any newspaper of general circulation in Nueces County, Texas.

1.7 QUORUM. The owners of at least ten percent (10%) of the Lots located in the subject property, present in person or by proxy, shall be requisite for and shall constitute a quorum for the transaction of business at all meetings of the members of the corporation. Any meeting of members may be adjourned from time to time without notice other than announcement at the meeting, until a quorum shall be present or represented. When a quorum is present at any meeting the vote of the owners of a majority of the Lots represented at such meeting in person or by proxy shall decide any question brought before such meeting.

## SECTION 2 DIRECTORS

2.1 NUMBER. The number of directors of the corporation shall be seven (7), who shall be elected at the annual membership meeting, and shall serve for a term of one (1) year and until their successors are duly elected and qualified. Notwithstanding the foregoing, the directors

may determine that in lieu of electing new directors at an annual membership meeting, such election shall be conducted by mail.

2.2 QUALIFICATIONS. Directors shall be natural persons of the age of eighteen (18) years or over, but need not be members of the corporation.

2.3 VACANCIES AND REMOVAL. Any director may be removed with or without cause by the unanimous vote of the remaining members of the Board (excluding the director to be removed). Upon the death, removal, resignation, or incapacity of any member of the Board, a majority of the then remaining directors shall elect his successor.

2.4 MEETINGS.

(a) An annual meeting of the Board of the corporation shall be held each year immediately following the adjournment of the annual meeting of the members, and at the same place as the annual meeting of the members; and no notice of such annual meeting of the Board shall be required. Special meetings of the Board may be called by any director or by the President, and shall be held at such time and place as shall be specified in the notice of such meeting. No particular form of notice shall be required for the calling and holding of a special meeting of the Board, provided that actual notice thereof shall have been given to each director in advance of the time of such meeting. Proper notice shall be deemed to have been given of any special meeting of the Board if notice in writing, or by telephone or telegraph message, shall have been sent to either the usual business or residence address of the person entitled to receive notice not less than five (5) days preceding the time of the meeting.

(b) A director may vote in person or by proxy. No such proxy shall be valid after three (3) months from the date of its execution; and each shall be revocable unless expressly provided therein to be irrevocable.

2.5 MANAGEMENT. The affairs and property of the corporation shall be managed and controlled by the Board. The Board shall have authority to cause the corporation to own, acquire, develop, construct, maintain, operate, repair and replace, on a non-profit basis, common areas for the protection, security, pleasure, recreation, or benefit of the subject property and the owners thereof, including but not limited to, greenways, recreation areas, canals, bulkheads, seawalls, sea gates, lighting, parks, roads, streets, curbs, gutters, drainage facilities, water access areas, including boat ramps, and such other facilities in the subject property for the use, enjoyment, protection and benefit of the members of the corporation, and other parties designated by the Board, as the Board may deem appropriate, and they are expressly given full powers not inconsistent with these bylaws, the Articles of Incorporation of this corporation, applicable provisions of law and the Protective Covenants and Landowners' Agreements covering the subject property to accomplish such purposes, including the power to acquire, purchase or lease any such facilities or transfer the management responsibilities for any such facilities to others in order to provide for the maximum enjoyment of such facilities by the members and such other designated persons.

It shall further be the duty of the Board to use their best efforts to attempt in every way to support the enforcement of the provisions of the deed restrictions and of the Protective Covenants and Landowners'

Agreements covering any subject property, as well as any similar restrictions and covenants subsequently filed for record with respect to a portion of the subject property.

2.6 AUTHORITY; COMMITTEES. The Board shall have power to make rules for their own government and for the government of the corporation as it may deem necessary and to alter and amend the same; to prescribe and enforce penalties for violations of the rules and bylaws of the corporation; to assess and fix charges to be levied against the members of the corporation subject to limitations and conditions contained in the Protective Covenants and Landowners' Agreements filed of record for the subject property; and to exercise such other powers as may be necessary or proper to attain the objects of the corporation. The Board shall have the authority to create committees by appropriate resolutions, and may delegate to any such committee so much of its authority as it shall deem advisable, and shall specify the duties of any committee so created. Not less than the majority of the members of any such committee having and exercising any of the authority of the Board of Directors in the management of the corporation shall be directors of the corporation. No required percentage of the membership of any committee not exercising such authority need be directors of the corporation.

2.7 EMPLOYEES. The Board shall have responsibility and authority to employ such employees as the affairs of the corporation shall require and may delegate to any such employee so much of its authority as it shall deem advisable. The Board shall likewise have power for any cause they deem sufficient to discharge any or all employees of the corporation and may delegate their authority to do so to any officer of the corporation.

2.8 AUDIT. The financial records of the corporation shall be audited annually by an accountant designated by the Board of Directors who is licensed by the Texas State Board of Public Accounting as a Certified Public Accountant.

### SECTION 3 OFFICERS

3.1 COMPOSITION. The officers of the corporation shall consist of a President, a Vice President, a Secretary and a Treasurer, plus such assistant officers as the Board may deem appropriate, each of whom shall be elected by the Board at its annual meeting. The Board shall have full authority to remove any officer of the corporation from office by the vote of a majority of the members of the entire Board at any time; and the election of each officer of the corporation shall be subject to such power of the Board. If any office shall become vacant, the Board shall select an individual to fill such office for the unexpired term thereof. Any two offices may be held by the same person except the office of President and Secretary.

3.2 DUTIES. The duties of the officers of the corporation shall be as follows:

- a. The President shall be the chief executive officer of the corporation. He shall preside at all meetings of the members and directors and be responsible for the carrying out of their decisions in the administration of the affairs of the corporation. The President shall also execute contracts, conveyances and other documents on behalf of the corporation.
- b. In the absence of the President, or when it is inconvenient for the President to act, the Vice President shall perform the duties and exercise the powers of the President. At any time when the Vice President is performing a duty or exercising a power of the President,



any third party dealing with the corporation may presume conclusively that the President was absent and that the Vice President was authorized to act in his place.

- c. The Secretary shall issue notices of directors' and members' meetings if so directed by the party calling the meeting, and shall be responsible for the corporate minutes and records. The Secretary shall determine the membership of the corporation as of the record date of any meeting. In doing so, he may use any method which he deems to be reasonably calculated to determine the ownership of Lots in the subject property. Notwithstanding the foregoing, he shall follow any instructions given to him by the Board of Directors to use a specific method in determining the membership of the corporation. The Board may, if it deems it advisable, from time to time, designate one or more persons as Assistant Secretaries, who may perform the duties and exercise the powers of the Secretary when the Secretary is absent or it is inconvenient for him to act. Any third person dealing with the corporation may presume conclusively that any Assistant Secretary acting in the capacity of the Secretary was duly authorized so to act.
- d. The Treasurer shall be responsible for the custody of corporate funds and securities and the keeping of adequate books of account. The Board may, from time to time, if it deems it advisable, designate one or more persons as Assistant Treasurers who may perform the duties and exercise the powers of the Treasurer if the Treasurer is absent or if it is inconvenient for him to act. Any third person dealing with the corporation shall be entitled to presume conclusively that any Assistant Treasurer, acting in the capacity of the Treasurer, was duly authorized to do so.

The Treasurer shall prepare a roster of the members and the assessments applicable thereto, and a record of the payment of such assessments, and such records shall be kept at the principal offices of the corporation and shall be open to inspection by any member at any reasonable time during business hours.

#### SECTION 4 ASSESSMENTS

4.1 Pursuant and subject to the conditions and limitations of the Protective Covenants and Landowners' Agreements which have been or shall be filed of record for the various portions of the subject property,

which provide for maintenance fees to be paid by all members hereof to a Maintenance Fund administered by this corporation or its designated agent, the Board is hereby authorized and given full power and authority to assess and collect from the members of the corporation such maintenance fees at any regular or special meeting in order to obtain funds required by the corporation for the performance of its objectives and purposes and to meet its obligations, subject to the provisions of these bylaws, and the Protective Covenants and Landowners' Agreements which shall have been filed of record for any portion of the subject property authorizing or limiting the amount of such maintenance fees. Each assessment shall be due and payable by each member at the time and in the manner set forth in the respective Protective Covenants and Landowners' Agreements. Each assessment shall be payable in cash at a bank selected by the Board of Directors; but in no event shall such bank have an aggregate of certified surplus, capital and undivided profits of less than \$1,000,000. The corporation may designate PIIC as its agent to administer the Maintenance Fund including the payment of expenditures from such Maintenance Fund and the collection and enforcement of the maintenance fee assessments herein described and to carry out such other duties as shall have been specifically designated by the corporation and accepted by PIIC. This corporation, or PIIC, if so designated, shall not be liable for the failure of any member to pay any assessed maintenance charge.

4.2 No assessment shall be levied against any Lot owned by PIIC held by it for sale to others.

4.3 The corporation and its successors in interest shall have an express lien against each Lot into which the subject property may be

subdivided as shown by the maps or plats thereof at any time recorded, to secure all obligations of the owner or owners of each such Lot to the corporation. The terms of such lien shall be as stated and provided in the deed restrictions and/or the Protective Covenants and Landowners' Agreements covering the specific subdivision units within the subject property.

4.4 The corporation may, by instrument executed by its President or Vice President and authorized by its Board, release or subordinate such lien of the corporation, or any other right of the corporation created under such deed restrictions and Protective Covenants and Landowners' Agreements in whole or in part with respect to any Lot in the subject property for any reason whatsoever and upon such terms as it shall deem advisable, but any such release or subordination shall not affect such lien or rights insofar as they may apply to any other Lot in the subject property.

4.5 Any sums paid to the corporation for the maintenance and repair of a seawall pursuant to the terms of applicable Protective Covenants and Landowners' Agreements shall be used exclusively for such purpose and for the purpose of reimbursing this corporation for funds spent for such purpose which were not specifically designated for such purpose. Amounts owing to the corporation for maintenance and repair of seawalls in subdivision units under the terms of applicable Protective Covenants and Landowners' Agreements shall bear interest at the rate of ten percent (10%) per annum as provided in such Protective Covenants and Landowners' Agreements.

4.6 No Voting Member who is delinquent in the payment of any assessment, charge, fee or other sum due from such member to the corporation, shall be entitled to vote upon any matter unless and until all such delinquent sums shall have been paid to the corporation in full.

#### SECTION 5 DISPOSITION OF ASSETS UPON DISSOLUTION

5.1 Upon dissolution of the corporation, the assets, both real and personal of the corporation, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the corporation. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization described in Section 501(c)(4) of the Internal Revenue Code of 1954, as amended, to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the corporation. No such disposition of properties shall be effective to divest or diminish any right or title of any member vested in him under the covenants and deeds applicable to the subject property unless made in accordance with the provisions of such covenants and deeds.

#### SECTION 6 AMENDMENTS

6.1 These bylaws may be amended at any regular or special meeting of the members of a vote of a majority of the votes entitled to be cast by all of the Voting Members of the corporation, provided that no amendment inconsistent with the provisions of the Articles of Incorporation,

applicable law, the applicable deed restrictions and Protective Covenants and Landowners' Agreements, or any covenant or restriction applicable to the subject property, shall be valid. The Voting Members may delegate to the Board of Directors the power to amend the bylaws of the corporation.

Karl L.  
Rubinstein



## SUMMARY OF POSITION

TO: PIPOA Board of Directors

FM: Karl L. Rubinstein<sup>1</sup>

DATE: January 22, 2018

### **Introduction:**

I have been asked by Brent Moore, PIPOA President, to outline my position regarding a dispute between a group of Voting Members of the Padre Isles Property Owners Association, Inc. ("PIPOA") versus the Board of the PIPOA.

In this regard, Mr. Moore has advised me the PIPOA Board of Directors is seeking a second opinion from an unidentified attorney<sup>2</sup>, and I have been invited to supply materials supporting my opinions as to various items now in dispute between these PIPOA property owners (also, "Voting Members" or Members). I was given a deadline of January 22, 2018, a deadline I accept for these purposes.

But it must be clearly noted, I have not agreed to be bound in any way by this unknown attorney's legal opinion, nor have I in any way agreed that the various issues may be adjudicated or determined via this process. My participation is for informational purposes only and because I hope the Board has selected an independent, experienced, knowledgeable, and honorable member of the Texas Bar Association who will welcome my input. In good faith, I offer the comments herein, although I also stand on the comments and opinions from my counsel already provided to the Association. My counsel has had an opportunity to review this summary, and he asks that I advise you I will ultimately defer to him in the unfortunate event matters necessitate litigation; a prospect we do not expect, but an option we feel obligated to reserve.

### **Origin and Nature of the Dispute:**

This dispute arises out of a variety of ultra vires and improper actions of the PIPOA Board over the last several years.<sup>3</sup> Of particular focus herein is the 2013 action of the PIPOA Board of Directors when they putatively "amended" several provisions of the existing 1994 PIPOA Bylaws.<sup>4</sup> On numerous occasions the Board and Mr. Bell have asserted these amendments were mandated because the Texas Business Organizations Code (BOC) had imposed new requirements that, among other things, gave the Board the power to amend the Bylaws, a power

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<sup>1</sup> I am the retired senior partner of Rubinstein & Perry, a business law firm that had offices in Texas and California. I maintain an active status in both states. I was board certified in Texas as a Civil Trial Specialist (now inactive). More information about me can be found at [www.karlrubinstein.com](http://www.karlrubinstein.com)

<sup>2</sup> I asked for information about the practice and experience of this attorney, promising not to make direct contact, but Mr. Moore refused.

<sup>3</sup> Please see Exhibits A-1 and A-2 for a sample of these issues.

<sup>4</sup> A copy of the 1994 Bylaws and a blacklined copy of the 2013 version of the Bylaws showing the changes from the 1994 Bylaws is attached as Exhibits B-1 and B-2 hereto.



that had been expressly denied to them for 39 years in the manner shown in Section 6 of the 1994 PIPOA Bylaws.

While there are reasons all of these 2013 amendments were illegal, this dispute presently focuses on the Board's insertion of the last sentence in what is now Bylaw Section 7 and which purports to grant the Board the power to amend the PIPOA Bylaws by a majority vote of the Board—only four people. In other words, this amendment changes the rule that had existed for decades which had specifically provided the power to amend rested only with a majority vote of then in excess of 2,000 Voting Members. (Now, over 3,500 property owners) By this step, the Board turned the normal rule of the PIPOA on its head and allowed a mere four-person majority of the Board to amend our Bylaws, which are an exceedingly powerful dedicatory instrument that controls our day to day living.

This action was a hijacking that directly contravened the existing provisions in the then controlling Section 6 that provided the Board could only amend if that power was delegated to it by the Voting Members. No such delegation ever occurred.

In April, 2017, on the alleged “authority” of the 2013 amendments, the Board again amended the Bylaws. But since the authority to so amend is dependent on the illegal 2013 Bylaws, then the 2017 Bylaws are also illegal. More than that, however, there are certain other improprieties associated with the 2017 amendments which we do not wish to debate here. We save these for another day.

But more recently a November, 2017 Board meeting, the Board purported to “ratify” this illegal 2013 “amendment.” I discuss below why this so-called ratification was ineffective.

I retained a very experienced and independent counsel for an opinion on these issues and a copy of his letter to the Board is attached as Exhibit C. I continue to respect all of his expert views. I also spoke to other attorneys who voiced the opinion that my understanding of the pertinent laws is correct.

I have written a series of Essays (most published by a local paper, The Padre Island Moon), and these are available at [www.padreislandARCH.com](http://www.padreislandARCH.com). Because I will distill the essence of my points herein, there is no reason to attach copies of these emails, although I do not object to their introduction.

More recent events convinced a group of Voting Members that the filing of a declaratory judgment action (and possibly other causes of action against individual members of the Board) would be time consuming and expensive. Because the Voting Members have the clear right to call a Special Members Meeting and to enact amendments to the 2013 and 2017 Bylaws, we have chosen to forgo litigation in favor of obtaining a vote at a Special Members Meeting on two proposed amendments to the Bylaws. These are set out in Exhibit D, attached. This voting process, provided it is permitted to be fairly carried out, would essentially moot the dispute by allowing us to “arch” over the legal debate and create a set of Bylaws acceptable to the Voting Members. A full discussion of these proposed amendments as well as related documents and

facts can be found at [www.padreislandARCH.com](http://www.padreislandARCH.com), to which we respectfully direct your attention.

Mr. Bell, the Board's attorney, asserts both the 2013s and the 2017s were lawful and also disputes the form of our proposed Bylaw amendments. I will address both these topics below.

### **The Illegal 2013 Bylaw Provision:**

**a. Procedure:** A redlined copy of these 2013 Bylaws is attached above as Exhibit B. As discussed in more detail below, there was no effective notice given to the Voting Members advising us that the Board intended to alter the existing rule that placed the power to Amend exclusively in the hands of the Voting Members and expressly stated the Board had no right to amend unless that right was delegated to the Board by the Voting Members. There was no such delegation. In addition, the then Section 6 mandated that amendments be done at a members meeting, but no members meeting was called and the Board did these amendments at a board meeting, without notice. Further, then Section 6 required that Voting Members be advised of the terms of any proposed Bylaw amendments and that they also be advised of the pros and cons of each individual proposed amendment. This was not done.

Also, diligent investigation has failed to reveal any signed copy of these 2013 amendments and a diligent search of the Nueces County records proves they were never filed, as required by Texas Property Code section 202.006. Thus, these Bylaws are ineffective and illegal as a matter of procedure alone.

**b. Process:** In September 2013, the PIPOA Board improperly "amended" the then existing 1994 Bylaws to delete Section 6.01 (quoted immediately below) and to add the following sentence to a new Section 7 of what became the putative 2013 Bylaws: "These bylaws additionally may be amended at any regular or special meeting of the Board of Directors, after notice of such meeting has been provided to the membership...."

Section 6 of the lawfully enacted 1994 Bylaws, a copy of which is attached hereto as Exhibit A-1, expressly provided only the Voting Members could amend the Bylaws.

*6.01. These bylaws may be amended at any regular or special meeting of the members by a vote of the majority of the votes entitled to be cast by the Voting Members present at such meeting, in person or by proxy...the Voting Members may delegate to the Board of directors the power to amend the bylaws of the corporation. (underlining added)*

Section 6.02 required that each proposed amendment be treated individually and be accompanied by a statement of why it should be accepted or rejected and its positive and negative effects on the association or its members. Despite, it the absence of the text of 1994 Bylaw Section 6.02, Section 1.4A (Annual Meeting) the 2013 Bylaws, and both versions of the 2017 Bylaws state that the Voting Members must receive the information on issues and amendments as required in Section 6.02. Thus, one must refer back to the 1994 Bylaws for these procedural requirements that require detailed notice and explanation of any proposed amendments.

Both subsections of the 1994 Bylaws Section 6 giving Voting Members amendment power were and remain consistent with controlling law. The PIPOA, via its attorney, asserts that the provisions of Texas Business Organizations Code ("BOC") 22.102, which became effective in 2010, not only authorized, but mandated, that the Board of Directors have the power to amend the Bylaws, thus ignoring the clear language to the contrary in the then existing and controlling 1994 Bylaws. Mr. Bell also asserts that the provisions of BOC 22.102 are imported by implication into the PIPOA Bylaws by operation of law even if the 1994s had not been amended. As I will show, this notion is unworkable. But first I refer to Exhibit C, attached, in which Mr. Kilpatrick opines that the provisions of 22.102 only apply where the existing Bylaws are silent. In other words, this statute is only the default rule. In this, Mr. Kilpatrick is supported by the Texas Supreme Court opinion in the 2013 opinion in Masterson V. Diocese 422 SW3rd 594 (Tex. 2013). There the Supreme Court held:

*[W]hen Good Shepherd incorporated in 1974 the Non-Profit Corporations Act provided that "[t]he power to alter, amend, or repeal the by-laws or to adopt new by-laws shall be vested in the members, if any, but such power may be delegated by the members to the board of directors." See Tex. Rev. Civ. Stat. art. 1396-2.09. The current statutory scheme changes the default rule on who is authorized to amend the bylaws.... See Tex. Bus. Orgs. Code § 3.009; Tex. Rev. Civ. Stat. art. 1396-2.09 (current version at Tex. Bus. Orgs. Code § 22.102) ("The power to alter, amend, or repeal the by-laws or to adopt new by-laws shall be vested in the members . . . "). (underlining and bold added)*

We note also that BOC 22.102 expressly states it applies to the "initial bylaws" of the corporation. The PIPOA 2013 Bylaws were not the initial bylaws, and furthermore they were not silent. To the contrary, the existing Bylaws not only expressly reserved the amendment power to the Voting Members, but also mandated proper notice and also that any amendments be made at a members meeting (not a board meeting) and that the pros and cons of each individual amendment be disclosed prior to the Voting Members acting on them. In this case it is admitted by the PIPOA staff that no notice was given, and it is undisputed that the putative amendments were not done by a members vote or at a members meeting as required by the existing lawful 1994 Bylaws.

The Bylaws in the Masterson case contained the exact language of the PIPOA 1994 Bylaws (which was authorized by the prior statutes) and the Supreme Court stated clearly that BOC 22.102 is the "default rule," meaning the rule to be applied if the PIPOA Bylaws were silent on the subject. But they were not silent. Therefore, BOC 22.102 does not permit the Board to amend prior Bylaws that already stated only the Voting Members could amend the Bylaws.

And even, assuming arguendo, that the statute somehow applied, the existing language in the 1994s was to the exact same effect as that in BOC 22.102 (c) (3) which states *in amending, repealing, or adopting a bylaw, the members expressly provide that the board of directors may not amend or repeal the bylaw*. Texas law requires statutes and business documents be construed by their plain and common meaning unless that leads to an absurd result. City of Rockwall V. Hughes 246 SW 3<sup>rd</sup> 621 (Tex., 2008) and courts must avoid unreasonable, inequitable, or oppressive interpretation of statutes. Frost National Bank. V. L &F Distributors, 165 SW 3<sup>rd</sup> 310

(Tex., 2005). There is nothing in the BOC that mandates the exact text of 22.102 (c) (3) be used. It is sufficient if text used is to the same effect.

Further, BOC section 22.102 (b) clearly states the Bylaws may contain provisions consistent with law. "Consistent" doesn't mean identical, it means not contrary to. And Section 6 of the 1994 Bylaws was certainly consistent with the existing law because the essential meaning of its text is exactly the same as 22.102 (c) (3): The Voting Members can amend, and the Board cannot. This explains one reason why the Supreme Court determined Section 22.102 only stated the default position, meaning it applies only if the existing Bylaws are silent. This position is supported by Gregory S. Cagle in his thoroughly researched and documented treatise, Texas Homeowners Association Law 3rd Ed, (2017) Two Harbors Press, ISBN 13:978- 1-63413-989-2, where at page 132, he states: [certain] provisions of the Texas Non-Profit Corporation law [BOC Chapter 22] serve as "gap-fillers," or default rules, that apply only in the event a Nonprofit ('s) ...Governing Documents fail to address an applicable issue...In such instances the particular statutory provision is not applicable if the substance of such provision is already addressed in the...governing documents." Note, like the Supreme Court, Mr. Cagle understands that only the "substance" of the statutory provision needs to be addressed, and the use of the exact text is not necessary.

As I say, Section 6 of our 1994 Bylaws already stated the substance, indeed the exact meaning, of the default provision of 22.102. After months of this discussion, the Board's attorney has provided no citation to any case decision, to no authoritative treatise, nor to anything else to support his opinions. He merely states his opinions and expects them to be accepted. But how can they be accepted in the face of plain language and authority to the contrary? Further, and very regrettably, he leaves a long trail of mistakes behind him, some samples of which are listed in Exhibits A-1 and A-2.

Even if the Board had the power to amend, which I deny, it nevertheless was required to follow the procedural provisions of the 1994 Bylaws that required amendments to be done at a Members meeting, after due notice in accordance with Section 6. This alleged 2013 "amendment" was not done at a members meeting, but at a board meeting. Further, no notice was given of the fact the Board intended to turn the 1994 Section 6 on its head by seizing the amendment power from the Voting Members and arrogating it to the Board. Diligent search of the PIPOA records by several persons, including me, the PIPOA staff, and other Voting Members failed to turn up any evidence that notice was given to the Voting Members that the Board intended to amend the Bylaws to give itself the power to amend.

As a matter of logic, isn't this entire notion nonsensical--the Board needed to amend the Bylaws in order to have the power to amend the Bylaws because the existing Bylaws withheld that power from the Board?

#### **The Flawed Amendment Procedure:**

The lack of notice is fatal to the 2013 Bylaws. The only mention by the Board about "Bylaws amending" in 2013 began at the April 23rd Board meeting when the Board was discussing the extent of its power to enforce the "ACC [Architectural Control Committee] Covenants:

*" NEW BUSINESS: ACC enforcement: - There was a great deal of discussion regarding enforcement of ACC and covenants. Jeff felt our By-Laws give the Board more power especially under section 2.06. MayBeth [the Executive Coordinator] will contact John Bell and Charlie Zahn for their reading of the issue.*

This plainly relates only to the ACC and most likely to issues over compliance with PIPOA property maintenance requirements which property owners were then resisting. The reference to Section 2.06 plainly relates to ACC concerns. If the Board intended to amend Section 6 relating to Bylaw amendments, it would have said so. But it didn't.

After this minute entry, the phrase "Bylaws amending" appears in four more Board meeting agendas as "Old Business," with no further explanation. These cryptic entries were certainly not the extensive notice then mandated by existing Section 6 of the 1994 Bylaws or by the provisions of Property Code 209.0051 (h) (10) which in fact bars the board from adopting amendments to the Dedictory instruments, which includes Bylaws, without notice to the owners.

Moreover, since the term "Old Business" can only refer to what was once "New Business," then its effect and intent was only to consider amending Section 2.06.

There was no reasonable expectation that the Voting Members were obligated to read all the Board Minutes, none of which were sent out to the Voting Members. However, if one did carefully read these minutes, beginning with the very first one, the message would have been that as "New Business" the Board was strictly focused on the possible need to amend the Bylaws to strengthen their power to run the compliance program via the ACC provisions in our covenants. All further mention of Bylaws in the agendas is under the heading of Old Business, meaning these relate back to the original entry that refers to the compliance issue and the ACC. There is never any notice to Members the Board was considering changing the rule as to who could amend the Bylaws. In fact, the reference in the minutes of the September 24th Board meeting (filed after the fact in October) was simply that the Bylaws were "up-dated."

*By-laws Amending – There was a discussion about the amendments to the by-laws. Nancy moved to approve the amended by-laws, Jack seconded the motion and they were approved. Nancy asked MayBeth to be sure to thank John Bell for the work on bringing them up to date. (underlining added)*

Even this after-the-fact comment about the amendments, intentionally or unintentionally, disguised what was done by referring to the action as merely "bringing them up to date." Mr. Bell has often defended this action as bringing the Bylaws into mandatory compliance with existing state law. But not only was there no need to "update" the Amendment provisions of Section 6, there were several other amendments made to the 2013 Bylaws that had nothing to do with changes in the law. See Exhibit E for a list of these.

Thus, this was not a fair description of what they did, which was to completely reverse who had the power to amend the Bylaws. It is also important to recall that in 2013, the PIPOA sent out regular newsletters. These would have been a logical vehicle for notice if they had any intent to give proper notice. But it is without dispute that none contained any such notice. The PIPOA

Board also sent out mass emails that it refers to as “blasts” to Voting Members. It is without dispute that no “blasts” gave notice of these planned amendments. Indeed, the “blast” sent out Saturday, September 14, 2013 just before this amendment was “approved,” only states: “Tuesday, September 24-- POA Board Meeting at the POA office.” That’s no notice.

The Board sometimes posts pending agenda’s in a glass fronted case at the PIPOA office. There is no evidence showing whether the September agenda was actually posted there, but if it was, here’s what that document said about the Bylaws: “6. OLD BUSINESS a. Parks b. Encantada culverts c. By-laws amending d. Shade Structure/Goodrum e. Covenants and Compliance committee d. Whitecap median.” (Underlining added) There’s no notice of any pending amendment of the Section 6 or any other specific Bylaw. Indeed, PIPOA staff have admitted to me no notice was given.

The term “By-laws amending” is not notice of any specific pending amendment. It could mean simply that the idea might be discussed, or the methodology might be a concern, or just about anything touching on the topic. It certainly doesn’t comply with the specific requirements of the then valid Section 6 of the Bylaws or with the Texas Property Code provisions. This is particularly true when the only actual mention of what they were up to was the one in the April Minutes, which referred to ACC issues. And in any case, these minutes were not circulated to the Members, nor were then then posted on-line.

And beyond all this, we cannot doubt the Board knew or had good reason to know they were breaching the Bylaws when we read this direct quote from the May 2013 Board minutes:

*The decision on how to pass them [the Bylaws] will await John Bell’s direction as it might be possible for the Board to pass as members of the Association have given their proxies to various Board Members for the year. (underlining added)*

This proves the Board knew or should have known the Voting Members had the exclusive power to amend the Bylaws. And they knew or should have known owners were entitled to notice, but wondered if they might get around this by reason of proxies given for the prior Board Election. However, those proxies only granted authority to vote for board members; no other proxies existed.

Another fatal defect is that diligent search of the Nueces County records proves the 2013 Bylaws, which are a “dedicatory instrument” were never filed in the Nueces real property records as required by Texas Property Code section 202.006, which reads: “A property owners’ association shall file all dedicatory instruments in the real property records of each county in which the property to which the dedicatory instruments relate is located...A dedicatory instrument has no effect until the instrument is filed in accordance with this section.”

Even worse, diligent search of the PIPOA files indicates 2013 Bylaws weren’t ever signed and were not lawfully executed, let alone filed.

Lately, Mr. Bell has floated the idea that Bylaws aren’t “dedicatory instruments,” and didn’t need to be filed, but they surely are: Sec. 209.002. DEFINITIONS. In this chapter:

*(3) "Declaration" means an instrument filed in the real property records of a county that includes restrictive covenants governing a residential subdivision. (4) "Dedictory instrument" means 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.*

A leading commentary on Homeowners laws, says the same. See, chapter 6, paragraph 6.5, page 299, "Texas Homeowners Association law, 3rd Ed. By Gregory S. Cagle, explains that Bylaws are "Dedictory Instruments" and must be filed to be valid.

And, the later problematic 2017 Bylaws were filed with the County Clerk on November 30, 2017 with the sworn certification by the PIPOA President that they were being filed as a "dedictory instrument." (underlining added)

#### **Internal Conflicts in the BOC Statute Prevent Imputation by Operation of Law.**

Perhaps the worst thing about the then PIPOA Board's arrogation to itself of the right to amend the Bylaws is what I call "The Big Cheat," meaning that even if we forget all of the above, and concede for the sake of argument, that Business Organizations Code Section 22.102 did require the 1994 Bylaws to be amended to conform with its provisions, the Board's action remains invalid. First, no provision of the BOC strikes out the notice requirements set out in Section 6 of the 1994 Bylaws, nor does any part of the BOC strike out the mandate that amendments be made at a Members meeting as opposed to a Board meeting. No provision of the BOC invalidates 1994 Bylaw Section 6.02 regarding the form and content of notice required for amendments.

But even setting aside these fatal errors, and assuming BOC Section 22.102 had to be somehow incorporated into the PIPOA Bylaws, the fact remains that the statute provides three choices, one of which, 22.102 (c) (3), would have retained the clear meaning of the existing 1994 Bylaws and barred the Board from amending the Bylaws. This means the Voting Members should have had the chance to pick the option they wanted, and since historically the Board was not allowed to amend the Bylaws, there is no reason to believe the Voting Members would have chosen any option other than (c) (3) which would have, even under the Board's attorney's argument, preserved the status quo. Thus, the Voting Members were cheated out of their right to choose subsection (c) (3).

If Section 22.102 were deemed as imputed into the Bylaws, this is how the Bylaw would read:

##### *Section 7: Amendments:*

*(a) The initial bylaws of a corporation shall be adopted by the corporation's board of directors or, if the management of the corporation is vested in the corporation's members, by the members.*

*(b) The bylaws may contain provisions for the regulation and management of the affairs*

of the corporation that are consistent with law and the certificate of formation.

(c) The board of directors may amend or repeal the bylaws, or adopt new bylaws, **unless:**

(1) this chapter or the corporation's certificate of formation wholly or partly reserves the power exclusively to the corporation's members;

(2) the management of the corporation is vested in the corporation's members; or

(3) in amending, repealing, or adopting a bylaw, the members expressly provide that the board of directors may not amend or repeal the bylaw. (underlining and bold added)

As thus incorporated, the Bylaw would on the one hand allow the Board to amend, but on the other, allow the members to forbid the Board to amend. Such a provision is fatally internally inconsistent. Subsection (c) states the board may amend, unless the members expressly provide it cannot. So, which is it? Who decides? The text Section 22.102 (c) (3) plainly contemplates a decision by the Voting Members who are allowed to “expressly provide” the board may not amend. This is a key phrase because it plainly contemplates an act by the Voting Members. We act by voting. How could we “expressly provide” unless given notice and a right to vote on which subsection of (c) would be enacted?

Nobody can explain why the statute can be imputed into our Bylaws, yet prevent the Voting Members from having a vote to “expressly provide that the Board of directors cannot amend or repeal the bylaw.” No. If the statute was imputed, then this inconsistency had to be resolved at that time by a vote of the Members as plainly contemplated by (c) (3).

This necessity is clear because the then existing 1994 Bylaws set out a particular procedure for amending Bylaws and the BOC does not pretend to alter this procedure. This means the Voting Members then had the power and right to choose Section 22.102 (c) (3) but were deprived of this right by the machinations of the PIPOA Board. The inconsistency between the board “can” and the board “cannot” was required to have been determined by a vote of the Voting Members after the notice provided for in then existing Section 6 as well as the statutory law. This was not done.

We also note that subsection (b) allows the Bylaws to contain any provision that is consistent with law and the certificate of formation. The existing provisions of Section 1994 Section 6 that retained the power to amend in the hands of the Voting Members were absolutely “consistent” with the provisions of subsection (c) (3). The net effect of each is to bar the Board from amending and retaining that power in the members.

And we cannot forget that the Texas Supreme Court in Masterson states this BOC provision is the default provision in any event. Our 1994 Bylaw section 6 had already give this power exclusively to the members. But the Board usurped the this right of the Voting Members.



### **The Failure to File:**

The PIPOA admits the 2013s were not filed with the Nueces County Clerk. As noted above Texas Property Code section 202.006, renders these Bylaws ineffective. We are aware of some speculation by Mr. Bell that Bylaws may not actually be “dedicatory” instruments, but I deny this notion as discussed above. For one example only, Section 2.05 of the 2013s “Management” plainly qualifies as a dedicatory instrument. And as we mention above, the PIPOA did file the 2017 Bylaws with the County Clerk on November 30, 2017 with the sworn certification by its President that they were being filed as a “dedicatory instrument.”

### **The 2017 Bylaw Amendments:**

In April, 2017 the PIPOA Board used a board meeting to make a single amendment to the Section 2.1 of 2013 Bylaws, to change the election requirement from a majority of the votes to a plurality only. The Board originally proposed to make this change in the midst of the April 1 2017 election for Board members and, as it was originally proposed by the PIPOA board, it would take effect immediately, thereby changing the voting rules while ballots filed under the original rules were still being counted. After an uproar from the Voting Members present, where we were still not allowed to vote on this proposition, the Board agreed to make the change effective April 2, 2017, the day after the election.

As it happened, once these 2017 Bylaws were filed with the County Clerk, a Voting Member discovered that several other amendments had improperly been made to these Bylaws, amendments that had not been mentioned or voted on, even by the PIPOA Board. Eventually, the PIPOA asserted these additional amendments were unintentional and had resulted from a mistake by the Board’s attorney, who chose the wrong draft of the 2013 Bylaws to file, a draft that had different terms than the actual 2013 Bylaws. While, we think this mystery remains to be further investigated, we do not raise it herein as an issue to be further commented upon. A redlined version of these 2017 Bylaws is attached as Exhibit F

Suffice it to say, however, that since the 2017 Bylaws were also made by the Board at a Board meeting without any Voting Member participation and without the required procedures set out in Section 6 of the 1994 Bylaws, then they are no more valid than the 2013 Bylaws which form the foundation upon which the 2017 version stands.

As mentioned above, Section 1.4 A the 2013 Bylaws and all versions of the 2017 Bylaws retain the following provision from the 1994 Bylaws: “information on issues and amendments as required in Section 6, Paragraph 6.02.” The 1994 Bylaws are attached as Exhibit A-1, above. Paragraph 6.02 mandates each proposed amendment be dealt with individually and be accompanied by a discussion of its pros and cons. This was not done for the 2013s or for any of the 2017s. Also, it should be noted that the improperly inserted last sentence of Section 7 requires “notice of such meeting has been provided to the membership in the manner provided in these Bylaws.” Why wouldn’t this clause invoke the requirements of Paragraph 6.02 as well as the applicable statutory notices? Whether, this is so or not, proper notice is still required by the Bylaws and pertinent Statutes. Note the last sentence of Section 7, requires notice of any pending

amendment “after notice of such meeting has been provided to the membership in the manner provided in these Bylaws.”

### **The Putative Ratification of the 2013 Bylaws:**

At the November, 2017 PIPOA Board meeting, the Board purported to retroactively “ratify” the illegal 2013 Bylaw Amendments. This “ratification” does nothing to cure the fundamental and fatal defects of the 2013 amendments, in particular the amendment that purports to grant the Board the power to amend. If the Board lacked amendment authority in 2013 (and it did lack such authority) then it still lacked that authority in 2017 because there was no intervening event or codification that created new authority. Indeed, by the attempted “ratification” the Board creates an evidentiary admission that it lacked authority in the first place. In other words, if it had the authority in 2013, there would be no need to “ratify.” And if it did not have the power in 2013, it didn’t have it in 2017, and doesn’t have it now.

I have asked Mr. Bell to advise what authority he relies on to support the power of the PIPOA Board to Ratify the 2013 Amendments and he has kindly responded, saying: “The authority would be BOC 22.102 authorizing the board to amend, repeal or adopt new bylaws and the general rule that an authority to do something includes the authority to ratify the action in the event of any question concerning the prior act.” Thus, he is forced to agree with my position that to ratify, the PIPOA must have possessed the authority to amend in the first place.

Ratification occurs when a person who does possess the requisite authority to perform an act authenticates the same earlier act that had been performed by an entity that lacked the requisite authority. The concept is usually seen in agency law where the agent has acted without authority and the principle later “ratifies” the previously unauthorized act. It is also seen sometimes when a change in the law confers new authority which authorizes a previously unauthorized act. Nothing has changed since 2013 to increase the authority of the PIPOA Board.

Analogous agency law holds it is not possible for an entity that lacked the authority to perform an act in the first place, to later ratify its own lack of authority unless some intervening event has occurred to confer that authority. See, for example: *Bache Halsey Stuart Shields, Inc. v. University of Houston*, 638 S.W.2d 920, 293 (Tex.App.-Hous. (1 Dist.), 1982)

*The resolution of the case depends substantially on the characterization given to repurchase agreements. If a repurchase agreement is a "debt," as that word was intended by the writers of the Texas Constitution, no state agency could enter into a reverse repurchase agreement without violating art. 3, § 49 of the Texas Constitution...In short, if a repurchase agreement creates a debt, as appellee argues and the trial court found, the Board of Regents could not legally authorize Brogden and Harwell to enter into such agreements, because the Board itself legally could not have entered into them.<sup>5</sup>(underlining added)*

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<sup>5</sup> In that case, for other reasons, the court interpreted the statute to grant the requisite authority, but the principle remains: if the board in that case did not have the authority in the first instance, it could not authorize and agent to

Joyce v. First Nat. Bank of Snyder, 99 S.W.2d 1092, 1095 (Tex. App. Eastland, 1936)

*The mere fact that the other party to the contract has done something thereunder, and the corporation received some benefit thereby, could not take away the incapacity and vitalize the contract... The point made is not that the corporation ought not to have made the contract, but that it could not make it. Under circumstances analogous to those in the instant case, it was held in Fidelity & Deposit Co. v. National Bank of Commerce, *supra*, quoting with approval from the opinion in Central Transp. Co. v. Pullman's Palace Car Co., 139 U.S. 24, 58, 11 S. Ct. 478, 35 L.Ed.55 " The contract cannot be ratified by either party, because it could not have been authorized by either. No performance on either side can give the unlawful contract any validity, or be the foundation for any right of action upon it." (underlining added)*

This proposition is logically inescapable. If the 2013 Amendments were not within its authority, then the Board cannot ratify that which it has no power to do. The Board does not have the power to make the 22.102 default rule into a mandatory rule. The Board's "ratification" cannot overturn the Texas Supreme Court rule laid down in Masterson, and it cannot erase the clear and lawful procedural provisions in the 1994 Bylaws.

While I find no similar code provision for non-profit corporations, there is a set procedure which for-profit corporations must follow. The so-called PIPOA "ratification" is nothing like BOC 21.903, which ought to at least be a model and requires a great deal of explanation for resolutions to ratify prior acts. In fact, a prerequisite is a prior defective act.<sup>6</sup> Thus, my point that the PIPOA has created an admission that the 2013 Bylaws are defective. Without a defect, there is no need to ratify. And without the requisite authority to amend, there can be no cure.

### **The Proposed Bylaw Amendments:**

Given the invalidity of the 2013 and 2017 Bylaws, the best practice for the PIPOA Board is to pass a resolution reverting back to the 1994 Bylaws as requested by Mr. Peter Kilpatrick in Exhibit B. But this the Board refuses to do. An alternative would be the filing of a declaratory judgment action to seek a court decision on the issue. But this would be a lengthy and expensive process. The expense would be particularly ironic since we Voting Members would be paying for both sides of the litigation since the PIPOA would be defending by use of our maintenance fee trust funds. After due consideration, we determined the most efficacious and least disruptive solution would be to amend the Bylaws to delete the last sentence of Section 7 which gives the

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perform the act. Likewise, since the PIPOA Board did not have the authority in 2013, it didn't have it in 2017, and therefor had no power to ratify its own ultra vires act.

<sup>6</sup> Sec. 21.903. Ratification of Defective Corporate Act; Adoption of Resolutions. (a) To ratify one or more defective corporate acts, the board of directors of the corporation shall adopt resolutions stating:

- (1) the defective corporate act or acts to be ratified;
- (2) the date of each defective corporate act;
- (3) if the defective corporate act or acts involved the issuance of putative shares, the number and type of putative shares issued and the date or dates on which the putative shares were purportedly issued;
- (4) the nature of the failure of authorization with respect to each defective corporate act to be ratified; and
- (5) that the board of directors approves the ratification of the defective corporate act or acts.

Board the power to amend the Bylaws, a power denied to it for 39 years by the prior Bylaws. Also, we seek to amend Section 2.03 that allows the PIPOA to remove any director with or without cause to provide “cause” is required for such removal. Cause is defined as conviction of a felony or a misdemeanor involving moral turpitude.

Please note that this section of the Bylaws allows removal of a director by a vote of 55% of the Voting Members but only for cause. There is no justification for this disparity, particularly when the current provision frustrates the will of the Voting Members who elected the board member by allowing six persons to reverse that vote. There ought to be at least some valid reason for this removal.

We realize this provision is lawful, but under current law BOC section 22.211 the default rule is that removal requires the “affirmative vote equal to the vote necessary to elect the director.” This is only fair. Why should six Board members be able to remove one, just because he or she won’t “go along to get along?”

The urgency of this rule is highlighted by the action of the PIPOA Board President on November 8, 2017 when he emailed all other Board members forbidding them from communicating with me on pain of being sanctioned for “dereliction of duty,” and stating “I will hold anyone who does not follow those instructions in violation of the following bylaw [citing 2.10 Conflict of interest].” He continued by claiming that speaking to me (a Voting Member for 17 years) would be a “conflict of interest.”

What brought this on is that I had for several months been begging Mr. Bell, Mr. Moore (the President) and other Board Members simply to place our two proposed amendments on the agenda for our Annual Member’s Meeting in March 2018. At the time this gag order was issued, I had just offered to meet with any or all of the Board members for a frank and honest discussion of these proposed amendments. I had made it clear that I was not asking them to agree to the amendments, but only to put them on the agenda for a fair up or down vote. I also offered to consider changes in the proposed text of the amendments. I even met with John Bell at his office for an hour or more begging to have these amendments put to a fair, democratic up or down vote. But this has not only been refused, Mr. Moore has evoked the *in terrorem* clause to prevent an adult discussion. Thus, we see the potential abuse of this provision come to real life fruition. Copies of my memos to the Board of November 8<sup>th</sup> and 9<sup>th</sup> of 1018 are attached as Exhibits G-1 and G-2.

Because of the refusal to place these two proposed amendments on the agenda for a vote at the annual members meeting, we have begun a drive to call a Special Members meeting to vote on these amendments. A copy of our Ballot/Proxy is attached as Exhibit H.

I had shown this document to Mr. Bell well prior to our printing it and collecting votes and proxies for it. Mr. Bell now asserts our Proposal One is improper. This proposition reads:

*Proposition 1. Providing for the following amendment to said Bylaws Section 7 as follows:*

*The last sentence of Bylaw Section 7, which now states: "These bylaws (sic.) additionally may be amended at any regular or special meeting of the Board of Directors, after notice of such meeting has been provided to the membership in the manner provided in these Bylaws," is hereby deleted and stricken and the following sentence is added as the last sentence of Section 7:*

*"The PIPOA Board is hereby forbidden to amend or repeal this Bylaw or to adopt any other PIPOA Bylaw to the same or similar effect. The PIPOA Bylaws may not be amended, repealed, adopted, or otherwise effected by the PIPOA Board, all such power being herewith reserved unto the Voting Members, and only the Voting Members."*

Mr. Bell has long conceded that we Voting Members are entitled to hold a Special Meeting and to vote on proposed Bylaw Amendments. He also agrees that, as to each amended Bylaw, we may "expressly provide that the board of directors may not amend or repeal the bylaw," as specifically permitted under BOC 22.102 (c) (3). In other words, he admits we could amend each and every Bylaw and add the sentence: "The Board of Directors may not amend or repeal this bylaw."

But Mr. Bell has demonstrated a long history of cleverly parsing words and phrases and we are concerned that if we simply amend Section 7 to delete the last sentence that allows the Board to amend, and substitute the sentence: "The Board of Directors may not amend or repeal this bylaw," (a provision he must concede is permitted) he will later argue that a "change" or "clarification" can be made that effectively reverses our amendment. Alternatively, he might assert it's permissible to create an entirely new section that effectively allows the Board to amend the bylaws.

To avoid this, our draft makes clear these things cannot be done. Because BOC 22.102 (b) expressly states: The bylaws may contain provisions for the regulation and management of the affairs of the corporation that are consistent with law and the certificate of formation," and because our chosen text is not inconsistent with simply stating the Board cannot amend or repeal the Bylaw, then it is not only lawful, but also defends against future abuse.

In the event the reader's opinion is that this text needs to be changed, we would appreciate a statement of what text would be permissible. Must we really go to each and every Bylaw and include the bar, or can we affect all Bylaws by placing the blanket statement in Bylaw Section 7 which is titled "Amendments" and which applies to all Bylaws?

Respectfully submitted,



Karl L. Rubinstein  
Attorney at Law and  
PIPOA Voting Member

#### Exhibit A-1

- the illegal 2013 Bylaw amendment,
- the failure to even sign or file these "amendments,"
- the funds dissipated by the so-called Beautification Program,
- the more than \$60 thousand dollars squandered on the unsanctioned Community Center (for which in a 2015 letter the Board confessed its guilt, admitting the members had voting rights, and swore to clean up its act),
- the "mistake" over how the improper 2017 Bylaw amendments were filed,
- the prospect of misappropriating our Common Area trust funds through a \$100,000 donation to the Charter School,
- the unsanctioned "scholarships" from trust funds to the Community College,
- other similarly questionable expenditures, such as the \$2,500 check to Kiwanis
- the extremely debatable processes by which PIOPA projects and contracts are bid out,
- the unpredictable manner in which the Architectural Control Committee approves or disapproves projects and supervises builders,
- the failure to have reasonable parking standards for large vehicles and boats,
- the unevenly coordinated "compliance program" and the never-ending wheel spinning of the "compliance committee,"



## **PADRE ISLES PROPERTY OWNERS ASSOCIATION**

14015 FORTUNA BAY DRIVE • CORPUS CHRISTI, TX 78418-6347 • (361) 949-7023 • FAX (361) 949-7026 • E-MAIL [padreisles@pihoa.net](mailto:padreisles@pihoa.net)

January 13, 2015

An Open Letter to the Padre Isles Property Owners Association membership  
From the PIPOA Board of Directors:

Owners, Friends, Neighbors:

Over the past months, the Board of Directors has pursued building a Community Center and new POA Headquarters at Billish Park with input from the owners and the best intentions in mind for all of the PIPOA membership. We have received many visits, emails, and phone calls supporting this project and some opposing it. We have taken all of them seriously. However, in recent days it has become apparent that the Board has not done a good job incorporating the desire of many of our owners to allow each member an opportunity to cast a formal vote to approve or not approve a project of this magnitude and importance while explaining all aspects of the Community Center and how it is to be operated.

Even as late as three weeks ago, the Board did not plan any additional voting in regards to the project. This position has caused an unexpected amount of conflict. Additionally, given a recent spate of insults, innuendo and threatened lawsuits against the POA, the environment for cooperation and civil engagement has degraded significantly. Furthermore, in reviewing the regulations that the Board must follow in executing its financial duties, the Board determined that a project of this size required additional actions prior to expending funds to build the Center, actions which rightfully should include approval of the owners by formal vote. The Board has no desire or intention to violate the rules and regulations which govern the Board and management of the POA, nor do we have any desire to cause the owners to question their trust in the Board.

Given the above, the Board has decided to place on hold any further action on current plans to build the Community Center. No contractual obligations for construction or detailed design have been entered into and the POA has no future work scheduled on behalf of the Center. The Board will review all of its procedures and decisions which led to this so we can learn from it and ensure a far better process in the future. As the Board still believes a Community Center is a worthwhile and needed project for the island, when the time comes to resume this process, it will include a wide dissemination of information via various media to the owners regarding operating plans, cost estimates, and budgets for membership review and will culminate in a formal vote of the membership to approve or not approve the Board proceeding forward.

The Board sincerely apologizes to the members for our oversights in regards to the Center but reiterates that we had nothing but the best interests of the membership at heart. Now that action on the Center has been put on hold, we hope that the rancor and angst will subside and our Island return to the neighborly place we all love. We thank the many owners who voiced their support for the initiative and ask you to still come out to assist us in the future when this issue gets revisited. We also express our

wish that those who oppose a Center will actively participate in future discussions so the Board has an opportunity to alleviate your concerns and increase overall support throughout our membership.

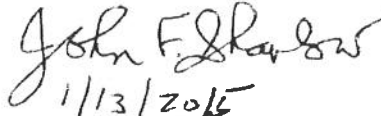
Respectfully,

  
Jeff Carlson

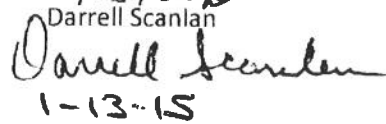
  
Cheri Sperling

  
Brent Moore

Jack Sharlow

  
1/13/2015

Darrell Scanlan

  
1-13-15

Nancy Tressa

  
01/13/15

  
Stan Hulse



*Black-lined Copy*

# *Padre Isles*

PROPERTY OWNERS ASSOCIATION, INC.



## *Bylaws*

AMENDED TO ~~SEPTEMBER 8, 1994~~  
\_\_\_\_\_, 2013

# PADRE ISLES PROPERTY OWNERS ASSOCIATION, INC.

## BYLAWS

### SECTION 1 MEMBERS

#### 1.01 MEMBERSHIP

~~Padre Island Investment Corporation (hereinafter referred to as "PHC") and~~ Each person (which term shall be construed to include partnerships, corporations and any other type of entity or organization) who shall have acquired or shall hereafter acquire the record legal title to all or any portion of the property ~~owned by PHC~~ situated on Padre Island, Nueces County, Texas (hereinafter sometimes referred to as the "subject property Subdivisions") ~~including, but not limited to, the lots or tracts into which the subject property presently has been subdivided as shown by the following listed recorded plats thereof, to-wit:~~

Barataria Bay Units 1-5  
Cape Summer Units 1 & 2  
Coquina Bay  
Island Fairway Estates  
Mariners Cay Unit 2A  
Padre Island Number 1 & 2  
Sea Pines Unit 1  
Section 3 (Galleon Bay)  
Section 4 (Tradewinds)  
Sections A-E

~~\*Cane Harbor Bay~~  
Commodore's Cove Units 1 & 2  
Mariner's Cay  
Island Fairway Estates Blocks: 3 & 21-36  
Point Tesoro Units 1-5  
Ports O'Call  
Section 2 (Galleon Bay)  
Section 3A (Galleon Bay)  
Section 18 (Marina Site)

~~shall automatically~~ Such membership shall continue for the duration of such the ownership of property within the Subdivisions. ~~be a Voting Member of Padre Isles Property Owners Association, Inc., This Association is a membership corporation organized under the provisions of the Texas Non-Profit Corporation Act (the "corporation"). Each person who is a purchaser of any portion of the subject property under a contract for deed from PHC, its successors and assigns, shall be an Associate Member of this corporation. Reference herein to "members" shall include both Voting and Associate Members.~~

• ~~To be added following receipt of \$16,000 "Buy-in" payment; dedication of street to City of Corpus Christi and covenants approved by the Corporation.~~

~~Notwithstanding any other provision herein, the City of Corpus Christi, Nueces County, Texas, or any other political subdivision which may presently own or hereafter acquire a portion of or any interest in the subject property, and any lien holder or mortgager, trustee under a deed of trust, and any holder or owner of any right of way easement or similar interest, shall not, as such, be deemed to be the owner of record of the legal title to a portion of the subject property and~~

shall not by reason of any such interest owned or held or acquired by them be or become a member of this corporation.

A member of this ~~corporation~~ Association is not, as such, personally liable for the debts, liabilities, nor obligations of the ~~corporation~~ Association

## 1.02 EXTENSION OF TERRITORIAL ELIGIBILITY FOR MEMBERSHIP

If, at any date subsequent to the adoption of these bylaws, additional land situated on Padre Island, Nueces County, Texas, is ~~platted of record by PHC for the purpose of being developed as an integral part of the subject property using the name Padre Island Corpus Christi, such additional land shall automatically be included within the definition of the "subject property", and owners thereof shall be eligible to become members of this corporation in accord with the rules established herein.~~ may be developed with protective covenants similar to the protective covenants applicable to the Subdivisions and upon the approval of the Board of Directors become part of the Subdivisions covered by these Bylaws.

## 1.03 VOTING RIGHTS.

A. Only Voting Members shall have voting rights and be counted in determining a quorum at any meeting; ~~provided, however, notwithstanding any other provision in these Bylaws, no Voting Member shall have a right to vote nor be counted in determining a quorum so long as his/her lot is not being assessed or charged a maintenance fee by reason of Section 4.07 of the Bylaws.~~ Only one (1) vote may be cast with respect to or by reason of the ownership of each Lot, and in the case of ownership of less than an entire Lot, or in the case of undivided fractional interest ownership Lots, the vote attributable to a Lot ~~shall be cast only~~ shall be a representative of the owners of a majority in interest or a majority of the front footage of such Lot (determined by measurement of the linear foot dimension of the Lot facing the street upon which such Lot fronts according to the plat or map designating and identifying such Lot).

B. A Voting Member may vote in person or by proxy; however, no proxy shall be valid after eleven (11) months from the date of execution unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and in no event shall it remain irrevocable for more than eleven (11) months. A proxy delivered by email or by fax may be counted if the identity of the member submitting the ballot can be confirmed. [See Texas Property Code § 209.00592].

C. Voting may be conducted by mail or electronic means in such a manner as the Board of Directors shall determine.

## 1.04 MEETINGS

A. Annual Meeting of the Members of the ~~corporation~~ Association shall be held at ten o'clock a.m. on the second Saturday in March each year at such place in Nueces County, Texas as shall be designated for such purposes in a notice of the meeting; ~~but if no notice be given, or if no~~

~~other place be designated, then such meeting shall be held at the Padre Isles Country Club.~~ With respect to proxy voting, the Association shall provide the members with the following minimum information: When voting for Directors, a resume provided by each candidate within the space requirements as determined by the Directors and information on issues and amendments as required in Section 6, Paragraph 6.02.

B. Special Meetings. Special meetings of the members may be called at any time by the President, the Vice President, the Secretary or Treasurer, or by two (2) or more members of the Board, or upon written request of the members who have a right to vote ten percent (10%) of the votes entitled to be cast at the time of such call. Any business, which may properly be conducted at an annual or regular meeting of the members, may also be conducted at any special meeting.

C. Informational Meetings. In addition to the Annual Meeting, ~~there will be three (3) informational meetings annually~~ the Board may schedule informational meetings to pass on and receive information on news/plans/projects/status on programs for the benefit of the members

#### 1.05 NOTICE

A. Not later than the 10<sup>th</sup> day or earlier than the 60th day before the date of an election or vote of the membership on a matter, the Association shall give written notice of the election or vote to each member. [See Texas Property Code § 209.0056].

B. If mailed, the notice shall be deemed to be delivered when deposited in the United State mail addressed to the member at the address as it appears on the records of the corporation, with postage prepaid. If notice is given by electronic mail, such notice shall be deemed to be delivered when sent to the electronic mail address provided by the member.

~~No notice of any annual or regular meeting of the members of the corporation shall be required, but such notice of any such meeting as the Board may deem advisable may be given.~~

~~Notice of special meetings shall be given to Voting Members (none being required to Associate Members) not less than ten (10) nor more than fifty (50) days prior to the date of any such meeting~~

~~Any notice which shall be given to a member of the corporation with respect to any meeting or for any other purpose shall be deemed to have been properly given if addressed to "owner", in care of the street address of the Lot or tract located in the subject property with respect to the ownership of which the member is entitled to vote; or, when the number of Voting Members exceeds one thousand (1,000), notice may be given by publication in any newspaper of general circulation in Nueces County, Texas.~~

#### 1.06 QUORUM

~~The owners of at least ten percent (10.%) of the Lots located in the subject property~~Subdivisions, present in person or by proxy, shall be requisite for and shall constitute a quorum for the transaction of business at all meetings of the members of the ~~corporation~~Association. Any

meeting of members may be adjourned from time to time without notice other than announcement at the meeting, until a quorum shall be present or represented. When a quorum is present in person or by proxy, a majority vote of the members present shall decide any question brought before such meeting, except as noted in Section 2, Paragraph 2.03.

#### 1.07 PROCEDURES

All ~~Association membership~~ meetings and Board of Directors meetings shall be conducted according to Robert's Rules of Order, newly revised, as long as such rules are not inconsistent or in conflict with these Bylaws, the Articles of Incorporation, or Texas or Federal Law.

### SECTION 2 DIRECTORS

#### 2.01 NUMBER

The number of directors of the ~~corporation~~ Association shall be seven, and those whose terms shall have expired shall be elected at the annual membership meeting. Directors shall serve for ~~three-year terms~~ until his/her successor has been duly elected and qualified. Notwithstanding the foregoing, the directors may determine that in lieu of electing the new directors whose terms shall have expired at an annual membership meeting, such election shall be conducted by mail.

#### 2.02 QUALIFICATIONS

Directors and Officers shall be natural persons of the age of eighteen (18) or over, and must be members of the Association.

#### 2.03 VACANCIES AND REMOVAL

Any director may be removed with or without cause by the unanimous vote of the remaining members of the Board (excluding the director to be removed). Officers and Directors may also be removed, with cause, by a 55% vote of the members voting in an Annual or Special Meeting. Upon the death, removal, resignation, or incapacity of any member of the Board, a majority of the then remaining directors shall elect his/her successor.

#### 2.04 MEETINGS

A. An annual meeting of the Board of the ~~corporation~~ Association shall be held each year immediately following the adjournment of the annual meeting of the members, and at the same place as the annual meeting of the members; ~~and no notice of such annual meeting of the Board shall be required.~~ Special meetings of the Board may be called by any three (3) directors or by the President, and shall be held at such time and place as shall be specified in the notice of such meeting. ~~No particular form of notice shall be required for the calling and holding of a special meeting of the Board, provided that actual notice thereof shall have been given to each director in advance of the time of such meeting. Proper notice shall be deemed to have been given of any~~

~~special meeting of the Board if notice is in writing, or by telephone or telegraph message and shall have been sent to either the usual business or residence address of the person entitled to receive notice not less than five (5) days preceding the time of the meeting.~~

B. A director may vote in person or by proxy. No such proxy shall be valid after three (3) months from the date of its execution; and each shall be revocable unless expressly provided therein to be irrevocable.

C. The Association must give all members notice of the date, hour, place, and general subject of all Board meetings. The notice shall be provided to each member as provided by the Texas Property Code. The notice shall be: (1) mailed to each member 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 the members: (i) in a place located on the Association's common property or, with the member's consent, on other conspicuously located privately-owned property within the subdivision; or (ii) 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. [See Texas Property Code § 209.0051].

## 2.05 MANAGEMENT

The affairs and property of the ~~corporation~~ Association shall be managed and controlled by the Board. The Board shall have authority to cause the ~~corporation~~ Association to own, acquire, develop, construct, maintain, operate, repair and replace, on a non-profit basis, common areas for the protection, security, pleasure, recreation, or benefit of the ~~subject property~~ Subdivisions and the owners thereof, including but not limited to, greenways, recreation areas, canals, bulkheads, seawalls, sea gates, lighting, ~~parks, roads, streets, curbs, gutters,~~ drainage facilities, water access areas, including boat ramps, and such other facilities in the ~~subject property~~ Subdivisions for the use, enjoyment, protection and benefit if the members of the ~~corporation~~ Association, and other parties designated by the Board, as the Board may deem appropriate, and they are expressly given full powers not inconsistent with these bylaws, the Articles of Incorporation of this ~~corporation~~ Association, applicable provisions of law and the Protective Covenants and Landowners' Agreements covering the ~~subject property~~ Subdivisions to accomplish such purposes, including the power to acquire, purchase or lease any such facilities or transfer the management responsibilities for any such facilities to others in order to provide for the maximum enjoyment of such facilities by the members and such other designated persons.

~~It shall further be the duty of the Board to use their best efforts to attempt in every way to support the enforcement of the provisions of the deed restrictions and of the Protective Covenants and Landowners' Agreements covering any subject property, as well as any similar restrictions and covenants subsequently filed for record with respect to a portion of the subject property.~~

## 2.06 ~~AUTHORITY~~ COMMITTEES.

A. The Board shall have power to make rules for their own government and for the government of the ~~corporation~~ Association as it may deem necessary and to alter and amend the same; to prescribe and enforce penalties for violations of the rules and bylaws of the ~~corporation~~ Association; to access and fix charges to be levied against the members of the ~~corporation~~ Association subject to limitations and conditions contained in the Protective Covenants and Landowner's Agreements filed of record for the ~~subject property~~ Subdivisions; and to exercise such other powers as may be necessary or proper to attain the objects of the ~~corporation~~ Association. The Board shall have the authority to create committees by appropriate resolutions, and may delegate to any such committee so much of its authority as it shall deem advisable, and shall specify the duties of any committee so created. Not less than the majority of the members of any such committee having and exercising any of the authority of the Board of Directors in the management of the ~~corporation~~ Association shall be directors of the ~~corporation~~ Association. No required percentage of the membership of any committee not exercising such authority need be directors of the ~~corporation~~ Association.

B. The following standing committees shall be established: A. Architectural Control, B. Homeowner Advisory, C. Covenants and Compliance, D. Bulkheads and Canals, E. Governmental Affairs and F. Elections. The Board may establish committees including an Architectural Control Committee and such others as it deems necessary.

## 2.06 EMPLOYEES

The Board shall have responsibility and authority to employ such employees as the affairs of the ~~corporation~~ Association shall require and may delegate to any such employee so much of its authority as it shall deem advisable. The Board shall likewise have power for any cause they deem sufficient to discharge any or all employees of the ~~corporation~~ Association and may delegate their authority to do so to any officer of the ~~corporation~~ Association.

## 2.07 AUDIT

The financial records of the ~~corporation~~ Association shall be audited annually by an accountant, who is licensed by the Texas State Board of Public Accounting as a Certified Public Accountant, as designated by the Board of Directors.

## 2.08 INDEMNIFICATION

Each director and officer or former director or officer of the ~~corporation~~ Association shall be indemnified by the ~~corporation~~ Association against expenses reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director or officer of this ~~corporation~~ Association, except in relation to matters as to which he shall be finally judged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of his duty as such director or officer. Such right of indemnification shall not be deemed exclusive of any other rights to which he may be entitled as a matter of law or under any provision of the Articles of Incorporation, Bylaws, Agreement, Vote of Members or otherwise; and the ~~corporation~~ Association shall exercise the power to

indemnify any such officer or director to the fullest extent to which such power of indemnification is permitted to be exercised under the laws of the State of Texas.

## 2.09 CONFLICT OF INTEREST

Officers, Directors, Committee Chairmen, Committee Members, Employees and Consultants, before serving the Association shall be personally sensitive to conflicts of interest, and in serving shall not participate in discussions nor decision that are in conflict of interest.

## SECTION 3 OFFICERS

### 3.01 COMPOSITION

The officers of the ~~corporation~~ Association shall consist of a President, a Vice President, a Secretary and a Treasurer, plus such assistant officers as the Board may deem appropriate, each of whom shall be elected by the Board at its annual meeting. The Board shall have full authority to remove any officer of the ~~corporation~~ from office by the vote of a majority of the members of the entire Board at any time; and the election of each officer of the ~~corporation~~ shall be subject to such power of the Board. If any office shall become vacant, the Board shall select an individual to fill such office for the non-expired term thereof. Any two offices may be held by the same person except the office of President and Secretary.

### 3.02 DUTIES

The duties of the officers of the ~~corporation~~ Association shall be as follows:

A. The President shall be the chief executive officer of the ~~corporation~~ Association. He shall and preside at all meetings of the members and directors and be responsible for the carrying out of their decisions in the administration of the affairs of the ~~corporation~~ Association. The President shall also execute contracts, conveyances and other documents on behalf of the ~~corporation~~ Association. The President or his designee shall be the only spokesman for the policy of the Association.

B. In the absence of the President, or when it is inconvenient for the President to act, the Vice President shall perform the duties and exercise the powers of the President. At any time when the Vice President is performing a duty or exercising a power of the President, any third party dealing with the ~~corporation~~ Association may presume conclusively that the President was absent and that the Vice President was authorized to act in his place.

C. The Secretary shall issue notices of directors' and members' meetings if so directed by the party calling the meeting, and shall be responsible for the corporate minutes and records. The Secretary shall determine the membership of the ~~corporation~~ Association as of the record date of any meeting. In doing so, he the Secretary may use any method in which he deems is deemed to be reasonably calculated to determine the ownership of Lots in the subject



~~property~~Subdivisions. Notwithstanding the foregoing, ~~he~~ the Secretary shall follow any instructions given ~~to him~~ by the Board of Directors to use a specific method in determining the membership of the ~~corporation~~Association. The Board may, if it deems it advisable, from time to time, designate one or more persons as Assistant Secretaries, who may perform the duties and exercise the powers of the Secretary when the Secretary is absent or it is inconvenient for ~~him~~ the Secretary to act. Any third person dealing with the ~~corporation~~Association may presume conclusively that any Assistant Secretary acting in the capacity of the Secretary was duly authorized so to act.

D. The Treasurer shall be responsible for overseeing the custody of corporate funds and securities and the keeping of adequate books of account. The Board may, from time to time, if it deems it advisable, designate one or more persons as Assistant Treasurers who may perform the duties and exercise the powers of the Treasurer if the Treasurer is absent or if it is inconvenient for ~~him~~ the Treasurer to act. Any third person dealing with the ~~corporation~~Association shall be entitled to presume conclusively that any Assistant Treasurer, acting in the capacity of the Treasurer, was duly authorized to do so.

The Treasurer shall oversee the preparation~~prepare~~ of a roster of the members and the assessments applicable thereto, and a record of the payment of such assessments, and such records shall be kept at the principal offices of the ~~corporation~~Association and shall be open to inspection by any member at any reasonable time during business hours.

#### SECTION 4 ASSESSMENTS

4.01 Pursuant and subject to the conditions and limitations of the Protective Covenants Landowners' Agreements which have been or shall be filed of record for the various portions of the ~~subject property~~Subdivisions, which provide for maintenance fees to be paid by all members hereof to a Maintenance Fund administered by this ~~corporation~~Association or its designated agent, the Board is hereby authorized and given full power and authority to assess and collect from the members of the ~~corporation~~Association such maintenance fees at any regular or special meeting in order to obtain funds required by the ~~corporation~~Association for the performance of its objectives and purposes and to meet its obligations, subject to the provisions of these ~~Bylaws~~, and the Protective Covenants and Landowners' Agreements shall have been filed of record for any portion of the ~~subject property~~Subdivisions authorizing or limiting the amount of such maintenance fees. Each assessment shall be due and payable by each member at the time and in the manner set forth in the respective Protective Covenants and Landowner's Agreements. Each assessment shall be payable to the Padre Isles Property Owners Association office located at 14015 Fortuna Bay Drive, Corpus Christi, TX. ~~in cash at a bank selected by the Board of Directors; but in no event shall such bank have an aggregate of certified surplus, capital and undivided profits of less than \$1,000,000. The corporation may designate PHC as its agent to administer the Maintenance Fund including the payment of expenditures from such Maintenance Fund and the collection and enforcement of the maintenance fee assessments herein described and to carry out such other duties as shall have been specifically designated by the corporation~~

~~and accepted by PHIC. This Association corporation, or PHIC, if so designated, shall not be liable for the failure of any member to pay any assessed maintenance charge.~~

4.02 No assessment shall be levied against any Lot owned by PHIC held by it for sale to others.

4.03 The ~~corporation~~ Association and its successors in interest shall have an express lien against each Lot into which the ~~subject property~~ Subdivisions may be subdivided as shown by the maps or plats thereof at any time recorded, to secure all obligations of the owner or owners of each such Lot to the ~~corporation~~ Association. The terms of such lien shall be as stated and provided in the deed restrictions and/or the Protective Covenants and Landowners' Agreements covering the specific subdivision units within the ~~subject property~~ Subdivisions.

4.04 The ~~corporation~~ Association may, by instrument executed by its President or Vice President and authorized by its Board, release or subordinate such lien of the ~~corporation~~ Association, or any other right of the ~~corporation~~ Association created under such deed restrictions and Protective Covenants and Landowners' Agreement in whole or in part with respect to any Lot in the ~~subject property~~ Subdivisions for any reason whatsoever and upon such terms as it shall deem advisable, but any such release or subordination shall not affect such lien or rights insofar as they may apply to any other Lot in the ~~subject property~~ Subdivisions.

4.05 Any sums paid to the ~~corporation~~ Association for the maintenance and repair of a seawall pursuant to the terms of applicable Protective Covenants and Landowners' Agreements shall be used exclusively for such purpose and for the purpose of reimbursing this purpose. Amounts owing to the ~~corporation~~ Association for maintenance and repair of seawalls in subdivision units under the terms of applicable Protective Covenants and Landowners' Agreements shall bear interest at the rate of ten percent (10%) per annum as provided in such Protective Covenants and Landowners' Agreements.

~~4.06 No Voting Member who is delinquent in the payment of any assessment, charge, fee or other sum due from such member to the corporation shall be entitled to vote upon any matter unless and until all such delinquent sums shall have been paid to the corporation in full.~~

~~4.07~~

~~Assessments shall be levied with respect to each lot only after PHIC or its successors shall have fulfilled its contractual obligations, if any to:~~

~~A. Grade, excavate, and/or fill the lot to bring it to the elevations approved by the City of Corpus Christi, Texas in accord with the specifications filed with the City;~~

~~B. Install paved streets abutting the lot;~~

~~C. Install bulk heads on canals abutting the lot, if applicable;~~

~~D. Install water main and sewage disposal facilities so that the lot owner is able to, at his expense, tap into such facilities and procure water service and sewer disposal service to his lot.~~

~~4.08—06~~ Any assessment not paid when due shall be deemed delinquent and shall bear interest from said due date at the rate of six percent (6%) per annum. In addition to liens as described in paragraph 4.04-03 above, the Association shall also have the right to foreclose on such liens and all other rights and remedies necessary to collect delinquent amounts; with all costs being added to the delinquent ~~Owners'~~ member's account.

## SECTION 5 BOOKS AND RECORDS

### 5.01 REQUIRED BOOKS AND RECORDS

The Association will keep correct and complete books and records of account. The books and records include:

A. A file-endorsed copy of all documents filed with the Texas Secretary of State relating to the Association;

B. A copy of all Bylaws, and any amended version or amendments to them;

C. A copy of the Protective Covenants and Landowners' Agreements.

D. Minutes of the proceedings of the Board, and committees having any of the authority of the Board for the previous seven years;

E. A financial statement showing the Association's income and expenses for the seven most recent fiscal years;

F. The Association's federal, state, and local tax information or income tax returns for each of the Association's seven most recent tax years.

[See Texas Property Code § 209.005(m)]

### 5.02 INSPECTION

Books and records of the Association will be made available for inspection and copying pursuant to applicable law, such as Section 22.351 of the Texas Business Organizations Code and Section 209.005 Texas Property Code. The Board may require a member to submit a written demand for inspection by certified mail to the Association, stating the purpose for which the member will inspect the books and records. The Board has the following rights: (1) to determine whether the member's purpose for inspection is proper; (2) to deny the request if the Board determines that the member's purpose is not proper; (3) if granting the request, to identify which books and

records are relevant to the member's stated purpose for inspection. [See Texas Property Code § 209.005]

### 5.03    COPYING

A member, at member's expense, may obtain photocopies of books and records for which the Board grants the right of inspection. The Board has the right to retain possession of the original books and records, to make copies requested by the member, and to charge the member a reasonable fee for copying. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page or part of a page. Each side that has recorded information is considered a page. [See Texas Property Code § 209.005]

## SECTION 6 DISPOSITION OF ASSETS UPON DISSOLUTION

### 5.04    6.01

Upon dissolution of the ~~corporation~~ Association, the assets, both real and personal of the ~~corporation~~ Association, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the ~~corporation~~ Association. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization described in Section 501(c)(4) of the Internal Revenue Code of 1954/1986, as amended, to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the ~~corporation~~ Association. No such disposition of properties shall be effective to divest or diminish any right or title or any member vested in him under the covenants and deeds applicable to the ~~subject property~~ Subdivisions unless made in accordance with the provisions of such covenants and deeds.

## SECTION 7 AMENDMENTS

### 6.01    7.01

These Bylaws may be amended at any regular or special meeting of the members by a vote of a majority of the votes entitled to be cast by the Voting Members present at such meeting, in person or by proxy, provided that no amendment is inconsistent with the provisions of the Articles of Incorporation, applicable law, the applicable deed restrictions and Protective Covenants and Landowners' Agreements, or any covenant or restriction applicable to the ~~subject Subdivisions~~ property, shall be valid. ~~The Voting Members may delegate to the Board of Directors the power to amend the bylaws of the corporation~~ These bylaws additionally may be amended at any regular or special meeting of the Board of Directors, after notice of such meeting has been provided to the membership in the manner provided in these Bylaws.

~~6.02~~ 7.02 ~~AMENDMENTS OF BYLAWS AND ARTICLES OF INCORPORATION~~

~~Each shall be treated individually, and accompanied by a statement of why it should be accepted or rejected and its positive and negative effects on the Association and its members.~~

EX-C



## LANGLEY &amp; BANACK

PETER L. KILPATRICK  
BOARD CERTIFIED - CIVIL TRIAL LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION

E-MAIL: [pkilpatrick@langleybanack.com](mailto:pkilpatrick@langleybanack.com)

September 29, 2017

Padre Isles Property Owners Association, Inc.  
via Maybeth Christensen, its Registered Agent  
14015 Fortuna Bay Dr.  
Corpus Christi, TX 78418

CERTIFIED MAIL/RETURN RECEIPT REQUESTED  
No. 9414 7266 9904 2099 0582 02

D. Brent Moore, President of  
Padre Isles Property Owners Association, Inc.,  
per Association's website  
14015 Fortuna Bay Dr.  
Corpus Christi, TX 78418

CERTIFIED MAIL/RETURN RECEIPT REQUESTED  
No. 9414 7266 9904 2099 0582 19  
and e-mail: bmoorel@stxrr.com

Leslie Hess

lesliehess@earnesthealth.com

Nancy Tressa

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Mjones@law@att.net

Darrell Scanlon

darrellandterriscanlon@gmail.com

Re: Demand on Padre Isles Property Owners Association ("Association" herein)

Dear Board of Directors of the Association:

This firm represents Karl and Nancy Rubinstein, co-Trustees of the Rubinstein Family Trust, owners of the real property and improvements located within a subdivision of Padre Isles, Corpus Christi, Texas. As such, my clients are mandatory members of the Association.

Pursuant to the Articles of Incorporation, although managed by the Board of Directors, the Association is a membership corporation.

TRINITY PLAZA 111743 EAST MULBERRY, STE 900  
SAN ANTONIO, TEXAS 78212-3166 F 210.735.6500 F 210.735.6889  
WWW.LANGLEYBARACK.COM

SAN ANTONIO CARLISLE SPRINGS EAGLE PASS KARNES CITY CASTROVILLE  
L & B 20875/0001/L1335256.DOCX

Prior to 2013, Section 6 of the bylaws of the Association provided that the bylaws themselves could only be amended by a majority of the Voting Members at a regular or special meeting of the Voting Members of the Association. While the bylaws provided that the Voting Members might delegate to the Board of Directors the power to amend the bylaws, the power to amend the bylaws – or to delegate that power to the Board by membership vote – was reserved exclusively to the Voting Membership.

It is our clients' understanding that at no time has the membership voted to delegate the power to amend the bylaws to the Board of Directors.

In 2013 and/or approximately March 2017, our clients' understand that the Board sought to unilaterally amend the bylaws – without membership vote to support same and without the membership voting to delegate power to the Board to amend the bylaws. The 2013 and 2017 attempts were also inexplicably a flawed process, done without proper notice as required by the bylaws and applicable law. Consistent with its ineffectiveness, the putative bylaw amendments in 2013 were not even filed of record (the Property Code requires validly-passed bylaw amendments to be filed of record in the real property records of the County as dedicatory instruments or they are not effective).

The 2013 and 2017 attempt by the Board to amend the bylaws was wholly improper. No proposed amendments to the bylaws had been put to the membership for a vote with a statement as to why they should be accepted or rejected as required in the duly enacted 1994 bylaws. Purported amendments of the bylaw that do not follow the organizational documents of the Association are void. That the Board also sought to amend the bylaws earlier this year to affect election processes is a shameless usurpation of power from the membership that is in material violation of the law and the organizational documents of the Association. .

The Business Organizations Code and Property Code do not trump the organizational documents of a non-profit unless specifically indicated in the law. While the Business Organizations Code codified in 2006 provided for a board of directors of a non-profit to amend the bylaws under certain circumstances (*i.e.*, such as if the bylaws were silent on the issue of the procedure to amend the bylaws), the bylaws of Padre Isles Property Owners Association were not silent on such matter. Rather, consistent with the Articles, the organizational documents expressly and specifically reserved the power to amend the bylaws to the membership unless the membership delegated such power to the Board (which it has not).

Additionally, even had one engaged in the fiction that the Board had the power to unilaterally amend – which was and is not the case – to our knowledge there was no requisite notice by the Association as required to the membership before such matter was taken up by the Board. Further, the membership, if given its rightful opportunity to amend the bylaws, would have chosen such text as may have been necessary to preserve its sole right to amend the bylaws, assuming *arguendo*, there did exist statutorily mandatory text; a concept we deny.

September 29, 2017

p. 3

The Board has improperly disenfranchised and usurped power from the membership. The purported bylaw amendments of 2013 and 2017 are void. As fiduciaries to the Association, the Board members should immediately rectify this matter. While my clients could file suit right away to address this matter and recover their attorney's fees under law, our clients are hopeful that litigation can be avoided by the Association doing the right thing to promptly fix this.

Our clients urge that the Association's duly-elected board members promptly issue a resolution or take some other step adequate to officially acknowledge that the bylaws putatively enacted by the Board in 2013 and 2017 are null and void and that the only bylaws in effect today for the Association are the 1994 bylaws. If this mess is not fixed by you by or at the Annual Membership meeting in March 2018, my clients will explore doing so by seeking a judicial declaration under Chapter 37 of the Texas Civil Practices & Remedies Code against the Association for the benefit of the membership and Association, as well as costs and attorney's fees, along with any other relief to which our clients are entitled under the law to address this matter.

Thank you for your immediate attention to this very important matter to our clients.

Sincerely,

LANGLEY & BANACK, INC.



Peter L. Kilpatrick

cc: Clients



### **WHAT THE TWO PROPOSED BYLAW AMENDMENTS DO**

**Summary:** The two proposed Bylaw Amendments accomplish two things:

1. First, Proposed Bylaw Amendment 1 returns the power to create, repeal, or amend our Bylaws back to the exclusive power of the property owners. This is the rule that existed for 19 years until in 2013 the Board improperly amended the Bylaws to also give the Board the power to amend.
2. Second, Proposed Bylaw Amendment 2, requires the Board to have cause to remove a duly elected Board Member, cause being conviction of a felony or a misdemeanor involving moral turpitude, or habitually skipping Board members. The current Bylaw allows the Board to remove a Board Members without any cause whatsoever.

#### **Rationale:**

Allowing 4 people (the majority of the 7-member Board) to enact, repeal, or amend Bylaws that govern the property rights of more than 5300 property owners is unfair, undemocratic, and unwise. In fact, it's dangerous because Bylaws can change our property rights in many ways, including creating rules that allow us to be fined.

Allowing the Board to kick off a Board Member who was duly elected by the vote of the property owners is undemocratic and undermines the rights of the property owners. It's akin to allowing the Senate to kick out our Senators for no reason at all. The Board President has recently threatened this sort of action when he issued a gag order forbidding Board Members from even discussing the proposed amendments with property owners.

#### **The Exact Text of the Proposed Bylaws:**

**Proposition 1. Providing for the following amendment to said Bylaws Section 7 as follows:**

The last sentence of Bylaw Section 7, which now states: "*These bylaws (sic.) additionally may be amended at any regular or special meeting of the Board of Directors, after notice of such meeting has been provided to the membership in the manner provided in these Bylaws,*" is hereby deleted and stricken and the

EX D

following sentence is added as the last sentence of Section 7: “The PIPOA Board is hereby forbidden to amend or repeal this Bylaw or to adopt any other PIPOA Bylaw to the same or similar effect. The PIPOA Bylaws may not be amended, repealed, adopted, or otherwise effected by the PIPOA Board, all such power being herewith reserved unto the Voting Members, and only the Voting Members.

**Explanation:** Proposition 1, by the deletion of the last sentence will prevent the POPOA Board, on its own, without the Voting Members, from changing the governing rules adopted by the Voting members and thereby thwarting the will of the Voting Members. While this will make amendments more difficult, it will preserve the democratic process and prevent the PIPOA Board from changing the rules against the will of the property owners.

**Proposition 2. Providing for the following amendment to said Bylaws Section 2.03 as follows:**

The first sentence of Said Bylaws Section 2.03, which now states: “*Any director may be removed with or without cause by the unanimous vote of the remaining members of the Board (excluding the director to be removed).*,” is hereby deleted and stricken, and the following is substituted:

“Any director may be removed for cause by the unanimous vote of the remaining members of the Board (excluding the director to be removed), the term “cause” being hereby defined as the conviction of a felony or a misdemeanor involving moral turpitude, or the failure to attend more than four (4) Board meetings, absent illness or force majeure. The PIPOA Board is hereby forbidden to amend or repeal Bylaw or to adopt any other PIPOA Bylaw to the same or similar effect. All power to amend or repeal this Bylaw or to adopt any similar Bylaw is herewith reserved unto the Voting Members, and only the Voting Members.”

**Explanation:** Proposition 2 will prevent incumbent Board of Directors from removing a duly elected Board member carrying out the will of those who elected him or her. A board member can still be removed “for cause.” While this makes removal of a director more complicated, it also prevents other board members from exerting undue and unfair threats and influence upon other Board members. A Board member can still be removed for cause by a vote of 55% of the Voting Members.

EX E

LIST OF 1994 BYLAWS AMENDED NOT ACCORDING TO CHANGES IN THE LAW

1. Section 1.104 C. which previously required three informational meetings per year was reduced to zero meetings unless the Board decides to hold one.
2. Section 2.04 A. Which previously allowed any Board member to call a Board meeting, was changed to require three members to call a meeting.
3. Section 2.06 was amended to delete the Homeowners Advisory Committee, the Covenants Committee, The Bulkheads and Canals Committee, The Governmental Affairs Committee, and the Election Committee. All these were committees composed of owners and provided transparency. All were shut down.
4. Section 3.01 E added the position of Executive Coordinator who would function as the General Manager. This position was later deleted by the 2017 Bylaw amendments that omitted it by "mistake."
5. Section 6 became Section 7, which added the last sentence giving the Board the right to amend the Bylaws.

# *Padre Isles*

PROPERTY OWNERS ASSOCIATION, INC.



## *Bylaws*

~~AMENDED TO~~  
~~September 24, 2013~~

As Amended Through  
April 2, 2017

## **PADRE ISLES PROPERTY OWNERS ASSOCIATION, INC.**

### **BYLAWS**

#### **SECTION I MEMBERS**

1.1 MEMBERSHIP. Each person (which term shall be construed to include partnerships, corporations and any other type of entity or organization) who shall have acquired or shall hereafter acquire the record legal title to all or any portion of the property situated on Padre Island, Nueces County, Texas (hereinafter sometimes referred to as the "Subdivisions") as shown by the following listed recorded plats thereof, to-wit:

Barataria Bay Units 1-5	Commodore's Cove Units 1 & 2
Cape Summer Units 1 & 2	Mariner's Cay
Coquina Bay	Island Fairway Estates Blocks: 3 & 21-36
Island Fairway Estates	Point Tesoro Units 1-5
Mariners Cay Unit 2A	Ports O'Call
Padre Island Number 1 & 2	Section 2 (Galleon Bay)
Sea Pines Unit 1	Section 3A (Galleon Bay)
Section 3 (Galleon Bay)	Sections A-E
Section 4 (Tradewinds)	

Such membership shall continue for the duration of the ownership of property within the Subdivisions. This Association is a membership corporation organized under the provisions of the Texas Non-Profit Corporation Act. A member of this Association is not, as such, personally liable for the debts, liabilities, or obligations of the Association.

1.2 EXTENSION OF TERRITORIAL ELIGIBILITY FOR MEMBERSHIP. If, at any date subsequent to the adoption of these bylaws, additional land situated on Padre Island, Nueces County, Texas, may be developed with protective covenants similar to the protective covenants applicable to the Subdivisions and upon the approval of the Board of Directors become part of the Subdivisions covered by these Bylaws.

#### **1.3 VOTING RIGHTS.**

A. Only Voting Members shall have voting rights and be counted in determining a quorum at any meeting. Only one (1) vote may be cast with respect to or by reason of the ownership of each Lot, and in the case of ownership of less than an entire Lot, or in the case of undivided fractional interest ownership Lots, the vote attributable to a Lot only shall be a representative of the owners of a majority in interest or a majority of the front footage of such Lot (determined by measurement of the linear foot dimension of the Lot facing the street upon which such Lot fronts according to the plat or map designating and identifying such Lot).

B. A Voting Member may vote in person or by proxy; however, no proxy shall be valid after eleven (11) months from the date of execution unless otherwise provided in the proxy.

Each proxy shall be revocable unless expressly provided therein to be irrevocable, and in no event shall it remain irrevocable for more than eleven (11) months. A proxy delivered by email or by fax may be counted if the identity of the member submitting the ballot can be confirmed. [See Texas Property Code § 209.00592].

C. Voting may be conducted by mail or electronic means in such a manner as the Board of Directors shall determine.

#### 1.4 MEETINGS.

A. Annual Meeting. The Annual Meeting of the Members of the Association shall be held at ten o'clock a.m. on the second Saturday in March each year at such place in Nueces County, Texas as shall be designated for such purposes in a notice of the meeting. With respect to proxy voting, the Association shall provide the members with the following minimum information: When voting for Directors, a resume provided by each candidate within the space requirements as determined by the Directors and information on issues and amendments as required in Section 6, Paragraph 6.02.

B. Special Meetings. Special meetings of the members may be called at any time by the President, the Vice President, the Secretary or Treasurer, or by two (2) or more members of the Board, or upon written request of the members who have a right to vote ten percent (10%) of the votes entitled to be cast at the time of such call. Any business, which may properly be conducted at an annual or regular meeting of the members, may also be conducted at any special meeting.

C. Informational Meetings. In addition to the Annual Meeting, the Board may schedule informational meetings to pass on and receive information on news/plans/projects/status on programs for the benefit of the members

#### 1.5 NOTICE.

A. Not later than the 10<sup>th</sup> day or earlier than the 60th day before the date of an election or vote of the membership on a matter, the Association shall give written notice of the election or vote to each member. [See Texas Property Code § 209.0056].

B. If mailed, the notice shall be deemed to be delivered when deposited in the United State mail addressed to the member at the address as it appears on the records of the corporation, with postage prepaid. If notice is given by electronic mail, such notice shall be deemed to be delivered when sent to the electronic mail address provided by the member.

1.6 QUORUM. The owners of at least ten percent (10 %) of the Lots located in the Subdivisions, present in person or by proxy, shall be requisite for and shall constitute a quorum for the transaction of business at all meetings of the members of the Association. Any meeting of members may be adjourned from time to time without notice other than announcement at the meeting, until a quorum shall be present or represented. When a quorum is present in person or by proxy, a majority vote of the members present shall decide any question brought before such meeting, except as noted in Section 2, Paragraph 2.03.

17 PROCEDURES. All membership meetings and Board of Directors meetings shall be conducted according to Robert's Rules of Order, Newly Revised, as long as such rules are not inconsistent or in conflict with these Bylaws, the Articles of Incorporation, or Texas or Federal Law.

## SECTION 2 DIRECTORS

2.1 NUMBER. The number of directors of the Association shall be seven, and those whose terms shall have expired shall be elected at the annual membership meeting. In the election of directors, the candidates receiving the highest number of votes (plurality) shall be declared the winners.<sup>1</sup> Directors shall serve for three-year terms until his/her successor has been duly elected and qualified. Notwithstanding the foregoing, the directors may determine that in lieu of electing the new directors whose terms shall have expired at an annual membership meeting, such election shall be conducted by mail.

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2.2 QUALIFICATIONS. Directors and Officers shall be natural persons of the age of eighteen (18) or over, and must be members of the Association.

2.3 VACANCIES AND REMOVAL. Any director may be removed with or without cause by the unanimous vote of the remaining members of the Board (excluding the director to be removed). Officers and Directors may also be removed, with cause, by a 55% vote of the members voting in an Annual or Special Meeting. Upon the death, removal, resignation, or incapacity of any member of the Board, a majority of the then remaining directors shall elect his/her successor.

### 2.4 MEETINGS.

A. An annual meeting of the Board of the Association shall be held each year immediately following the adjournment of the annual meeting of the members, and at the same place as the annual meeting of the members. Special meetings of the Board may be called by any three (3) directors or by the President, and shall be held at such time and place as shall be specified in the notice of such meeting.

B. A director may vote in person or by proxy. No such proxy shall be valid after three (3) months from the date of its execution; and each shall be revocable unless expressly provided therein to be irrevocable.

C. The Association must give all members notice of the date, hour, place, and general subject of all Board meetings. The notice shall be provided to each member as provided by the Texas Property Code. The notice shall be: (1) mailed to each member 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 the members: (i) in a place located on the Association's common property or, with the member's consent, on other conspicuously located privately-owned property within the subdivision; or (ii) on any Internet website maintained by the Association or

<sup>1</sup> The amendment made by this statement was adopted to be effective as of April 2, 2017.

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other Internet media; and (b) sending the notice by e-mail to each owner who has registered an e-mail address with the Association. [See Texas Property Code § 209.0051].



2.5 MANAGEMENT. The affairs and property of the Association shall be managed and controlled by the Board. The Board shall have authority to cause the Association to own, acquire, develop, construct, maintain, operate, repair and replace, on a non-profit basis, common areas for the protection, security, pleasure, recreation, or benefit of the Subdivisions and the owners thereof, including but not limited to, greenways, recreation areas, canals, bulkheads, seawalls, sea gates, lighting, , drainage facilities, water access areas, including boat ramps, and such other facilities in the Subdivisions for the use, enjoyment, protection and benefit if the members of the Association, and other parties designated by the Board, as the Board may deem appropriate, and they are expressly given full powers not inconsistent with these bylaws, the Articles of Incorporation of this Association, applicable provisions of law and the Protective Covenants and Landowners' Agreements covering the Subdivisions to accomplish such purposes, including the power to acquire, purchase or lease any such facilities or transfer the management responsibilities for any such facilities to others in order to provide for the maximum enjoyment of such facilities by the members and such other designated persons.

#### 2.6 COMMITTEES.

A. The Board shall have power to make rules for their own government and for the government of the Association as it may deem necessary and to alter and amend the same; to prescribe and enforce penalties for violations of the rules and bylaws of the Association; to assess and fix charges to be levied against the members of the Association subject to limitations and conditions contained in the Protective Covenants and Landowner's Agreements filed of record for the Subdivisions; and to exercise such other powers as may be necessary or proper to attain the objectives of the Association. The Board shall have the authority to create committees by appropriate resolutions, and may delegate to any such committee so much of its authority as it shall deem advisable, and shall specify the duties of any committee so created. Not less than the majority of the members of any such committee having and exercising any of the authority of the Board of Directors in the management of the Association shall be directors of the Association. No required percentage of the membership of any committee not exercising such authority need be directors of the Association.

B. The Board may establish committees including an Architectural Control Committee and such others as it deems necessary.

2.7 EMPLOYEES. The Board shall have responsibility and authority to employ such employees as the affairs of the Association shall require and may delegate to any such employee so much of its authority as it shall deem advisable. The Board shall likewise have power for any cause they deem sufficient to discharge any or all employees of the Association and may delegate their authority to do so to any officer of the Association.

2.8 AUDIT. The financial records of the Association shall be audited annually by an accountant, who is licensed by the Texas State Board of Public Accounting as a Certified Public Accountant, as designated by the Board of Directors.

2.9 INDEMNIFICATION. Each director and officer or former director or officer of the Association shall be indemnified by the Association against expenses reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director or officer of this Association, except in relation to matters as to which he shall be finally judged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of his duty as such director or officer. Such right of indemnification shall not be deemed exclusive of any other rights to which he may be entitled as a matter of law or under any provision of the Articles of Incorporation, Bylaws, Agreement, Vote of Members or otherwise; and the Association shall exercise the power to indemnify any such officer or director to the fullest extent to which such power of indemnification is permitted to be exercised under the laws of the State of Texas.

2.10 CONFLICT OF INTEREST. Officers, Directors, Committee Chairs, Committee Members, Employees and Consultants, before serving the Association shall be personally sensitive to conflicts of interest, and in serving shall not participate in discussions nor decision that are in conflict of interest.

### SECTION 3 OFFICERS

3.1 COMPOSITION. The officers of the Association shall consist of a President, a Vice President, a Secretary, and a Treasurer, ~~and an Executive Coordinator~~, plus such assistant officers as the Board may deem appropriate, each of whom shall be elected by the Board at its annual meeting. The Board shall have full authority to remove any officer from office by the vote of a majority of the members of the entire Board at any time; and the election of each officer shall be subject to such power of the Board. If any office shall become vacant, the Board shall select an individual to fill such office for the non-expired term thereof. Any two offices may be held by the same person except the office of President and Secretary.

**Commented [J1]:** All referenced to the Executive Coordinator, formerly an OFFICER of the corporation, have been struck in an act of masterful legal drafting. This was an accident of a clerk creating a document for signature. This was crafted by an attorney, signed by an Officer, then filed with Nueces County.

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3.2 DUTIES. The duties of the officers of the Association shall be as follows:

A. President. The President shall be the chief executive officer of the Association and preside at all meetings of the members and directors. ~~The President shall supervise the Executive Coordinator in carrying out the Board's of their decisions and in the administration of the affairs of the Association. The President shall also execute contracts, conveyances and other documents on behalf of the Association. The President or the Executive Coordinator's designee shall be the only persons to speak on behalf of the policy of the Association.~~

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B. Vice-President. In the absence of the President, or when it is inconvenient for the President to act, the Vice President shall perform the duties and exercise the powers of the President. At any time when the Vice President is performing a duty or exercising a power of the President, any third party dealing with the Association may presume conclusively that the President was absent and that the Vice President was authorized to act in his place.

C. Secretary. The Secretary shall ~~oversee the issuance of~~ issue notices of directors' and members' meetings if so directed by the party calling the meeting, and ~~shall be responsible for the corporate minutes and records.~~ The Secretary shall determine the membership of the Association as of the record date of any meeting. In doing so, the Secretary may use any method in

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which is deemed to be ~~reasonably entitled to determine the ownership of Lots in the~~  
~~Subdivision. Notwithstanding~~

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~~reasonably calculated to determine the ownership of lots in the Subdivisions. Notwithstanding the~~ foregoing, the Secretary shall follow any instructions given by the Board of Directors to use a specific method in determining the membership of the Association. The Board may, if it deems it advisable, from time to time, designate one or more persons as Assistant Secretaries, who may perform the duties and exercise the powers of the Secretary when the Secretary is absent or it is inconvenient for the Secretary to act. Any third person dealing with the Association may presume conclusively that any Assistant Secretary acting in the capacity of the Secretary was duly authorized so to act.

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~~← D. Treasurer.~~ The Treasurer shall be responsible for overseeing the custody of corporate funds and securities and the keeping of adequate books of account. The Board may, from time to time, if it deems it advisable, designate one or more persons as Assistant Treasurer who may perform the duties and exercise the powers of the Treasurer if the Treasurer is absent or if it is inconvenient for the Treasurer to act. Any third person dealing with the Association shall be entitled to presume conclusively that any Assistant Treasurer, acting in the capacity of the Treasurer, was duly authorized to do so. -The Treasurer shall oversee the preparation of a roster of the members and the assessments applicable thereto, and a record of the payment of such assessments, and such records shall be kept at the principal offices of the -Association and shall be open to inspection by any member at any reasonable time during business hours.

~~D. Executive Coordinator. The Executive Coordinator shall be the chief operating officer of the Association and be responsible for the implementation of the policies and programs established by the Board. The Executive Coordinator shall not be a member of the Board of Directors, but shall serve as the general manager of the Association, employing the staff, contractors, and consultants necessary to accomplish the work of the Association, subject to the policies and rules established by the Board. The Executive Coordinator shall present an annual budget to the Board for approval each year, and upon approval of the budget, the Executive Coordinator shall be authorized to expend funds for the budgeted purposes, subject to such rules and limitations concerning the signing of checks as may be adopted by the Board.~~

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#### SECTION 4 ASSESSMENTS

4.1 MAINTENANCE ASSESSMENTS. Pursuant and subject to the conditions and limitations of the Protective Covenants Landowners' Agreements which have been or shall be filed of record for the various portions of the Subdivisions, which provide for maintenance fees to be paid by all members hereof to a Maintenance Fund administered by this Association or its designated agent, the Board is hereby authorized and given full power and authority to assess and collect from the members of the Association such maintenance fees at any regular or special meeting in order to obtain funds required by the Association for the performance of its objectives and purposes and to meet its obligations, subject to the provisions of these Bylaws, and the Protective Covenants and Landowners' Agreements shall have been filed of record for any portion of the Subdivisions authorizing or limiting the amount of such maintenance fees. Each assessment shall be due and payable by each member at the time and in the manner set forth in the respective Protective Covenants and Landowner's Agreements. Each assessment shall be payable to the Padre Isles Property Owners Association office located at 14015 Fortuna Bay Drive, Corpus Christi, TX. This Association shall not be liable for the failure of any member to pay any assessed maintenance charge.

42 EXEMPTION. No assessment shall be levied against any Lot owned by PIIC held by it for sale to others.

43 LIENS. The Association and its successors in interest shall have an express lien against each Lot into which the Subdivisions may be subdivided as shown by the maps or plats thereof at any time recorded, to secure all obligations of the owner or owners of each such Lot to the Association. The terms of such lien shall be as stated and provided in the deed restrictions-

and/or the Protective Covenants and Landowners' Agreements covering the specific subdivision units within the Subdivisions.

44 RELEASE AND SUBORDINATION. The Association may, by instrument executed by any person authorized by its Board, release or subordinate such lien of the Association, or any other right of the Association created under such deed restrictions and Protective Covenants and Landowners' Agreement in whole or in part with respect to any Lot in the Subdivisions for any reason whatsoever and upon such terms as it shall deem advisable, but any such release or subordination shall not affect such lien or rights insofar as they may apply to any other Lot in the Subdivisions.

45 SEAWALL. Any sums paid to the Association for the maintenance and repair of a seawall pursuant to the terms of applicable Protective Covenants and Landowners' Agreements shall be used exclusively for such purpose and for the purpose of reimbursing this purpose. Amounts owing to the Association for maintenance and repair of seawalls in subdivision units under the terms of applicable Protective Covenants and Landowners' Agreements shall bear interest at the rate of ten percent (10%) per annum as provided in such Protective Covenants and Landowners' Agreements.

46 DELINQUENCIES. Any assessment not paid when due shall be deemed delinquent and shall bear interest from said due date at the rate of six percent (6%) per annum. In addition to liens as described in paragraph 4.03 above, the Association shall also have the right to foreclose on such liens and all other rights and remedies necessary to collect delinquent amounts; with all costs being added to the delinquent member's account.

## SECTION 5 BOOKS AND RECORDS

5.1 REQUIRED BOOKS AND RECORDS. The Association will keep correct and complete books and records of account. The books and records include:

A. A file-endorsed copy of all documents filed with the Texas Secretary of State relating to the Association;

B. A copy of all Bylaws, and any amended version or amendments to them;

C. A copy of the Protective Covenants and Landowners' Agreements.

~~D.~~ Minutes of the proceedings of the Board, and committees having any of the authority of

~~A-D~~ the Board for the previous seven years:

E. A financial statement showing the Association's income and expenses for the seven most recent fiscal years:

F. The Association's federal, state, and local tax information or income tax returns for each of the Association's seven most recent tax years.  
[See Texas Property Code § 209.005(m)]

52 INSPECTION. Books and records of the Association will be made available for inspection and copying pursuant to applicable law, such as Section 22.351 of the Texas Business Organizations Code and Section 209.005 Texas Property Code. The Board may require a member to submit a written demand for inspection by certified mail to the Association, stating the purpose for which the member will inspect the books and records. The Board has the following rights: (1) to determine whether the member's purpose for inspection is proper; (2) to deny the request if the Board determines that the member's purpose is not proper; (3) if granting the request, to identify which books and records are relevant to the member's stated purpose for inspection. [See Texas Property Code § 209.005]

53 COPYING. A member, at member's expense, may obtain photocopies of books and records for which the Board grants the right of inspection. The Board has the right to retain possession of the original books and records, to make copies requested by the member, and to charge the member a reasonable fee for copying. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page or part of a page. Each side that has recorded information is considered a page. [See Texas Property Code § 209.005]

#### SECTION 6 DISPOSITION OF ASSETS UPON DISSOLUTION

6.01. DISSOLUTION. Upon dissolution of the Association, the assets, both real and personal of the Association, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, as amended, to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No such disposition of properties shall be effective to divest or diminish any right or title or any member vested in him under the covenants and deeds applicable to the Subdivisions unless made in accordance with the provisions of such covenants and deeds.

#### SECTION 7 AMENDMENTS

7.01 AMENDMENTS. These Bylaws may be amended at any regular or special meeting of the members by a vote of a majority of the votes entitled to be cast by the Voting Members present at such meeting, in person or by proxy, provided that no amendment is



| inconsistent with the provisions of the Articles of Incorporation, applicable law, the  
| applicable deed restrictions and Protective Covenants and Landowners' Agreements, or any  
| covenant or restriction applicable to the Subdivisions, shall be valid. These bylaws additionally  
| may be amended at any regular or special meeting of the Board of Directors, after notice of such  
| meeting has been provided to the membership in the manner provided in these Bylaws.

CERTIFICATE

The attached and foregoing Bylaws are the current Bylaws of the Padre Isles Property Owners Association, Inc., a Texas nonprofit corporation, whose address is 14015 Fortuna Bay Drive, Corpus Christi, Texas 78418.

These Bylaws are being filed as a dedicatory instrument pursuant to Texas Property Code § 209.005 (i) and pertains to the Protective Covenants and real properties of Padre Isles more particularly described on Exhibit A attached.

The records production and copying policy of the Association required under Texas Property Code § 209.005 is set forth in Section 5 of the Bylaws.

PADRE ISLES PROPERTY OWNERS ASSOCIATION, INC.

By: Brent Moore  
President

STATE OF TEXAS §

COUNTY OF NUECES §

This instrument was acknowledged before me on April 1, 2017, by Brent Moore, the President of Padre Isles Property Owners Association, Inc., a Texas nonprofit corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

EXHIBIT A

<u>Subdivision Name</u>	<u>Covenants Filed of Record (Deed Records)</u>	<u>Map Filed of Record (Map Records)</u>
<u>Section A</u>	<u>Volume 1258, Pages 215 et seq.</u>	<u>Volume 33, Pages 97 et seq.</u>
<u>Section B</u>	<u>Volume 1265, Pages 227 et seq.</u>	<u>Volume 34, Pages 15 et seq.</u>
<u>Section C</u>	<u>Volume 1323, Pages 487-94</u>	<u>Volume 34, Pages 133 et seq.</u>
<u>Section D</u>	<u>Volume 1335, Pages 285-92</u>	<u>Volume 35, Pages 24-25</u>
<u>Section E</u>	<u>Volume 1424, Pages 351-59</u>	<u>Volume 38, Pages 25-26</u>
<u>Barataria Bay Units 1 &amp; 2</u>	<u>Volume 1292, Pages 114-21</u>	<u>Volume 34, Pages 60-63</u>
<u>Barataria Bay Unit 3</u>	<u>Volume 1300, Pages 426-33</u>	<u>Volume 34, Pages 86-87</u>
<u>Barataria Bay Unit 4</u>	<u>Volume 1300, Pages 418-25</u>	<u>Volume 34, Pages 84-85</u>
<u>Barataria Bay Unit 5</u>	<u>Volume 1319, Pages 507-14</u>	<u>Volume 34, Pages 117-118</u>
<u>Cape Summer Unit 1</u>	<u>Volume 1386, Pages 1002 et seq.</u>	<u>Volume 36, Pages 25 et seq.</u>
<u>Cape Summer Unit 2</u>	<u>Volume 1386, Pages 1012 et seq.</u>	<u>Volume 36, Pages 34 et seq.</u>
<u>Commodore's Cove Unit One</u>	<u>Volume 1424, Pages 378-87</u>	<u>Volume 38, Pages 34-35</u>
<u>Commodore's Cove Unit Two</u>	<u>Volume 1424, Pages 388 et seq.</u>	<u>Volume 38, Pages 36-44</u>
<u>Coquina Bay</u>	<u>Volume 1424, Pages 407-16</u>	<u>Volume 38, Pages 47-54</u>
<u>Island Fairway Estates</u>	<u>Volume 1424, Pages 417 et seq.</u>	<u>Volume 38, Pages 55 et seq.</u>
<u>Island Fairway Estates</u>	<u>Volume 1517, Pages 100-110</u>	<u>Volume 40, Pages 154-59</u>
<u>Island Fairway Estates</u>	<u>Volume 1517, Pages 111 et seq.</u>	<u>Volume 40, Pages 181-82</u> <u>Volume 40, Pages 183-84</u>
<u>Mariner's Cay</u>	<u>Volume 1292, Pages 106 et seq.</u>	<u>Volume 34, Pages 54-55</u>
<u>Mariner's Cay Unit 2</u>	<u>Volume 1424, Pages 398-406</u>	<u>Volume 38, Pages 45-46</u>
<u>Mariner's Cay Unit 2-A</u>	<u>Volume 1424, Pages 398-406</u>	<u>Volume 39, Pages 193-94</u>
<u>Point Tesoro Unit 1</u>	<u>Volume 1368, Pages 494-502</u>	<u>Volume 34, Pages 145-46</u>

<u>Point Tesoro Unit 2</u>	<u>Volume 1335, Pages 265-273</u>	<u>Volume 35, Pages 20-21</u>
<u>Point Tesoro Unit 3</u>	<u>Volume 1335, Pages 275-283</u>	<u>Volume 35, Pages 22-23</u>
<u>Point Tesoro Unit 4</u>	<u>Volume 1345, Pages 493-501</u>	<u>Volume 35, Pages 46-49</u>
<u>Point Tesoro Unit 5</u>	<u>Volume 1424, Pages 369-77</u>	<u>Volume 38, Pages 32-33</u>
<u>Ports O'Call</u>	<u>Volume 1424, Pages 427-36</u>	<u>Volume 38, Pages 62-68</u>
<u>Sea Pines Unit 1</u>	<u>Volume 1329, Pages 63 et seq.</u>	<u>Volume 34, Pages 149 et seq.</u>
<u>Section No. 1</u>	<u>Volume 1265, Pages 491-97</u> <u>Volume 1280, Pages 354-59</u> <u>Volume 1280, Pages 360 et seq.</u> <u>Volume 1384, Pages 528 et seq.</u>	<u>Volume 13, Pages 1-8</u> <u>Volume 33, Pages 83-84</u> <u>Volume 32, Pages 34 et seq.</u> <u>Volume 36, Pages 12 et seq.</u>
<u>Section No. 2</u> <u>(Galleon Bay Unit 2)</u>	<u>Volume 1274, Pages 173-80</u> <u>Volume 1491, Pages 803-10</u>	<u>Volume 33, Pages 80-82</u>
<u>Section No. 3</u> <u>(Galleon Bay Unit 3)</u>	<u>Volume 1261, Pages 97-104</u>	<u>Volume 33, Pages 83-84</u>
<u>Section No. 3A</u> <u>(Galleon Bay Unit 3)</u>	<u>Volume 1424, Pages 349-50</u>	<u>Volume 38, Pages 22-23</u>
<u>Section No. 4</u> <u>(Tradewinds)</u>	<u>Volume 1241, Pages 25-33</u>	<u>Volume 33, Pages 44-47</u>
<u>Tract B, Section No. 4</u> <u>(Tradewinds)</u>	<u>Volume 1588, Pages 725-34</u>	<u>Volume 33, Pages 44-47</u>
<u>Lots 8 through 18, inclusive,</u> <u>Block 191, Section No. 4</u> <u>(Tradewinds)</u>	<u>Volume 1580, Pages 512-21</u>	<u>Volume 42, Pages 4-5</u>
<u>Tract A, Section No. 4</u> <u>(Tradewinds)</u>	<u>Volume 1856, Pages 357-365</u>	<u>Volume 33, Pages 44-47</u>

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EX G-1

REQUEST THAT CERTAIN PROPOSED AMENDMENTS BE PLACED ON THE 2018 e  
AND  
SUMMARY OF MAJOR REASONS THE 2013 BYLAWS ARE ILLEGAL<sup>1</sup>

TO: PIPOA Board  
FM: Karl L. Rubinstein  
DATE: November 8, 2017

**Introduction.**

I provide this discussion in the hope you will not only study it, but will provide it to any attorney from whom you seek a second opinion about the legality of the 2013 Bylaws. As you know, I retained a well-qualified and highly regarded attorney who wrote to you with essentially the same opinions I have previously provided. Additionally, I spoke to other well-qualified attorneys, including corporate attorneys, who also agreed with these views. These attorneys were completely free to state their honest opinions and the reason their opinions and mine coincide is we all understand the truth, which is that the 2013 “Amendments” are invalid.

**The Issues.**

In September 2013, the PIPOA Board improperly “amended” the then existing 1994 Bylaws to delete the first part of Section 6 and to add the following sentence to a new Section 7 of what became the putative 2013 Bylaws: “These bylaws additionally may be amended at any regular or special meeting of the Board of Directors, after notice of such meeting has been provided to the membership...”.

This attempted Bylaw amendment is invalid for numerous reasons, most of which I have discussed in a series of Essays, copies of which I can provide. Chief among these are the following:

**1. The lawfully enacted 1994 Bylaws expressly provided only the Voting Members could amend the Bylaws. This provision was and is consistent with controlling law.**

The PIPOA, via its attorney, asserts that the provisions of Texas Business Organizations Code (“BOC”) 22.102, which became effective in 2010, not only authorized, but mandated, the Bylaw amendment giving the Board the power to amend. But this is clearly untrue. This statute reads:

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<sup>1</sup>Because the 2017 Bylaws rest on the authority of the 2013 amendment, they are also invalid. These are also invalid because the version filed with the County Clerk did not properly reflect the actual Bylaws supposedly adopted.

*Sec. 22.102. BYLAWS. (a) The **initial** bylaws of a corporation shall be adopted by the corporation's board of directors or, if the management of the corporation is vested in the corporation's members, by the members.*

*(b) The bylaws may contain provisions for the regulation and management of the affairs of the corporation that are consistent with law and the certificate of formation.*

*(c) The board of directors may amend or repeal the bylaws, or adopt new bylaws, unless:*

*(1) this chapter or the corporation's certificate of formation wholly or partly reserves the power exclusively to the corporation's members;*

*(2) the management of the corporation is vested in the corporation's members; or*

*(3) **in amending, repealing, or adopting a bylaw, the members expressly provide that the board of directors may not amend or repeal the bylaw.***

By its very terms, this statute applies to the “initial” bylaws and sets out what the “default” rule is, meaning this would be the rule if the Bylaws were silent on the subject of who has the power to amend Bylaws. In 2013, the Texas Supreme Court ruled on this exact issue in the Case of Masterson V. Diocese<sup>2</sup>

*[W]hen Good Shepherd incorporated in 1974 the Non-Profit Corporations Act provided that "[t]he power to alter, amend, or repeal the by-laws or to adopt new by-laws shall be vested in the members, if any, but such power may be delegated by the members to the board of directors." See Tex. Rev. Civ. Stat. art. 1396-2.09. The current statutory scheme changes the **default rule** on who is authorized to amend the bylaws.... See Tex. Bus. Orgs. Code § 3.009; Tex. Rev. Civ. Stat. art. 1396-2.09 (**current version at Tex. Bus. Orgs. Code § 22.102**) ("The power to alter, amend, or repeal the by-laws or to adopt new by-laws shall be vested in the members . . .").*

The Bylaws in the Masterson case contained the exact language of the PIPOA 1994 Bylaws (which was authorized by the prior statutes) and the Supreme Court stated clearly that BOC 22.102) is the “default rule,” meaning the rule to be applied if the PIPOA Bylaws were silent on the subject. But they were not silent.

Therefore, BOC 22.102 does not permit the Board to amend prior Bylaws that already stated only the Voting Members could amend the Bylaws. It is absurd to argue that the Board can shoehorn in a power expressly withheld from them by the existing 1994 Bylaws just because the language of the existing Bylaws doesn’t contain the precise text of 22.102 (c) (3) when the existing language is to the exact same effect, and the Texas Supreme court has ruled 22.102 contains only the default rule.

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<sup>2</sup> 422 SW3rd 594 (Tex. 2013)

Further, BOC section 22.102 (b) clearly states the Bylaws may contain provisions **consistent with law**. “Consistent” doesn’t mean identical, it means not contrary to. And Section 6 of the 1994 Bylaws was certainly consistent with the existing law because the essential meaning of its text is exactly the same as 22.102 (c) (3): The Voting Members can amend, and the Board cannot. This explains one reason why the Supreme Court determined Section 22.102 only stated the default position, meaning it applies only if the existing Bylaws are silent.

This position is supported by Gregory S. Cagle in his thoroughly researched and documented treatise, Texas Homeowners Association Law 3<sup>rd</sup> Ed, (2017) Two Harbors Press, ISBN 13:978-1-63413-989-2. where at page 132, he states:

*[certain] provisions of the Texas Non Profit Corporation law [BOC Chapter 22] serve as “gap-fillers,” or default rules, that apply only in the event a Nonprofit (‘s) ... Governing Documents fail to address an applicable issue... **In such instances the particular statutory provision is not applicable if the substance of such provision is already addressed in the...governing documents.**” (bolding added)*

Note, like the Supreme Court, Mr. Cagle understands that only the “substance” of the statutory provision needs to be addressed, and the use of the exact text is not necessary. Section 6 of our 1994 Bylaws already stated the substance, indeed the exact meaning, of the default provision of 22.102.

After months of this discussion, the Board’s attorney has provided no citation to any case decision, to no authoritative treatise, nor to anything else to support his opinions. He merely states his opinions and expects them to be accepted. But how can they be accepted in the face of plain language and authority to the contrary? Further, and very regrettably, he leaves a long trail of mistakes behind him.

## **2. No proper notice was given to the Voting Members:**

Even if the Board had the power to amend, which I deny, it nevertheless was required to follow the provisions of the 1994 Bylaws that required amendments to be done at a Members meeting, after due notice. This alleged “amendment” was not done at a members meeting, but at a board meeting. Further, no notice was given of the fact the Board intended to turn the 1994 Section 6 on its head by seizing the amendment power from the Voting Members and arrogating it to the Board.

Diligent search of the PIPOA records by several persons, including me, MayBeth Christiansen, Becky Perrin, and others, failed to turn up any evidence that notice was given to the Voting Members that the Board intended to amend the Bylaws to give itself the power to amend. As a matter of logic, isn’t this entire notion nonsensical--the Board had to amend the Bylaws in order to have the power to amend the Bylaws because the existing Bylaws withheld that power from the Board? Really?

The only mention by the Board about “Bylaws amending” in 2013 began at the April 23<sup>rd</sup> Board meeting when the Board was discussing the extent of its power to enforce the “ACC Covenants:”

***NEW BUSINESS:** ACC enforcement: - There was a great deal of discussion regarding enforcement of ACC and covenants. Jeff felt our By-Laws give the Board more power especially under section 2.06. Maybeth will contact John Bell and Charlie Zahn for their reading of the issue.*

This plainly relates to the Architectural Control Committee (“ACC”) and most likely compliance issues. After this entry, the phrase “Bylaws amending” appears in four more agendas as “**Old Business**,” with no further explanation. These cryptic entries were certainly not the extensive notice then mandated by existing Section 6 of the 1994 Bylaws or by the provisions of Property Code 209.0051 (h) (10) which in fact bars the board from adopting amendments to the Dedicatory instruments, which includes Bylaws, without notice to the owners. No proper notice was given of the intent to amend the Bylaws at any time.

Moreover, there was no reasonable expectation that the Voting Members were obligated to read all the Board Minutes, none of which were sent out to the Voting Members. However, if one did carefully read these minutes, beginning with the very first one, the message would have been that as **New Business** the Board was strictly focused on the possible need to amend the Bylaws to strengthen their power to run the compliance program via the ACC provisions in our covenants. All further mention of Bylaws in the agendas is under the heading of **Old Business**, meaning these relate **back** to the original entry that refers to the compliance issue and the ACC. There is never any notice to Members the Board was considering changing the rule as to who could amend the Bylaws.

In fact, the reference in the minutes of the September 24<sup>th</sup> Board meeting (filed after the fact in October) was simply that the Bylaws were “up-dated.”

*By-laws Amending – There was a discussion about the amendments to the by-laws. Nancy moved to approve the amended by-laws, Jack seconded the motion and they were approved. Nancy asked Maybeth to be sure to thank John Bell for the work on bringing them up to date.*

Even this after-the-fact comment about the amendments, intentionally or unintentionally, disguised what was done by referring to the action as merely “bringing them up to date.” This is not a fair description of what they did, which was to completely reverse who had the power to amend the Bylaws.

It is also important to recall that in 2013, the PIPOA sent out regular newsletters. These would have been a logical vehicle for notice if they had any intent to give proper notice. But none contained any such notice. The PIPOA Board also sent out mass emails that it refers to as “blasts” to Voting Members. No “blasts” gave notice. Indeed, the “blast” sent out Saturday,



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September 14, 2013 only states: "Tuesday, September 24-- POA Board Meeting at the POA office." That's no notice.

The Board sometimes posts pending agenda's in a glass fronted case at the PIPOA office. There is no evidence showing whether the September agenda was actually posted there, but if it was, here's what it said about the Bylaws:

6. OLD BUSINESS a. Parks b. Encantada culverts c. **By-laws amending** d. Shade Structure/Goodrum e. Covenants and Compliance committee d. Whitecap median

This is not sufficient notice even assuming it was posted. The term "By-laws amending" could mean simply that the idea might be discussed, or the methodology might be a concern, or just about anything touching on the topic. It certainly doesn't comply with the specific requirements of the then valid Bylaws or with the Property Code provisions. This is particularly true when the only actual mention of what they were up to was the one in the April Minutes, which referred to ACC issues. And in any case, these minutes were not circulated to the Members.

And beyond all this, we cannot doubt the Board knew or had good reason to know they were breaching the Bylaws when we read this direct quote from the May 2013 Board minutes: "The decision on how to pass them [the Bylaws] will await John Bell's direction as it **might** be possible for the Board to pass as members of the Association have given their proxies to various Board Members for the year." This proves the Board knew or should have known the Voting Members had the exclusive power to amend the Bylaws. And they knew or should have known owners were entitled to notice, but wondered if they might get around this by reason of proxies given for the prior Board Election. However, those proxies only granted authority to vote for board members; no other proxies existed.

### **3. The 2013 Bylaws Were Never Filed with the Nueces County Clerk and are Therefore Invalid:**

Diligent search of the Nueces County records proves the 2013 Bylaws, which are a "dedicatory instrument" were never filed in the Nueces real property records as required by Texas Property Code section 202.006, which reads: "A property owners' association shall file all dedicatory instruments in the real property records of each county in which the property to which the dedicatory instruments relate is located...A dedicatory instrument has **no effect** until the instrument is filed in accordance with this section."

Lately the Board's attorney (again with no reference to case law or any other authority) has floated the idea that Bylaws aren't "dedicatory instruments," and didn't need to be filed, but they surely are:

Sec. 209.002. DEFINITIONS. In this chapter:

(1) "Assessment" means a regular assessment, special assessment, or other amount a property owner is required to pay a property owners' association under the dedicatory instrument or by law.

(2) "Board" means the governing body of a property owners' association.

(3) "Declaration" means an instrument filed in the real property records of a county that includes restrictive covenants governing a residential subdivision.

(4) **"Dedicatory instrument" means 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.

The leading commentary on Homeowners laws, says the same. See, chapter 6, paragraph 6.5, page 299, "Texas Homeowners Association law, 3<sup>rd</sup> Ed. By Gregory S. Cagle, explains that Bylaws are "Dedicatory Instruments" and must be filed to be valid.

And, the later problematic 2017 Bylaws were filed. So why did the PIPOA file these if filing wasn't necessary?

#### **4. Diligent Search Indicated the 2013 Bylaws Weren't Even Signed:**

Diligent search of the PIPOA files by staff and several property owners has found only an unsigned copy of the 2013 Bylaws. Apparently, they were never lawfully executed, let alone filed.

#### **5. The Big Cheat:**

Perhaps the worst thing about the then PIPOA Board's arrogation to itself of the right to amend the Bylaws is what I call "The Big Cheat," meaning that even if we forget all of the above, and concede for the sake of argument, that Business Organizations Code Section 22.102 did require the 1994 Bylaws to be amended to conform with its provision, the Board's action remains invalid. First, no provision of the BOC strikes out the notice requirements set out in Section 6 of the 1994 Bylaws, nor does any part of the BOC strike out the mandate that amendments be made at a Members meeting as opposed to a Board meeting. But even setting aside these fatal errors, and assuming BOC Section 22.102 had to be somehow incorporated into the PIPOA Bylaws, the fact remains that the statute provides **three** choices, one of which, 22.102 (c) (3), would have retained the clear meaning of the existing 1994 Bylaws and barred the Board from amending the Bylaws. This means the Voting Members should have had the chance to pick the option they wanted, and since historically the Board was not allowed to amend the Bylaws, there is no reason to believe the Voting Members would have chosen any option other than (c) (3) which would have, even under the Board's attorney's argument, preserved the status quo. But, the members of

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the then Board robbed the Voting Members of this choice by not providing straightforward and clear notice.

**Conclusion and Request.**

I have prepared this memorandum, not only for the current Board, but also for any attorney you might retain for a second opinion as to the advice you are getting from your current attorney. Looking back over the last several years we see a long string of mistakes, overreaching, and errors committed by or with the advice of counsel. I can elaborate on these if you wish. In the face of these errors, you would be well-advised to seek a second opinion from a truly independent attorney. Further, I ought to be allowed to explain my views to him or her so that we can be sure (s)he has a balanced presentation.

One solution to the mess the illegal Bylaw amendments has created, is to enact the two proposed Bylaw Amendments that for over six months I have been asking Brent Moore, John Bell, and others to agree to place on the agenda for the 2018 Annual Meeting. It takes only two Board members to make this happen. So far, I have received no answer to this request and, after so long a time, it seems clear I cannot expect an answer. I now appeal to the full board (or any two of you) to step up and agree to put these two proposed amendments on the Annual Meeting agenda and also to send out the attached Notice of Motion and Resolution to Amend Bylaws and Proxy Ballot along with the other voting materials to be sent out by the Board in connection with the election of new Board Members.

These proposed amendments are designed to correct the illegality of the 2013 Bylaw amendments in Section 7 and also to correct the unreasonable provision in Section 2.03, allowing the Board to remove other duly elected Board members without cause. Board members should only be subject to removal by the Board for cause and I have provided a reasonable definition of "cause." You are not asked to agree or disagree with these proposals, but only to put them on the agenda for a fair up or down vote. In my opinion, the failure to agree to this simple request constitutes a lack of good faith and fair dealing with the Voting Members you represent; Voting Members some of you will be asking to re-elect you.

Respectfully submitted,

/S/ Karl L. Rubinstein

Karl L. Rubinstein, Voting Member

MEMORANDUM TO PIPOA BOARD OF DIRECTORS

RE: Recent Email Discussions and Gag Order

FM: Karl L. Rubinstein

DATE: November 9, 2017

1. To the Board, I'm sorry Brent insisted on mandating your involvement in last evenings emails. But I suppose he has his reasons. This communication is to clear up any "confusion" in your minds about the meaning of my recent request that certain proposed PIPOA Bylaws be placed on the agenda and ballot for the 2018 Annual Members Meeting. This request is made as a property owner and pursuant to my rights under the PIPOA governing documents and other applicable rules and laws. The fact that I'm an attorney duly licensed to practice law in Texas and California, is not particularly relevant to the current process. I did include an explanation of some of the several reasons the 2013 Bylaws are in my opinion illegal, but that's a benefit of being an attorney as well as a property owner. Of course, I know that not all present Board Members were on the Board in 2013 and, thus, when I refer to "the Board" in that context I'm never referring to anyone not then on the Board. Also, I bear no malice towards any of you and would welcome, cherish actually, the opportunity to sit down and have an adult conversation with any or all of you.

2. While Brent and John both continually brought up my "lawsuit," as you all should know, there is no lawsuit. The letter from Mr. Kilpatrick explained certain relevant laws and demanded that the Board rectify the mess it has created via the improper and invalid 2013 Bylaws. He did advise that if the Board failed and refused to do so by the Annual Meeting, we would consider litigation. That remains the fact. However, at this point neither I nor Mr. Kilpatrick are engaged in litigation with the PIPOA and he and I have agreed I will personally and directly deal with these matters until such time as I determine litigation is necessary. Brent has no right to direct me to communicate with the Board through an attorney and I refuse to do so. If the Board chooses to involve Mr. Kilpatrick prior to such time as I advise you I have decided to initiate litigation, then I will expect the PIPOA to pay his fees. There is no need for me to be an attorney or to employ an attorney to petition the Board to place matters on the meeting agenda.

3. While the Petition to place the Bylaw Amendments on the Agenda for an up or down vote would obviate the need for a lawsuit, it is not a settlement discussion as such, but is a formal request to the Board by a property owner and should be treated as such.

4. Despite my effort to obtain a fair up or down vote on these proposed amendments, Brent calls this "caving in" to demands as opposed to a fair request. This is quite odd, given that in an email

this last summer he suggested putting these proposals on the agenda would be the professional thing to do. But now, he and John both appear to want to continue to argue the merits of the legal issues. I am confident in my view of the legal issues and also in my view the 2013 Bylaws are invalid for at least the several reasons stated in the memorandum I provided. But whether the Bylaws are valid or invalid is not the issue now on the table. The issue before us is a legitimate petition seeking a fair up or down vote on the proposed amendments.

5. During yesterday's email discussion, Brent wrote that all other Board members were forbidden by him from communicating with me on pain of being sanctioned for "dereliction of duty." To quote Brent: "I will hold anyone who does not follow those instructions in violation of the following bylaw [citing 2.10 Conflict of interest]." He goes on to claim speaking with me directly is a "conflict of interest." This is patently absurd and a very odd command, to say the least—indeed, one which is contrary to the law as I understand it. I do not believe he can forbid discussions between property owners and Board Members and there is no conflict of interest and no such offense of "dereliction of duty" that can be committed by merely communicating with property owners.

6. Although I am an attorney, that doesn't change my status as a property owner with the right to speak or communicate with any Board Member I want to. It appears to me the failure of Board Members to communicate with property owners would be the dereliction. Brent's willingness to issue such a command to the other Board Members, seems to me to highlight a major defect with the manner in which the PIPOA Board operates, particularly if you Board Members feel compelled to obey Brent's commands. It looks as if Brent's mind is set against agreeing to my petition, which he characterizes as "caving in," and that he will use his odd command power to essentially force the rest of the Board to go along. This is a sad state of affairs and illustrates clearly the need for the two amendments I have requested as well as the need to vote in new Board members at the Annual Meeting.

## Explanation of the Ballot by Proxy

**\*\* This Ballot by Proxy is effective only to establish a Quorum for the Special Members Meeting and to vote regarding the two proposed Bylaw Amendments. It cannot be used for any other purpose. \*\***

This Ballot by Proxy allows a Padre Isles Property Owner (you) to assign a proxy in order to achieve a quorum and vote on the two presented propositions. Any property owner who owns property under the jurisdiction of the Padre Isles Property Owners Association is eligible to vote.

To obtain a Ballot by Proxy you can go to [www.PadrelislandARCH.com](http://www.PadrelislandARCH.com) and click on the "Request a Ballot" tab. You can request an e-signable version or download and print a PDF version.

To execute the Ballot by Proxy, just do the following:

- 1) Read the two proposed propositions (pages 1 and 2)
- 2) On the Ballot (page 3):
  - a. Fill in your name or business name that your properties are listed under
  - b. Fill in your number of votes. You are entitled to one vote per each lot you own. If you are not sure how many votes you have, please contact Executive Director Becky Perrin at the PIPOA Office at 361-949-7025
  - c. Fill in your property address. If you own more than one property, only one is needed. Just make sure to include your actual vote total on the "number of lots" line.
  - d. You can vote both, one or none of the propositions. If you choose not to vote for the propositions, your ballot will be used to count toward a quorum only. And you still have the option to vote at the actual meeting.
  - e. Fill in your contact information. Please make sure to include your mailing address, email and phone so that you can be notified once the meeting date is announced.
  - f. Most importantly, sign and date the form. If the property is owned by a married couple, only one signature is required, though we encourage both to sign. If the property has multiple non-married owners, all owners should sign.
- 3) Return the Ballot by Proxy in one of several ways
  - a. E-sign and submit if using the electronically signable PDF.
  - b. Mail it to: Padre Island ARCH Group  
15037 S. Padre Island Dr. #189  
Corpus Christi, TX 78418
  - c. Fax it to: 361-336-0242
  - d. Scan and email to [PadrelislandARCH@gmail.com](mailto:PadrelislandARCH@gmail.com)
  - e. Hand it to an ARCH Group Member at one of our upcoming [events](#).
- 4) Once your Ballot by Proxy is received, we will return to you a unique ID number for your proxy. With this ID you will be able to verify that your proxy and vote was applied once the vote has been held. A spreadsheet will be made available that will contain the ID and voting tally for each proxy. Only you will have knowledge of your ID and no personally identifiable information will be included.

If you have submitted a proxy but HAVE NOT received your ID, please contact the ARCH Group at [PadrelislandARCH@gmail.com](mailto:PadrelislandARCH@gmail.com)

**Padre Isles Property Owners Association, Inc.**

**NOTICE OF MOTION AND RESOLUTION TO AMEND BYLAWS**

**And**

**PROXY BALLOT**

**Special Membership Meeting to be held on a date to be determined, but such meeting to occur no later than September 30, 2018.**

**NOTICE IS HEREBY GIVEN THAT AT THE ABOVE-REFERENCED MEETING, A MOTION AND RESOLUTION SHALL BE MADE TO APPROVE, ENACT, AND EFFECT THE FOLLOWING PROPOSITIONS:**

**Proposition 1. Providing for the following amendment to said Bylaws Section 7 as follows:**

The last sentence of Bylaw Section 7, which now states:

*"These bylaws (sic.) additionally may be amended at any regular or special meeting of the Board of Directors, after notice of such meeting has been provided to the membership in the manner provided in these Bylaws,"*

is hereby deleted and stricken and the following sentence is added as the last sentence of Section 7:

"The PIPOA Board is hereby forbidden to amend or repeal this Bylaw or to adopt any other PIPOA Bylaw to the same or similar effect. The PIPOA Bylaws may not be amended, repealed, adopted, or otherwise effected by the PIPOA Board, all such power being herewith reserved unto the Voting Members, and only the Voting Members."

**Explanation**

Proposition 1, by the deletion of the last sentence will prevent the POPOA Board, on its own, without the Voting Members, from changing the governing rules adopted by the Voting members and thereby thwarting the will of the Voting Members. While this will make amendments more difficult, it will preserve the democratic process and prevent the PIPOA Board from changing the rules against the will of the property owners.

**Proposition 2. Providing for the following amendment to said Bylaws Section 2.03 as follows:**

The first sentence of Said Bylaws Section 2.03, which now states:

*"Any director may be removed with or without cause by the unanimous vote of the remaining members of the Board (excluding the director to be removed)."*

is hereby deleted and stricken, and the following is substituted:

"Any director may be removed for cause by the unanimous vote of the remaining members of the Board (excluding the director to be removed), the term "cause" being hereby defined as the conviction of a felony or a misdemeanor involving moral turpitude, or the failure to attend more than four (4) Board meetings, absent illness or force majeure. The PIPOA Board is hereby forbidden to amend or repeal Bylaw or to adopt any other PIPOA Bylaw to the same or similar effect. All power to amend or repeal this Bylaw or to adopt any similar Bylaw is herewith reserved unto the Voting Members, and only the Voting Members."

**Explanation**

Proposition 2 will prevent incumbent Board of Directors from removing a duly elected Board member carrying out the will of those who elected him or her. A board member can still be removed "for cause." While this makes removal of a director more complicated, it also prevents other board members from exerting undue and unfair threats and influence upon other Board members. A Board member can still be removed for cause by a vote of 55% of the Voting Members.



## OFFICIAL BALLOT AND PROXY

I \_\_\_\_\_ (Printed name)

Who own \_\_\_\_\_ lot(s) (insert number of lots owned)

And owning property located at (include one property only for verification)

\_\_\_\_\_

hereby designate and appoint Kelly Ann McFadden as my true and lawful attorney in fact and proxy with full powers of substitution for the purposes of establishing a quorum and to represent me and cast my votes on my behalf as follows:

**Proposition 1 (above, check ONE or none)   ☐ FOR   ☐ AGAINST**

**Proposition 2 (above, check ONE or none)   ☐ FOR   ☐ AGAINST**

**If no votes are presented, this proxy will be counted toward quorum only.**

Notice of date and place of the meeting to be delivered as follows:

Name \_\_\_\_\_

Mailing Address \_\_\_\_\_

Mailing Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Email \_\_\_\_\_ Phone \_\_\_\_\_

This proxy is valid for 11 months from the date hereof; and in the event of any purported amendments, edits, or alteration to the above specified Bylaws done by the PIPOA Board of Directors from this date forward, I specifically authorize my said attorney in fact to cast my vote to so amend such Bylaws in accordance with the above described Propositions, regardless of what the designanted Article or Section number of such Bylaw becomes by reason of any such amendments, edits, or alterations. If it is not marked, or if marked improperly, it will be counted toward a quorum only.

**This form must be signed in order to be valid.**

Date \_\_\_\_\_

Signature \_\_\_\_\_ Printed Name \_\_\_\_\_

(if applicable) \_\_\_\_\_ Printed Name \_\_\_\_\_

EX B-1

# *Padre Isles*

PROPERTY OWNERS ASSOCIATION  
INCORPORATED



*Bylaws*

AMENDED TO SEPTEMBER 8, 1994

## PADRE ISLES PROPERTY OWNERS ASSOCIATION, INC.

## BYLAWS

## SECTION 1

## MEMBERS

1.01 MEMBERSHIP. Padre Island Investment Corporation (hereinafter referred to as "PIIC") and each person (which term shall be construed to include partnerships, corporations and any other type of entity or organization) who shall have acquired or shall hereafter acquire the record legal title to all or any portion of the property owned by PIIC situated on Padre Island, Nueces County, Texas (hereinafter sometimes referred to as the "subject property") including, but not limited to, the lots or tracts into which the subject property presently has been subdivided as shown by the following listed recorded plats thereof, to-wit:

Barataria Bay Units 1 - 5  
Cape Summer Units 1 & 2  
Coquina Bay  
Island Fairway Estates

Mariners Cay Unit 2A  
Padre Island Number 1 & 2  
Sea Pines Unit 1  
Section 3 (Galleon Bay)  
Section 4 (Tradewinds)  
Sections A - E

\*Cane Harbor Bay  
Commodore's Cove Units 1 & 2  
Mariner's Cay  
Island Fairway Estates  
Blocks: 3 & 21 - 36  
Point Tesoro Units 1 - 5  
Ports O'Call  
Section 2 (Galleon Bay)  
Section 3A (Galleon Bay)  
Section 18 (Marina Site)

shall automatically for the duration of such ownership be a Voting Member of Padre Isles Property Owners Association, Inc., a membership corporation organized under the provisions of the Texas Non-Profit Corporation Act (the "corporation"). Each person who is a purchaser of any portion of the subject property under a contract for deed from PIIC, its successors and assigns, shall be an Associate Member of this corporation. Reference herein to "members" shall include both Voting and Associate Members.

\*To be added following receipt of \$16,000 "Buy-in" payment; dedication of street to City of Corpus Christi and covenants approved by the Corporation.

Notwithstanding any other provision herein, the City of Corpus Christi, Nueces County, Texas, or any other political subdivision which may presently own or hereafter acquire a portion of or any interest in the subject property, and any lienholder or mortgagee, trustee under a deed of trust, and any holder or owner of any right-of-way easement or similar interest, shall not, as such, be deemed to be the owner of record of the legal title to a portion of the subject property and shall not by reason of any such interest owned or held or acquired by them be or become a member of this corporation.

A member of this corporation is not, as such, personally liable for the debts, liabilities, nor obligations of the corporation.

1.02 EXTENSION OF TERRITORIAL ELIGIBILITY FOR MEMBERSHIP. If, at any date subsequent to the adoption of these bylaws, additional land situated on Padre Island, Nueces County, Texas, is platted of record by PIIC for the purpose of being developed as an integral part of the subject property using the name Padre Island-Corpus Christi, such additional land shall automatically be included within the definition of the "subject property", and owners thereof shall be eligible to become members of this corporation in accord with the rules established herein.

## 1.03 VOTING RIGHTS.

a. Only Voting Members shall have voting rights and be counted in determining a quorum at any meeting; provided, however, notwithstanding any other provision in these Bylaws, no Voting Member shall have a right to vote nor be counted in determining a quorum so long as his/her lot is not being assessed or charged a maintenance fee by reason of Section 4.07 of the Bylaws. Only one (1) vote may be cast with respect to or by reason of the ownership of each lot, and in the case of ownership of less than an entire lot, or in the case of undivided fractional interest ownership of lots, the vote attributable to a lot shall be cast only by a representative of the owners of a majority in interest or a majority of the front footage of such lot (determined by measurement of the linear foot dimension of the lot facing the street upon which such lot fronts according to the plat or map designating and identifying such lot).

b. A Voting Member may vote in person or by proxy; however, no proxy shall be valid after eleven (11) months from the date of execution unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and in no event shall it remain irrevocable for more than eleven (11) months.

## 1.04 MEETINGS.

a. An Annual Meeting of the members of the corporation shall be held at ten o'clock a.m. on the second Saturday in March each year at such place in Nueces County, Texas as shall be designated for such purposes in a notice of the meeting; but if no notice be given, or if no other place be designated, then such meeting shall be held at the Padre Isles Country Club. With respect to proxy voting, the Association shall provide the members with the following minimum information: When voting for Directors, a resume provided by each candidate within the space requirements as determined by the Directors and information on issues and amendments as required in Section 6., Paragraph 6.02.

b. Special Meetings. Special meetings of the members may be called at any time by the President, the Vice President, the Secretary or Treasurer, or by two (2) or more members of the Board, or upon written request of the members who have a right to vote ten percent (10%) of the votes entitled to be cast at the time of such call. Any business which may properly be conducted at an annual or regular meeting of the members may also be conducted at any special meeting.

c. Informational Meetings. In addition to the Annual Meeting, there will be three (3) informational meetings annually to pass on and receive information on news/plans/projects/status on programs for the benefit of the members.

1.05 NOTICE. No notice of any annual or regular meeting of the members of the corporation shall be required, but such notice of any such meeting as the Board may deem advisable may be given.

Notice of special meetings shall be given to Voting Members (none being required to Associate Members) not less than ten (10) nor more than fifty (50) days prior to the date of any such meeting.

Any notice which shall be given to a member of the corporation with respect to any meeting or for any other purpose shall be deemed to have been properly given if addressed to "owner", in care of the street address of the lot or tract located in the subject property with respect to the ownership of which the member is entitled to vote; or, when the number of Voting Members exceeds one thousand (1,000), notice may be given by publication in any newspaper of general circulation in Nueces County, Texas.

1.06 QUORUM. The owners of at least ten percent (10%) of the Lots located in the subject property, present in person or by proxy, shall be requisite for and shall constitute a quorum for the transaction of business at all meetings of the members of the corporation. Any meeting of members may be adjourned from time to time without notice other than announcement at the meeting, until a quorum shall be present or represented. When a quorum is present in person or by proxy shall decide any question brought before such meeting, except as noted in Section 2, Paragraph 2.03.

1.07 PROCEDURES. All Association meetings and Board of Directors meetings shall be conducted according to Robert's Rules of Order, newly revised, as long as such rules are not inconsistent or in conflict with these Bylaws, the Articles of Incorporation, or Texas or Federal Law.

## SECTION 2

## DIRECTORS

2.01 NUMBER. The number of directors of the corporation shall be seven, and those whose terms shall have expired shall be elected at the annual membership meeting. Directors shall serve for three years until his/her successor has been duly elected and qualified. Notwithstanding the foregoing, the directors may determine that in lieu of electing the new directors whose terms shall have expired at an annual membership meeting, such election shall be conducted by mail.

2.02 QUALIFICATIONS. Directors and Officers shall be natural persons of the age of eighteen (18) or over, and must be members of the Association.

2.03 VACANCIES AND REMOVAL. Any director may be removed with or without cause by the unanimous vote of the remaining members of the Board (excluding the director to be removed). Officers and Directors may also be removed, with cause, by a 55% vote of the members voting in an Annual or Special Meeting. Upon the death, removal, resignation, or incapacity of any member of the Board, a majority of the then remaining directors shall elect his successor.

## 2.04 MEETINGS.

a. An annual meeting of the Board of the corporation shall be held each year immediately following the adjournment of the annual meeting of the members, and at the

same place as the annual meeting of the members; and no notice of such annual meeting of the Board shall be required. Special meetings of the Board may be called by any director or by the President, and shall be held at such time and place as shall be specified in the notice of such meeting. No particular form of notice shall be required for the calling and holding of a special meeting of the Board, provided that actual notice thereof shall have been given to each director in advance of the time of such meeting. Proper notice shall be deemed to have been given of any special meeting of the Board if notice in writing, or by telephone or telegraph message, shall have been sent to either the usual business or residence address of the person entitled to receive notice not less than five (5) days preceding the time of the meeting.

b. A director may vote in person or by proxy. No such proxy shall be valid after three (3) months from the date of its execution; and each shall be revocable unless expressly provided therein to be irrevocable.

**2.05 MANAGEMENT.** The affairs and property of the corporation shall be managed and controlled by the Board. The Board shall have authority to cause the corporation to own, acquire, develop, construct, maintain, operate, repair and replace, on a non-profit basis, common areas for the protection, security, pleasure, recreation, or benefit of the subject property and the owners thereof, including but not limited to, greenways, recreation areas, canals, bulkheads, seawalls, sea gates, lighting, parks, roads, streets, curbs, gutters, drainage facilities, water access areas, including boat ramps, and such other facilities in the subject property for the use, enjoyment, protection and benefit if the members of the corporation, and other parties designated by the Board, as the Board may deem appropriate, and they are expressly given full powers not inconsistent with these bylaws, the Articles of Incorporation of this corporation, applicable provisions of law and the Protective Covenants and Landowners' Agreements covering the subject property to accomplish such purposes, including the power to acquire, purchase or lease any such facilities or transfer the management responsibilities for any such facilities to others in order to provide for the maximum enjoyment of such facilities by the members and such other designated persons.

It shall further be the duty of the Board to use their best efforts to attempt in every way to support the enforcement of the provisions of the deed restrictions and of the Protective Covenants and Landowners' Agreements covering any subject property, as well as any similar restrictions and covenants subsequently filed for record with respect to a portion of the subject property.

**2.06 AUTHORITY; COMMITTEES.** The Board shall have power to make rules for their own government and for the government of the corporation as it may deem necessary and to alter and amend the same; to prescribe and enforce penalties for violations of the rules and bylaws of the corporation; to access and fix charges to be levied against the members of the corporation subject to limitations and conditions contained in the Protective Covenants and Landowners' Agreements filed of record for the subject property; and to exercise such other powers as may be necessary or proper to attain the objects of the corporation. The Board shall have the authority to create committees by appropriate resolutions, and may delegate to any such committee so much of its authority as it shall deem advisable, and shall specify the duties of any committee so created. Not less than the majority of the members of any such committee having and exercising any of the authority of the Board of Directors in the management of the corporation shall be directors of the corporation. No required percentage of the membership of any committee not exercising such authority need be directors of the corporation.

The following standing committees shall be established: A. Architectural Control, B. Homeowner Advisory, C. Covenants and Compliance, D. Bulkheads and Canals, E. Governmental Affairs and F. Elections.

**2.07 EMPLOYEES.** The Board shall have responsibility and authority to employ such employees as the affairs of the corporation shall require and may delegate to any such employee so much of its authority as it shall deem advisable. The Board shall likewise have power for any cause they deem sufficient to discharge any or all employees of the corporation and may delegate their authority to do so to any officer of the corporation.

**2.08 AUDIT.** The financial records of the corporation shall be audited annually by an accountant designated by the Board of Directors who is licensed by the Texas State Board of Public Accounting as a Certified Public Accountant.

**2.09 INDEMNIFICATION.** Each director and officer of former director or officer of the corporation shall be indemnified by the corporation against expenses reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director or officer of this corporation, except in relation to matters as to which he shall be finally judged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of his duty as such director or officer. Such right of indemnification shall not be deemed exclusive of any other rights to which he may be entitled as a matter of law or under any provision of the Articles of Incorporation, Bylaw, Agreement, Vote of

Members or otherwise; and the corporation shall exercise the power to indemnify any such officer or director to the fullest extent to which such power of indemnification is permitted to be exercised under the laws of the State of Texas.

2.10 CONFLICT OF INTEREST. Officers, Directors, Committee Chairmen, Committee Members, Employees and Consultants, before serving the Association shall be personally sensitive to conflicts of interest, and in serving shall not participate in discussions nor decisions that are in conflict of interest.

### SECTION 3

#### OFFICERS

3.01 COMPOSITION. The officers of the corporation shall consist of a President, a Vice-President, a Secretary and a Treasurer, plus such assistant officers as the Board may deem appropriate, each of whom shall be elected by the Board at its annual meeting. The Board shall have full authority to remove any officer of the corporation from office by the vote of a majority of the members of the entire Board at any time; and the election of each officer of the corporation shall be subject to such power of the Board. If any office shall become vacant, the Board shall select an individual to fill such office for the unexpired term thereof. Any two offices may be held by the same person except the office of President and Secretary.

3.02 DUTIES. The duties of the officers of the corporation shall be as follows:

a. The President shall be the chief executive officer of the corporation. He shall preside at all meetings of the members and directors and be responsible for the carrying out of their decisions in the administration of the affairs of the corporation. The President shall also execute contracts, conveyances and other documents on behalf of the corporation. The President or his designee shall be the only spokesman for the policy of the Association.

b. In the absence of the President, or when it is inconvenient for the President to act, the Vice President shall perform the duties and exercise the powers of the President. At any time when the Vice President is performing a duty or exercising a power of the President, any third party dealing with the corporation may presume conclusively that the President was absent and that the Vice President was authorized to act in his place.

c. The Secretary shall issue notices of directors' and members' meetings if so directed by the party calling the meeting, and shall be responsible for the corporate minutes and records. The Secretary shall determine the membership of the corporation as of the record date of any meeting. In doing so, he may use any method which he deems to be reasonably calculated to determine the ownership of lots in the subject property. Notwithstanding the foregoing, he shall follow any instructions given to him by the Board of Directors to use a specific method in determining the membership of the corporation. The Board may, if it deems it advisable, from time to time, designate one or more persons as Assistant Secretaries, who may perform the duties and exercise the powers of the Secretary when the Secretary is absent or it is inconvenient for him to act. Any third person dealing with the corporation may presume conclusively that any Assistant Secretary acting in the capacity of the Secretary was duly authorized so to act.

d. The Treasurer shall be responsible for the custody of corporate funds and securities and the keeping of adequate books of account. The Board may, from time to time, if it deems it advisable, designate one or more persons as Assistant Treasurers who may perform the duties and exercise the powers of the Treasurer if the Treasurer is absent or if it is inconvenient for him to act. Any third person dealing with the corporation shall be entitled to presume conclusively that any Assistant Treasurer, acting in the capacity of the Treasurer, was duly authorized to do so.

The Treasurer shall prepare a roster of the members and the assessments applicable thereto, and a record of the payment of such assessments, and such records shall be kept at the principal offices of the corporation and shall be open to inspection by any member at any reasonable time during business hours.

### SECTION 4

#### ASSESSMENTS

4.01 Pursuant and subject to the conditions and limitations of the Protective Covenants and Landowners' Agreements which have been or shall be filed of record for the various portions of the subject property, which provide for maintenance fees to be paid by all members hereof to a Maintenance Fund administered by this corporation or its designated agent, the Board is hereby authorized and given full power and authority to assess and collect from the members of the corporation such maintenance fees at any regular or special meeting in order to obtain funds required by the corporation for the performance of its objectives and purposes and to meet its obligations, subject to the



provisions of these bylaws, and the Protective Covenants and Landowners' Agreements which shall have been filed of record for any portion of the subject property authorizing or limiting the amount of such maintenance fees. Each assessment shall be due and payable by each member at the time and in the manner set forth in the respective Protective Covenants and Landowners' Agreements. Each assessment shall be payable in cash at a bank selected by the Board of Directors; but in no event shall such bank have an aggregate of certified surplus, capital and undivided profits of less than \$1,000,000. The corporation may designate PIIC as its agent to administer the Maintenance Fund including the payment of expenditures from such Maintenance Fund and the collection and enforcement of the maintenance fee assessments herein described and to carry out such other duties as shall have been specifically designated by the corporation and accepted by PIIC. This corporation, or PIIC, if so designated, shall not be liable for the failure of any member to pay any assessed maintenance charge.

4.02 No assessment shall be levied against any lot owned by PIIC held by it for sale to others.

4.03 The corporation and its successors in interest shall have an express lien against each lot into which the subject property may be subdivided as shown by the maps or plats thereof at any time recorded, to secure all obligations of the owner or owners of each such lot to the corporation. The terms of such lien shall be as stated and provided in the deed restrictions and/or the Protective Covenants and Landowners' Agreements covering the specific subdivision units within the subject property.

4.04 The corporation may, by instrument executed by its President or Vice President and authorized by its Board, release or subordinate such lien of the corporation, or any other right of the corporation created under such deed restrictions and Protective Covenants and Landowners' Agreement in whole or in part with respect to any lot in the subject property for any reason whatsoever and upon such terms as it shall deem advisable, but any such release or subordination shall not affect such lien or rights insofar as they may apply to any other lot in the subject property.

4.05 Any sums paid to the corporation for the maintenance and repair of a seawall pursuant to the terms of applicable Protective Covenants and Landowners' Agreements shall be used exclusively for such purpose and for the purpose of reimbursing this corporation for funds spent for such purpose which were not specifically designated for such purpose. Amounts owing to the corporation for maintenance and repair of seawalls in subdivision units under the terms of applicable Protective Covenants and Landowners' Agreements shall bear interest at the rate of ten percent (10%) per annum as provided in such Protective Covenants and Landowners' Agreements.

4.06 No Voting Member who is delinquent in the payment of any assessment, charge, fee or other sum due from such member to the corporation, shall be entitled to vote upon any matter unless and until all such delinquent sums shall have been paid to the corporation in full.

4.07 Assessments shall be levied with respect to each lot only after PIIC or its successors shall have fulfilled its contractual obligations, if any to:

a. Grade, excavate, and/or fill the lot to bring it to the elevations approved by the City of Corpus Christi, Texas in accord with the specifications filed with the City;

b. Install paved streets abutting the lot;

c. Install bulkheading of canals abutting the lot, if applicable;

d. Install water main and sewage disposal facilities so that the lot owner is able to, at his expense, tap into such facilities and procure water service and sewer disposal service to his lot.

4.08 Any assessment not paid when due shall be deemed delinquent and shall bear interest from said due date at the rate of six percent (6%) per annum. In addition to liens as described in paragraph 4.04 above, the Association shall also have the right to foreclose on such liens and all other rights and remedies necessary to collect delinquent amounts; with all costs being added to the delinquent Owners' account.

## SECTION 5

### DISPOSITION OF ASSETS UPON DISSOLUTION

5.01 Upon dissolution of the corporation, the assets, both real and personal of the corporation, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the corporation. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit

corporation, association, trust or other organization described in Section 501 (c)(4) of the Internal Revenue Code of 1954, as amended, to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the corporation. No such disposition of properties shall be effective to divest or diminish any right or title or any member vested in him under the covenants and deeds applicable to the subject property unless made in accordance with the provisions of such covenants and deeds.

#### SECTION 6

##### AMENDMENTS

6.01 These bylaws may be amended at any regular or special meeting of the members by a vote of a majority of the votes entitled to be cast by the Voting Members present at such meeting, in person or by proxy, provided that no amendment inconsistent with the provisions of the Articles of Incorporation, applicable law, the applicable deed restrictions and Protective Covenants and Landowners' Agreements, or any covenant or restriction applicable to the subject property, shall be valid. The Voting Members may delegate to the Board of Directors the power to amend the bylaws of the corporation.

6.02 AMENDMENTS OF BYLAWS AND ARTICLES OF INCORPORATION: Each shall be treated individually, and accompanied by a statement of why it should be accepted or rejected and its positive and negative effects on the Association and its members.





# Correspondence



**From:** [Becky Perrin](#)  
**To:** ["Karl Rubinstein"; "John Bell"](#)  
**Cc:** [bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)  
**Subject:** RE: Opinion Letter  
**Date:** Tuesday, February 6, 2018 2:57:15 PM

---

Roberts Markel Weinberg Butler Hailey, is the law firm secured by the PIPOA to provide an opinion letter regarding bylaw legality issues.

Becky

**From:** [bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com) [<mailto:bmoore1@stx.rr.com>]  
**Sent:** Tuesday, February 06, 2018 6:24 AM  
**To:** Karl Rubinstein; Becky Perrin; John Bell  
**Subject:** Re: Opinion Letter

We have received an initial memo from the attorney and have asked a couple more questions and for clarifications. That follow up is anticipated this week.

No. John Bell has not been given a copy of the opinion letter or any information that you have not been provided. Nor has he had any correspondence with the attorney or the Board about this matter. In fact, I believe you outnumber his correspondence by a factor of 4.

Becky will provide you with the firm name this morning. We hope to have this completed soon.

Brent

Sent via the Samsung Galaxy S R5 agent on a T-Mobile USA 4G LTE smartphone

----- Original message -----

**From:** Karl Rubinstein <[karl.rubinstein@gmail.com](mailto:karl.rubinstein@gmail.com)>  
**Date:** 2/6/18 6:03 AM (GMT-06:00)  
**To:** Becky Perrin <[becky@pipoa.net](mailto:becky@pipoa.net)>, Brent Moore <[bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)>, John Bell <[jdbell@wbwpc.com](mailto:jdbell@wbwpc.com)>  
**Subject:** Opinion Letter

My understanding is the Board was to receive the opinion letter from the unnamed attorney about a week ago and that John Bell and I would receive a copy at the same time. Brent also advised by email that this letter would be discussed at a Special Board Meeting this Wednesday or Thursday. To date I have received neither a copy of this opinion nor any notice of a Special Board Meeting to discuss it. In fact an email sent from the PIPOA yesterday to the property owners does not mention either the letter or a Special Board Meeting to discuss it. I now ask for the promised copy of this opinion letter and also an explanation of the absence of notice of a meeting to discuss it. If you will not provide a copy of this letter, please explain why you earlier promise to do so is not being honored. Please also advise me if John Bell has been given a copy of this opinion.

## Becky Perrin

---

**From:** Becky Perrin <becky@pipoa.net>  
**Sent:** Thursday, February 01, 2018 9:11 AM  
**To:** 'bmoore1@stx.rr.com'  
**Subject:** RE: FW: 5478-00001 Padre Isles Property Owners Association, Inc.- General:

I sent it to you and Leslie. I have not and will not notify anyone else.

**From:** [bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com) [<mailto:bmoore1@stx.rr.com>]  
**Sent:** Thursday, February 01, 2018 9:05 AM  
**To:** Becky Perrin; [lesliehess@ernesthealth.com](mailto:lesliehess@ernesthealth.com)  
**Subject:** Re: FW: 5478-00001 Padre Isles Property Owners Association, Inc.- General:

Please do not discuss results or letter with anyone...including but not limited to Mr. Bell and Mr. Rubenstein.

We could have additional questions for the attorney. And, my intent is to call a special meeting in the next week or so to discuss the results.

Brent

Sent via the Samsung Galaxy S6 active, an AT&T 4G LTE smartphone

----- Original message -----

**From:** Becky Perrin <[becky@pipoa.net](mailto:becky@pipoa.net)>  
**Date:** 2/1/18 8:36 AM (GMT-06:00)  
**To:** [bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com), [lesliehess@ernesthealth.com](mailto:lesliehess@ernesthealth.com)  
**Subject:** FW: 5478-00001 Padre Isles Property Owners Association, Inc.- General:

Here you go. I haven't read it yet, just wanted to get it sent to you.

**From:** Clayton Hearn [<mailto:chearn@rmwbhlaw.com>]  
**Sent:** Wednesday, January 31, 2018 7:48 PM  
**To:** Becky Perrin  
**Cc:** Ashley Koirtyohann  
**Subject:** 5478-00001 Padre Isles Property Owners Association, Inc.- General:

Ms. Perrin,

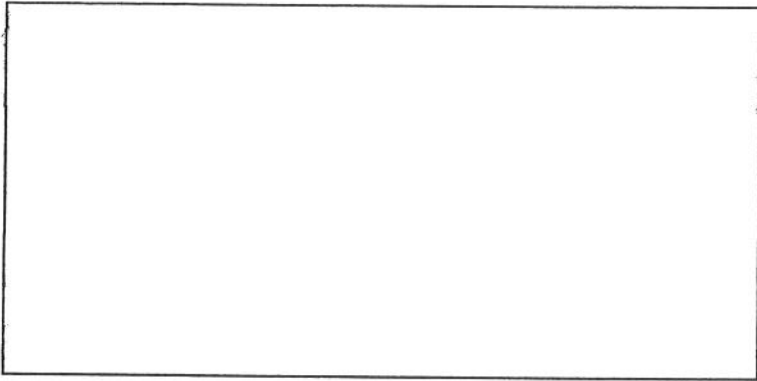
Please find my opinion regarding the Padre Isles Bylaws attached for the Board's consideration. Please let me know if you have any questions. Thank you.

*Roberts Markel Weinberg Butler Hailey PC is a debt collector attempting to collect a debt, and any information obtained as a result of this correspondence shall be used for that purpose.*

Clayton Hearn

Shareholder

[chearn@rmwbhlaw.com](mailto:chearn@rmwbhlaw.com)



## Becky Perrin

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**From:** Becky Perrin <becky@pipoa.net>  
**Sent:** Thursday, February 01, 2018 8:37 AM  
**To:** bmoore1@stx.rr.com; lesliehess@ernesthealth.com  
**Subject:** FW: 5478-00001 Padre Isles Property Owners Association, Inc. - General  
**Attachments:** Legal Opinion- Bylaws.pdf

Here you go. I haven't read it yet, just wanted to get it sent to you.

**From:** Clayton Hearn [<mailto:chearn@rmwbhlaw.com>]  
**Sent:** Wednesday, January 31, 2018 7:48 PM  
**To:** Becky Perrin  
**Cc:** Ashley Koirtyohann  
**Subject:** 5478-00001 Padre Isles Property Owners Association, Inc. - General:

Ms. Perrin,

Please find my opinion regarding the Padre Isles Bylaws attached for the Board's consideration. Please let me know if you have any questions. Thank you.

*Roberts Markel Weinberg Butler Hailey PC is a debt collector attempting to collect a debt, and any information obtained as a result of this correspondence shall be used for that purpose.*

Clayton Hearn  
Shareholder  
[chearn@rmwbhlaw.com](mailto:chearn@rmwbhlaw.com)



Appellate Law / Commercial Litigation / Construction Litigation / Corporate Transactions / Criminal and Juvenile Litigation / Family Law / Insurance Litigation / Intellectual Property / Real Estate / Estate Planning, Probate, and Trust Administration / Personal Injury / Professional Liability / Bankruptcy / Elder Law / Health Care Law / Labor and Employment Law / Tax / White Collar Crime / Bankruptcy / Insurance Litigation / Intellectual Property / Real Estate / Estate Planning, Probate, and Trust Administration / Personal Injury / Professional Liability / Bankruptcy / Elder Law / Health Care Law / Labor and Employment Law / Tax / White Collar Crime

## Becky Perrin

---

**From:** Karl Rubinstein <karl.rubinstein@gmail.com>  
**Sent:** Tuesday, January 30, 2018 7:22 PM  
**To:** bmoore1@stx.rr.com  
**Cc:** Becky; John Bell  
**Subject:** Re: Changed My Mind

I will be available either date. When you say "discussion" do you mean I get to actually participate in a back and forth adult conversation or do you mean the opinion will simply be announced to me and others?

On Tue, Jan 30, 2018 at 7:14 PM Karl Rubinstein <[karl.rubinstein@gmail.com](mailto:karl.rubinstein@gmail.com)> wrote:

On Tue, Jan 30, 2018 at 7:07 PM [bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com) <[bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)> wrote:

Gentlemen, We should have an opinion document back from the attorney tomorrow. I plan to call a special meeting at which time we will discuss the results. Would you like to attend that meeting? If so, are you available next Wednesday or Thursday evening?

Brent

Sent via the Samsung Galaxy S8 active, an AT&T 4G LTE smartphone

----- Original message -----

**From:** John Bell <[jdbell@wbwpc.com](mailto:jdbell@wbwpc.com)>  
**Date:** 1/30/18 3:52 PM (GMT-06:00)  
**To:** Karl Rubinstein <[karl.rubinstein@gmail.com](mailto:karl.rubinstein@gmail.com)>  
**Subject:** RE: Changed My Mind

Karl,

I was provided a copy of your Memo concerning the bylaws that you posted on line and reviewed it. I appreciate the effort that you put into 14 pages of argument, and perhaps my 6 pages pales a bit in comparison. Nevertheless, we will see what the outside counsel finds as the applicable law. I'll admit my argument is simpler since it is based on the plain meaning of a statute.

You quoted Greg Cagle's Handbook on HOA law but failed to note that he qualified his statement to state that in some situations the statutory requirements are subject to local options (such as size of the board, etc) and in others they are not. In his discussion of the procedure to amend the bylaws, he does not say it is subject to any local option other than the caveat noted in subsection (c) where the members, in enacting a bylaw, may prohibit the board from modifying that bylaw. In our case, the members only enacted a few of the provisions in the 1994 bylaws since most of the document goes back to the original set adopted by the initial board.



I see from your other writings that apparently you prefer to debate a straw man argument rather than my actual arguments. I've never maintained that the board created its own authority to amend the bylaws by adding the statement in Section 7.01 or that State law forced the board to amend the bylaws, although I suppose those are easier arguments for you to debate. You commented below that you would rather not see my response so it would not influence your future writings, and I now see why, since you prefer to recast my arguments as something easier for you to counter.

Last, I learned that Kelly McFadden has promised that she will not disclose the names of persons who give her proxies to call for the special meeting and will keep them confidential. How will the POA be able to find out whether you have satisfied the requirements to call the special meeting and have valid proxies if they will not be provided to the POA? I'd appreciate your thoughts on that so I can research the contention that an organization would be required simply to accept someone's statement that they have a certain number of proxies without actually producing the proxies.

Thanks in advance for your consideration.

John

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**From:** Karl Rubinstein [mailto:[karl.rubinstein@gmail.com](mailto:karl.rubinstein@gmail.com)]  
**Sent:** Tuesday, January 23, 2018 7:45 AM  
**To:** Becky Perrin; Brent Moore; John Bell  
**Subject:** Changed My Mind

John, after further consideration I don't want to swap submissions. I'll probably use a version of my research and position for another Essay, and don't want to be in the position of even subconsciously responding to yours. After all, I know your arguments anyway. Since Brent wants this initial process more or less secret, let's not swap.

## Becky Perrin

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**From:** Becky Perrin <becky@pipoa.net>  
**Sent:** Tuesday, January 30, 2018 4:26 PM  
**To:** bmoore1@stx.rr.com  
**Subject:** FW: 5478-00001 Padre Isles Property Owners Association, Inc.- General: KLR Position Memo

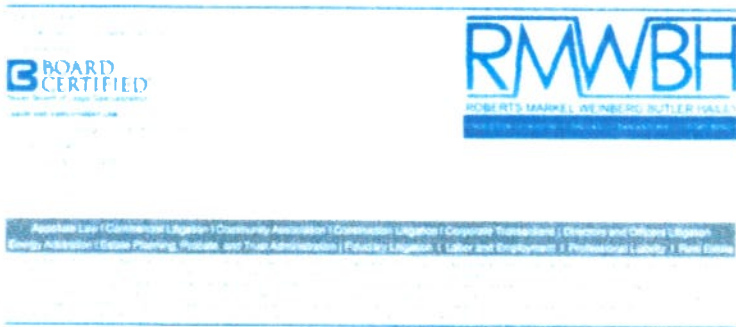
FYI

**From:** Clayton Hearn [<mailto:chearn@rmwbhlaw.com>]  
**Sent:** Tuesday, January 30, 2018 11:26 AM  
**To:** 'Becky Perrin'  
**Cc:** Laura L. Hearn; Ashley Koirtyohann  
**Subject:** RE: 5478-00001 Padre Isles Property Owners Association, Inc.- General: KLR Position Memo

I expect to complete the project and get you a draft opinion by the close of business tomorrow.

*Roberts Markel Weinberg Butler Hailey PC is a debt collector attempting to collect a debt, and any information obtained as a result of this correspondence shall be used for that purpose.*

Clayton Hearn  
Shareholder  
[chearn@rmwbhlaw.com](mailto:chearn@rmwbhlaw.com)



**From:** Becky Perrin [<mailto:becky@pipoa.net>]  
**Sent:** Tuesday, January 30, 2018 10:37 AM  
**To:** Clayton Hearn  
**Subject:** RE: 5478-00001 Padre Isles Property Owners Association, Inc.- General: KLR Position Memo

Mr. Hearn,  
I have been asked by the board to get an update concerning your opinion on the PIPOA Bylaws issue.

Thank you,  
Becky Perrin

**From:** Clayton Hearn [<mailto:chearn@rmwbhlaw.com>]  
**Sent:** Tuesday, January 23, 2018 1:29 PM

## Becky Perrin

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**From:** Becky Perrin <becky@pipoa.net>  
**Sent:** Monday, January 29, 2018 3:12 PM  
**To:** bmoore1@stx.rr.com; cartertate@sbcglobal.net; darrellandterriscanlan@gmail.com; 'Jack Sharlow' (jacktherancher@gmail.com); lesliehess@ernesthealth.com; mjones.law@att.net; paultressa@att.net  
**Subject:** FW: THE INDEPENDENT ATTY FILE


Marvin has requested a copy of the entire file with the information related to the Independent Opinion.

Becky


**From:** [marvinjones.law@gmail.com](mailto:marvinjones.law@gmail.com) [<mailto:marvinjones.law@gmail.com>] **On Behalf Of** Marvin Jones  
**Sent:** Monday, January 29, 2018 2:16 PM  
**To:** Becky  
**Subject:** THE INDEPENDENT ATTY FILE

I HAVE DECIDED I NEED A COPY OF THE ENTIRE FILE. AS A BOARD MEMBER I AM ENTITLED TO THE FILE. MAY I PICK IT UP AT 9AM TOMORROW. OF COURSE I WILL PAY FOR IT IF NECESSARY. THANK YOU MARVIN

Clayton Hearn  
Shareholder  
[chearn@rmwbplaw.com](mailto:chearn@rmwbplaw.com)



ROBERTS MARKEL WEINBERG BUTLER HAILE  
ATTORNEYS AT LAW



BOARD CERTIFIED  
TRUSTS BOARD OF JUDICIAL SPECIALIZATION  
LAWYER HAS EMPLOYMENT LAW

Appellate Law | Commercial Litigation | Community Association | Construction Litigation | Corporate Transactions | Directors and Officers Litigation  
**Energy Arbitration** | Estate Planning, Probate, and Trust Administration | Family Litigation | Labor and Employment | Professional Liability | Real Estate  
 Intellectual Property | Insurance | International Litigation | Labor and Employment | Litigation | Mergers and Acquisitions | Personal Injury | Products Liability | Real Estate  
 Securities | Tax | Transportation Litigation | Workers' Compensation Litigation

## Becky Perrin

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**From:** Becky Perrin <becky@pipoa.net>  
**Sent:** Thursday, January 25, 2018 3:44 PM  
**To:** bmoore1@stx.rr.com; cartertate@sbcglobal.net; darrellandterriscanlan@gmail.com; 'Jack Sharlow' (jacktherancher@gmail.com); lesliehess@ernesthealth.com; mjjones.law@att.net; paultressa@att.net  
**Subject:** RE: POA documents

Marvin has requested to see some documents, if there is anyone else that would like to review them please plan on being at the POA office tomorrow morning at 8:30. As stated at the Board meeting we do not have the completed agreement with the University. The University sent us their agreement, we sent it back with some additional information and now it is in the hands of the University for completion. I will be able to show you the draft agreement.

I have the Engagement Agreement from the Law Firm retained to review the Bylaws dispute along with the instructions given to the law firm in my office for review.

Becky

**From:** [marvinjones.law@gmail.com](mailto:marvinjones.law@gmail.com) [<mailto:marvinjones.law@gmail.com>] **On Behalf Of** Marvin Jones  
**Sent:** Thursday, January 25, 2018 2:51 PM  
**To:** Becky  
**Subject:** POA documents

Good afternoon Becky, I trust all is going well. I would like to look at or perhaps get a copy of the proposed agreement between Dr. Jorgenson and the POA. Plus any other documents, instructions or requirements to/from the DR. etc In addition I would like to see the retainer agreement between The POA and the law firm Mr. Moore Hired/ POA hired to give the opinion re the Karl and John Bell legal depute re the bylaws. If there are any other docs. correspondence ,particularly any instructions re the function of the law firm. Thank you for your cooperation. Is 830am to morrow convenient for you? Best regards Marvin Jones

Marvin L. Jones  
Attorney At Law

## Becky Perrin

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**From:** Becky Perrin <becky@pipoa.net>  
**Sent:** Tuesday, January 23, 2018 8:44 PM  
**To:** bmoore1@stx.rr.com; cartertate@sbcglobal.net; darrellandterriscanlan@gmail.com; 'Jack Sharlow' (jacktherancher@gmail.com); lesliehess@ernesthealth.com; mjones.law@att.net; paultressa@att.net  
**Subject:** Outside Opinion Information

Law firm:  
Roberts Markel Weinberg Bultler Haley  
5307 E. Mockingbird lane. Suite 685  
Dallas, Texas 75206

[www.rmwbhlaw.com](http://www.rmwbhlaw.com)



Becky Perrin  
Executive Director  
Padre Isles Property Owners Association  
361-949-7025

## Becky Perrin

---

**From:** Clayton Hearn <chearn@rmwbhlaw.com>  
**Sent:** Tuesday, January 23, 2018 1:29 PM  
**To:** Ashley Koirtyohann; Becky Perrin  
**Cc:** bmoore1@stx.rr.com  
**Subject:** RE: 5478-00001 Padre Isles Property Owners Association, Inc.- General: KLR Position Memo

Becky,

I've reviewed the materials you sent and am reviewing some legal authority to formulate my opinion. I don't know how the Board feels about letting Mr. Rubinstein know who I am, but I think there's no harm in doing so. I know and respect his attorney and can politely tell him that I'm giving my opinion absent any lobbying from any of the stakeholders.

*Roberts Markel Weinberg Butler Hailey PC is a debt collector attempting to collect a debt, and any information obtained as a result of this correspondence shall be used for that purpose.*

Clayton Hearn  
Shareholder  
[chearn@rmwbhlaw.com](mailto:chearn@rmwbhlaw.com)



Appellate Law / Commercial Litigation / Community Association / Construction Litigation / Corporate Governance / Directors and Officers Litigation  
Estate Planning / Estate Planning, Probate, and Trust Administration / Fiduciary Litigation / Labor and Employment / Professional Liability / Real Estate

**From:** Ashley Koirtyohann  
**Sent:** Monday, January 22, 2018 5:41 PM  
**To:** Becky Perrin  
**Cc:** [bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com); Clayton Hearn  
**Subject:** RE: 5478-00001 Padre Isles Property Owners Association, Inc.- General: KLR Position Memo

Thank you, Becky. We have received both statements and will begin reviewing them right away.

*Roberts Markel Weinberg Butler Hailey PC is a debt collector attempting to collect a debt, and any information obtained as a result of this correspondence shall be used for that purpose.*

Ashley Koirtyohann  
Associate Attorney  
[akoirtyohann@rmwbhlaw.com](mailto:akoirtyohann@rmwbhlaw.com)

## Becky Perrin

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**From:** Becky Perrin <becky@pipoa.net>  
**Sent:** Tuesday, January 23, 2018 1:33 PM  
**To:** 'bmoore1@stx.rr.com'  
**Subject:** RE: 5478-00001 Padre Isles Property Owners Association, Inc.- General: KLR Position Memo

I assume you still want to restrict contact for John and Karl.

**From:** Clayton Hearn [<mailto:chearn@rmwbhlaw.com>]  
**Sent:** Tuesday, January 23, 2018 1:29 PM  
**To:** Ashley Koirtyohann; Becky Perrin  
**Cc:** [bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)  
**Subject:** RE: 5478-00001 Padre Isles Property Owners Association, Inc.- General: KLR Position Memo

Becky,

I've reviewed the materials you sent and am reviewing some legal authority to formulate my opinion. I don't know how the Board feels about letting Mr. Rubinstein know who I am, but I think there's no harm in doing so. I know and respect his attorney and can politely tell him that I'm giving my opinion absent any lobbying from any of the stakeholders.

*Roberts Markel Weinberg Butler Hailey PC is a debt collector attempting to collect a debt, and any information obtained as a result of this correspondence shall be used for that purpose.*

Clayton Hearn  
Shareholder  
[chearn@rmwbhlaw.com](mailto:chearn@rmwbhlaw.com)



Appellate Law | Commercial Litigation | Community Association | Construction Litigation | Corporate Transactions | Directors and Officers Litigation  
Energy Arbitration | Estate Planning, Probate, and Trust Administration | Fiduciary Litigation | Labor and Employment | Professional Liability | Real Estate

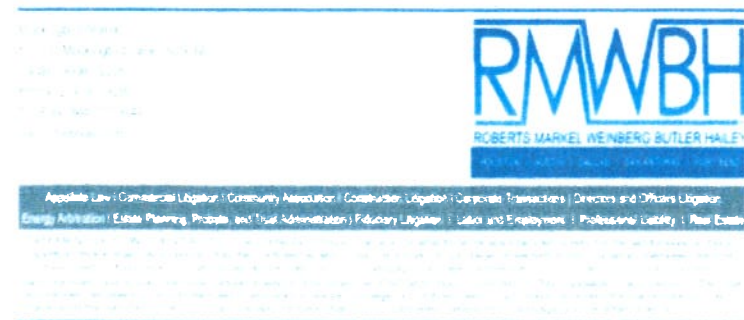
**From:** Ashley Koirtyohann  
**Sent:** Monday, January 22, 2018 5:41 PM  
**To:** Becky Perrin  
**Cc:** [bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com); Clayton Hearn  
**Subject:** RE: 5478-00001 Padre Isles Property Owners Association, Inc.- General: KLR Position Memo

Thank you, Becky. We have received both statements and will begin reviewing them right away.



Roberts Markel Weinberg Butler Hailey PC is a debt collector attempting to collect a debt, and any information obtained as a result of this correspondence shall be used for that purpose.

Ashley Koirtyohann  
Associate Attorney  
[akoirtyohann@rmwbhlaw.com](mailto:akoirtyohann@rmwbhlaw.com)



**From:** Becky Perrin [<mailto:becky@pipoa.net>]  
**Sent:** Monday, January 22, 2018 5:24 PM  
**To:** Ashley Koirtyohann  
**Cc:** [bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com); [lesliehess@ernesthealth.com](mailto:lesliehess@ernesthealth.com)  
**Subject:** FW: 5478-00001 Padre Isles Property Owners Association, Inc.- General: KLR Position Memo

Ashley,  
Here is the second submission I discussed with you earlier today.

Karl Rubinstein's Position Paper and Exhibits are attached regarding the Bylaws outside legal opinion.

Thank you,  
Becky

**From:** Karl Rubinstein [<mailto:karl.rubinstein@gmail.com>]  
**Sent:** Monday, January 22, 2018 6:14 AM  
**To:** Brent Moore; Becky Perrin  
**Subject:** KLR Position Memo

I attach herewith my Position Memorandum along with a zip file containing the Memo's exhibits. I rely on you to transmit both the Memorandum and the exhibits to the attorney who will give a second opinion regarding John Bell's advice concerning the Bylaws and the proposed amendments. All files are either .pdf or word and I assume can be easily accessed by the intended reader. If not, please print them out or advise me to do so.

Also, please advise me as to the circulation of this material. I presume it will be made available to the PIPOA Board, but to no-one else until after

it's submitted to the attorney, after which time I don't regard it as confidential.

**From:** Karl Rubinstein  
**To:** Becky Perrin; Brent Moore; John Bell  
**Subject:** Changed My Mind  
**Date:** Tuesday, January 23, 2018 7:45:11 AM

---

John, after further consideration I don't want to swap submissions. I'll probably use a version of my research and position for another Essay, and don't want to be in the position of even subconsciously responding to yours. After all, I know your arguments anyway. Since Brent wants this initial process more or less secret, let's not swap.

## Becky Perrin

---

**From:** bmoore1@stx.rr.com  
**Sent:** Sunday, January 21, 2018 8:47 PM  
**To:** Karl Rubinstein  
**Cc:** Becky Perrin  
**Subject:** Re: My Position Memo

Your assumptions below are correct.

You and John can talk regarding the desire/need to see each other's summary.

Our consultation with our attorney is without input from either of you (with the exception of your summaries).

Thank you,  
Brent

Sent via the Samsung Galaxy S86 active, an AT&T 4G LTE smartphone

----- Original message -----

From: Karl Rubinstein <[karl.rubinstein@gmail.com](mailto:karl.rubinstein@gmail.com)>  
Date: 1/21/18 7:17 PM (GMT-06:00)  
To: Brent Moore <[bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)>  
Cc: Becky Perrin <[becky@pipoa.net](mailto:becky@pipoa.net)>  
Subject: Re: My Position Memo

Thanks for the clarification, I will be sending to you Brent, and to Becky. I will rely on both of you to faithfully transmit my memo and it's exhibits to the unknown attorney without giving them to John Bell until after he has also submitted his papers. I assume this is your promise. After submission to the attorney, I'm fine with you providing JB with my papers provided you supply me with his.

On Sun, Jan 21, 2018 at 7:11 PM, Brent Moore <[bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)> wrote:

Tomorrow by close of business is good Karl.

Thanks,

Brent

**From:** Karl Rubinstein [mailto:[karl.rubinstein@gmail.com](mailto:karl.rubinstein@gmail.com)]  
**Sent:** Sunday, January 21, 2018 9:04 AM  
**To:** Becky Perrin <[becky@pipoa.net](mailto:becky@pipoa.net)>; Brent Moore <[bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)>  
**Subject:** My Position Memo

I anticipate delivering to you my, "Package" via email either later tonight or in the morning. I assume your deadline of the 22nd means on the 22nd and doesn't mean prior to the 22nd but you might clarify that.

**From:** [Karl Rubinstein](#)  
**To:** [Brent Moore](#)  
**Cc:** [Becky Perrin](#)  
**Subject:** Re: My Position Memo  
**Date:** Sunday, January 21, 2018 7:17:27 PM

---

Thanks for the clarification, I will be sending to you Brent, and to Becky. I will rely on both of you to faithfully transmit my memo and it's exhibits to the unknown attorney without giving them to John Bell until after he has also submitted his papers. I assume this is your promise. After submission to the attorney, I'm fine with you providing JB with my papers provided you supply me with his.

On Sun, Jan 21, 2018 at 7:11 PM, Brent Moore <[bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)> wrote:

Tomorrow by close of business is good Karl.

Thanks,

Brent

**From:** Karl Rubinstein [<mailto:karl.rubinstein@gmail.com>]  
**Sent:** Sunday, January 21, 2018 9:04 AM  
**To:** Becky Perrin <[becky@pipoa.net](mailto:becky@pipoa.net)>; Brent Moore <[bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)>  
**Subject:** My Position Memo

I anticipate delivering to you my. "Package" via email either later tonight or in the morning. I assume your deadline of the 22nd means on the 22nd and doesn't mean prior to the 22nd but you might clarify that.

## Becky Perrin

---

**From:** Becky Perrin <becky@pipoa.net>  
**Sent:** Friday, January 19, 2018 9:41 AM  
**To:** 'Ashley Koirtyohann'  
**Subject:** RE: Engagement Letter- Padre Isles Property Owners Association, Inc.  
**Attachments:** Bylaw Outside Opinion.pdf

Ashley,

Attached is the signed Engagement Letter for Padre Isles Property Owners Association, Inc. Please ensure that all correspondence is strictly between Brent Moore, Board President and Becky Perrin, Executive Director with the Padre Isles Property Owners Association. John Bell is not to be included in on any further correspondence.

We will be forwarding 2 briefs written by 2 different lawyers with their positions on their interpretation of the Bylaws. The briefs are due January 22, 2018.

Thank you,  
Becky Perrin  
Executive Director  
Padre Isles Property Owners Association

**From:** Ashley Koirtyohann [<mailto:akoirtyohann@rmwbhlaw.com>]  
**Sent:** Friday, January 12, 2018 4:10 PM  
**To:** 'becky@pipoa.net'  
**Cc:** 'jdbell@wbwpc.com'; Clayton Hearn  
**Subject:** Engagement Letter- Padre Isles Property Owners Association, Inc.

Mrs. Perrin,

Attached is our firm's engagement letter for the subject-referenced matter. Please return an executed copy of the same to my attention via email at your earliest convenience. Additionally, please forward me copies of any documents relevant to this matter, including the Association's governing documents. Should you have any questions or concerns, please feel free to contact me via email, or by phone at (214) 365-9290.

Thank you!

*Roberts Markel Weinberg Butler Hailey PC is a debt collector attempting to collect a debt, and any information obtained as a result of this correspondence shall be used for that purpose.*

Ashley Koirtyohann  
Associate Attorney  
[akoirtyohann@rmwbhlaw.com](mailto:akoirtyohann@rmwbhlaw.com)

Robert M. Butler  
Mark E. Weinberg  
Butler, Mark & Weinberg  
P.C.  
10000 Wilshire Blvd., Suite 2000  
Beverly Hills, CA 90212  
Phone: (310) 277-1000  
Fax: (310) 277-1001  
www.rmwbh.com



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Energy Advisory / Estate Planning, Probate and Trust Administration / Fiduciary Litigation / Labor and Employment / Professional Liability / Real Estate

At RMWBH, we are committed to providing the highest quality legal representation to our clients. Our attorneys are experienced in all areas of the law, and our firm has a reputation for excellence in every field. We are currently seeking qualified attorneys to join our team in the following areas: Appellate Law, Commercial Litigation, Community Association, Construction Litigation, Corporate Transactions, Directors and Officers Litigation, Energy Advisory, Estate Planning, Probate and Trust Administration, Fiduciary Litigation, Labor and Employment, Professional Liability, and Real Estate. If you are interested in joining our team, please contact us at (310) 277-1000 or visit our website at www.rmwbh.com.



**From:** [Karl Rubinstein](#)  
**To:** [bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)  
**Cc:** [Becky Perrin](#); [John Bell](#)  
**Subject:** Re: Your Second Opinion  
**Date:** Thursday, January 18, 2018 8:37:42 AM

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Brent: Okay, may I assume our materials will be sent to the attorney simultaneously and that neither John nor I will see the other's submission?

On Thu, Jan 18, 2018 at 8:31 AM [bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com) <[bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)> wrote:  
Gentlemen, Get your briefs in and let the review happen. Instead of writing emails to each other, work on providing your summary.

The work will be performed ethically and honestly.

Brent

Sent via the Samsung Galaxy S6 active, an AT&T 4G LTE smartphone

----- Original message -----

**From:** Karl Rubinstein <[karl.rubinstein@gmail.com](mailto:karl.rubinstein@gmail.com)>  
**Date:** 1/18/18 8:11 AM (GMT-06:00)  
**To:** John Bell <[jdbell@wbwpc.com](mailto:jdbell@wbwpc.com)>  
**Cc:** Becky Perrin <[becky@pipoa.net](mailto:becky@pipoa.net)>, [bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)  
**Subject:** Re: Your Second Opinion

John, this is not a court action, nor is it any kind of adjudication, nor will it produce a binding result. If you think or intend otherwise, please so advise me immediately.

As I understand it, we're trying to provide information to an independent and knowledgeable attorney who will give the Board an opinion which it can abide by or not. My participation is simply to facilitate informing this attorney even though the Board refuses to disclose this person's identity, experience, or even advise me of any business or other connections you or any member of the Board has with this person.

Despite this, I do appreciate the chance to accurately supply this information. If you and the Board don't want me to have a chance to know who this attorney is or to speak directly to her or him, then there's nothing I can do about it. I see no value in a telephone conference call since from prior experience I know both you and Brent will speak over me. I will produce written materials to the Board via delivery to Becky Perrin by January 22nd as suggested. I will rely upon Becky to deliver these materials to you, the Board and the attorney.

On Thu, Jan 18, 2018 at 7:49 AM John Bell <[jdbell@wbwpc.com](mailto:jdbell@wbwpc.com)> wrote:  
Karl,

Your being out of the legal practice awhile is betraying you. All federal courts and most state courts now handle these matters by submission of written briefs only. If you are confident in your legal position, no amount of personal cajoling, blustering or other antics is really necessary, right?

In this case, the law either says what you claim or what I claim. Oral argument isn't really necessary, but we can set up a conference call if you like.

John

On Jan 18, 2018, at 6:47 AM, Karl Rubinstein <[karl.rubinstein@gmail.com](mailto:karl.rubinstein@gmail.com)> wrote:

Sorry you don't like me Brent, but that's no excuse for refusing John and I an opportunity to discuss our legal points directly with the attorney who will be evaluating them. If you're going to the trouble of getting a second opinion, you should make the process fair and reasonable.

Sent from my iPad

On Jan 17, 2018, at 8:51 PM, "[bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)" <[bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)> wrote:

Karl, I have found you to be very difficult to trust, please or work with on just about anything. And am not interested in any more braggadocious stories from your past; as they are irrelevant to the issue at hand.

Let's just work to get this issue resolved.

Brent

Sent via the Samsung Galaxy S@6 active, an AT&T 4G LTE smartphone

----- Original message -----

From: Karl Rubinstein <[karl.rubinstein@gmail.com](mailto:karl.rubinstein@gmail.com)>

Date: 1/17/18 6:49 PM (GMT-06:00)

To: [bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)

Cc: Becky Perrin <[becky@pipoa.net](mailto:becky@pipoa.net)>, John Bell  
<[jdbell@wbwpc.com](mailto:jdbell@wbwpc.com)>

Subject: Re: Your Second Opinion

Brent, a conference call is only a pale substitute for a face to face. I'll certainly travel out of town and spend my own money to at least have a shot at discussing these issues face to face with an unprejudiced listener, even though his or her opinion is only advisory. The pursuit of justice is its own reward.

BTW did I ever tell you the story about the time I participated from my bed in the hospital ICU in an oral argument to a 9th Circuit case? Probably not.

On Wed, Jan 17, 2018 at 6:05 PM [bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)  
<[bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)> wrote:

We can set up a conference call at the appropriate time...within a week or so after receiving your information. The attorney is from out of town so I doubt you will want to travel at your own expense. That could get expensive.

Brent

Sent via the Samsung Galaxy S®6 active, an AT&T 4G LTE smartphone

----- Original message -----

From: Karl Rubinstein <[karl.rubinstein@gmail.com](mailto:karl.rubinstein@gmail.com)>  
Date: 1/17/18 4:26 PM (GMT-06:00)  
To: [bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)  
Cc: Becky Perrin <[becky@pipoa.net](mailto:becky@pipoa.net)>, John Bell  
<[jdbell@wbwpc.com](mailto:jdbell@wbwpc.com)>  
Subject: Re: Your Second Opinion

Brent, I assume you reject my requests, but since I do appreciate the chance to fully inform your attorney, I will supply the materials prior to January 22. Please assume I am making a continuing request for an opportunity to discuss my request for a face to face discussion with your chosen attorney.

On Wed, Jan 17, 2018 at 1:19 PM [bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)  
<[bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)> wrote:

Karl, Please provide the information as requested if you are interested in it being submitted for review/consideration.

Brent

Sent via the Samsung Galaxy S®6 active, an AT&T 4G LTE smartphone

----- Original message -----

From: Karl Rubinstein <[karl.rubinstein@gmail.com](mailto:karl.rubinstein@gmail.com)>  
Date: 1/17/18 11:49 AM (GMT-06:00)  
To: Becky Perrin <[becky@pipoa.net](mailto:becky@pipoa.net)>, Brent Moore  
<[bmoore1@stx.rr.com](mailto:bmoore1@stx.rr.com)>, John Bell <[jdbell@wbwpc.com](mailto:jdbell@wbwpc.com)>  
Subject: Your Second Opinion

I'm happy to know the PIPOA will be seeking a second opinion regarding the 2013 Bylaws and the ARCH proposed Bylaw amendments. And I'm also pleased at the opportunity

to give your new counsel the detailed reasons for my own legal conclusions. Just as it was beneficial for me to get a second opinion from Peter Kilpatrick, so will it benefit your thinking to get a second opinion of your own. I would be particularly interested in your new counsel's views on the wording of our two proposed Bylaw amendments. At the same time, unless the second opinion is from a truly independent attorney, it won't have much persuasion value. Once we both have our second opinions we can proceed as we choose, but I hope your counsel will help you see the value of having a fair up or down vote on the two amendments. As I've said, I expect those on our side will abide by the outcome of a fair election.

Back to your independent counsel, I would like to know his or her identity and CV. I would of course honor your request to not contact your lawyer, but also think the process would benefit if it has a mechanism for John and I to have an opportunity to discuss our views with your new lawyer.

Because you have set a deadline, we need to have the ground rule discussion I suggested in my earlier email to the three of you. I can't see how we could proceed without this and without a clear understanding we will both continue to be free to pursue our independently chosen courses but will take under consideration any new independent opinion. Please get back to me sooner, rather than later.

Regards,  
Karl

## Becky Perrin

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**From:** Becky Perrin <becky@pipoa.net>  
**Sent:** Tuesday, January 16, 2018 11:26 AM  
**To:** bmoore1@stx.rr.com  
**Subject:** FW: Engagement Letter- Padre Isles Property Owners Association, Inc.  
**Attachments:** Engagement Letter- Padre Isles Property Owners Association, Inc..pdf

Please sign and drop off or scan back to me, I will need the original for our files. I have sent all the requested information to the law firm for their review.

Becky

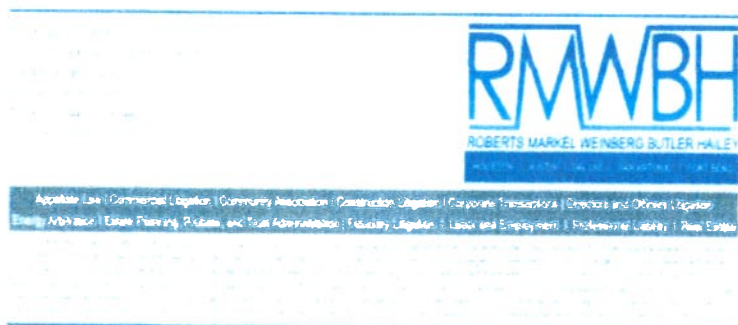
Mrs. Perrin,

Attached is our firm's engagement letter for the subject-referenced matter. Please return an executed copy of the same to my attention via email at your earliest convenience. Additionally, please forward me copies of any documents relevant to this matter, including the Association's governing documents. Should you have any questions or concerns, please feel free to contact me via email, or by phone at (214) 365-9290.

Thank you!

*Roberts Markel Weinberg Butler Hailey PC is a debt collector attempting to collect a debt, and any information obtained as a result of this correspondence shall be used for that purpose.*

Ashley Koirtyohann  
Associate Attorney  
[akoirtyohann@rmwbhlaw.com](mailto:akoirtyohann@rmwbhlaw.com)



## Becky Perrin

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**From:** Becky Perrin <becky@pipoa.net>  
**Sent:** Tuesday, January 16, 2018 9:19 AM  
**To:** 'Ashley Koirtyohann'  
**Subject:** RE: Engagement Letter- Padre Isles Property Owners Association, Inc.  
**Attachments:** Bylaws 1994.pdf; Bylaws 2013.pdf

Ashley,

Here is the information requested. I am waiting for our Board President to sign the Engagement Letter and scan it back to me. Once I have it I will email it to you. If there is anything else you need please let me know.

Thank you,  
Becky Perrin  
Executive Director  
Padre Isles Property Owners Association

Access to all information is available at our website - <http://padreislespoa.net/bylaws-covenants/>

2017 Bylaws - <http://padreislespoa.net/bylaws-covenants/bylaws-2017-1128-approved-recorded/>

Articles of Incorporation - <http://padreislespoa.net/wp-content/uploads/2014/03/Articles-of-Incorporation-2.pdf>

Covenants by Subdivision

[Barataria-Bay-1-2.pdf](#) [Barataria-Bay-3.pdf](#) [Barataria-Bay-4.pdf](#) [Barataria-Bay-5.pdf](#)

[Commodores-Cove-1.pdf](#) [Commodores-Cove-2.PDF](#)

[Coquina-Bay.pdf](#)

[Galleon-Bay-2\(Section-No2\).pdf](#) [Galleon-Bay-3\(Section-No3\).pdf](#)

[ISLAND FAIRWAY ESTATES.pdf](#) [Island-Fairway-Blocks-29-31-32-33.PDF](#) [Island-Fairway-Blocks-29-31-32-33.PDF](#) [IslandFairwayEstates blk41 - 42.pdf](#) [Island-Fairway-Estates-Block-3-45-46.pdf](#)

[Mariners-Cay.PDF](#) [Mariners-Cay-2-2A.pdf](#)

[Point-Tesoro-1.pdf](#) [Point-Tesoro-2.pdf](#) [Point-Tesoro-3.pdf](#) [Point-Tesoro-4.pdf](#) [Point-Tesoro-5.pdf](#)

[Ports-O'Call.pdf](#) [Sea-Pines-1.pdf](#)

[Section-A.pdf](#) [Section-B.pdf](#) [Section-C.pdf](#) [Section-D.pdf](#) [Section-E.pdf](#)

[Section-No-1-Blocks-1-2-B-Lots.pdf](#) [Section-No-1-Blocks-35-36.pdf](#)

[Tradewinds-\(Section-No-4\).pdf](#)

## Becky Perrin

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**From:** John Bell <jdbell@wbwpc.com>  
**Sent:** Thursday, January 04, 2018 2:01 PM  
**To:** Becky Perrin; Brent Moore (bmoore1@stx.rr.com)  
**Subject:** FW: Padre Isle POA Bylaws Issue

See response below from the law firm. I've sent the names so they can run a conflict check and make sure they do not have any issues.

John

-----Original Message-----

From: Clayton Hearn [mailto:chearn@rmwbhlaw.com]  
Sent: Thursday, January 04, 2018 10:37 AM  
To: John Bell  
Cc: Ashley Koirtyohann  
Subject: RE: Padre Isle POA Bylaws Issue

John,

We're fairly familiar with this issue and I'd like to help out with an opinion. Can you give me the retired attorney's name so I can run a conflict check?

I anticipate no more than \$1500 to review the materials, talk to the lawyer and prepare an opinion.

Clayton Hearn  
Roberts Markel Weinberg Butler Hailey PC  
214.365.9290  
<http://www.rmwbhlaw.com>

Roberts Markel Weinberg Butler Hailey PC is a debt collector attempting to collect a debt, and any information obtained as a result of this correspondence shall be used for that purpose.

-----Original Message-----

From: John Bell [mailto:jdbell@wbwpc.com]  
Sent: Thursday, January 4, 2018 8:59 AM  
To: Clayton Hearn  
Cc: Ashley Koirtyohann  
Subject: RE: Padre Isle POA Bylaws Issue

Clayton,

I hope that you are doing better. Please let me know if you can help on this issue.

John

-----Original Message-----

From: Clayton Hearn [mailto:chearn@rmwbhlaw.com]

Sent: Friday, December 29, 2017 7:39 PM

To: John Bell

Cc: Ashley Koirtyohann

Subject: Re: Padre Isle POA Bylaws Issue

I'll get you a proposal. Been ill with the flu all week but will be raring to go Monday.

Clayton Hearn  
214-755-8974

----- Original message -----

From: John Bell <jdbell@wbwpc.com>

Date: 12/29/17 3:32 PM (GMT-06:00)

To: Clayton Hearn <chearn@rmwbhlaw.com>

Subject: Padre Isle POA Bylaws Issue

Clayton,

I hope that you are doing well and ready to start a new year. The Padre Isles POA has about 5,300 members and has existed since 1976. We have a current kerfuffle related to the Bylaws, and the board would like to get an outside legal opinion on a few questions in dispute. Please let me know if you or someone in your firm could provide an opinion on the following:

1. Does the board of directors have the authority to amend the bylaws pursuant to Section 22.102 of the BOC? The original bylaws of 1976 tracked the Non-Profit Corporation Act language in effect at that time stating that the Bylaws could be amended by the members and may be amended by the board of directors if the membership delegated such authority to the board. The NPCA was amended in 1993 to the current language in 22.102 of the BOC which says the board of directors may amend the bylaws, subject to three exceptions. In 2013, the Board adopted amendments to the bylaws to make a number of conforming amendments to procedures required under Chapter 209 and conform the bylaws to the then-existing operations of the POA since the Bylaws had not been touched in about 20 years. One of the amendments was adding to the existing "Amendments" section that in addition to amendment by the membership, provided that "the Board of Directors may amend the bylaws" tracking the language of 22.102. In August of 2017, a retired attorney who is a member of the POA wrote letters to the editor in the local weekly newspaper on Padre Island alleging that the 2013 bylaw amendments were illegal since the bylaws only could be amended by the membership. He asserts that the membership never approved any amendment adopting the state law or alternatively that the original bylaws provision that the membership could delegate the authority to the board to amend the bylaws was an expressed reservation of the right to amend the bylaws under BOC 22.102(c)(3).

2. Does the following proposed bylaw amendment violate BOC 22.102(b) in requiring that any nonprofit corporation bylaws be consistent with the law?



"The PIPOA Bylaws may not be amended, repealed, adopted, or otherwise effected by the PIPOA Board, all such power being herewith reserved unto the Voting Members, and only the Voting Members."

The above amendment is being circulated among the POA membership in a proxy solicitation attempting to get the required 10% of the membership to approve it in order to put it on the agenda for a membership meeting. The board has declined to put the proposition on the agenda for the next annual meeting in March believing that it would violate Section 22.102 of the BOC.

If you or someone in your firm would accept this project, we will provide you copies of the 1976 bylaws, the 1994 bylaws and the 2013 bylaws as amended, the letter arguments by the retired attorney and my responses to him. The retired lawyer also may want to have a telephone conference with the attorney preparing the opinion to explain his position.

Please let me know if you or someone in your firm would do this and the financial requirements involved – hourly rate and estimated cost, or flat fee, and the amount of any retainer, if required.

Thanks for your consideration and have a happy new year,

John

John D. Bell  
Wood, Boykin & Wolter, P.C.  
615 N. Upper Broadway, Suite 1100  
Corpus Christi, Texas 78401-0748

361-888-9201

FAX 361-888-8353

[cid:image001.jpg@01D380B9.FFE9BDD0]

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Clayton Hearn

Shareholder

chearn@rmwbhlaw.com<mailto:chearn@rmwbhlaw.com>

[cid:85e4b8.png@90a01fdb.4aa48245]

## Becky Perrin

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**From:** John Bell <jdbell@wbwpc.com>  
**Sent:** Friday, December 29, 2017 4:28 PM  
**To:** Brent Moore (bmoore1@stx.rr.com); Becky Perrin  
**Subject:** Padre Isle POA Bylaws Issue

Brent and Becky,

In response to the board's request for another legal opinion on the bylaws issue, I've reached out to an attorney I know at ROBERTS MARKEL WEINBERG BUTLER HAILEY P.C. They have offices in Dallas, Houston, Austin and San Antonio, and have a large group specializing in community association law. Their website is below:

<http://rmwbhlaw.com/>

My email to him is below. Since he is a litigator primarily doing association cases, he probably will not be the one handling this question. Let me know if you believe that the board has other questions about the bylaws – I've tried to boil it down to two key issues without having them give us a treatise on bylaws generally.

I'll let you know what I hear. If you know of other firms out of town doing HOA law let me know.

John

**From:** John Bell  
**Sent:** Friday, December 29, 2017 3:32 PM  
**To:** 'chearn@rmwbhlaw.com'  
**Subject:** Padre Isle POA Bylaws Issue

Clayton,

I hope that you are doing well and ready to start a new year. The Padre Isles POA has about 5,300 members and has existed since 1976. We have a current kerfuffle related to the Bylaws, and the board would like to get an outside legal opinion on a few questions in dispute. Please let me know if you or someone in your firm could provide an opinion on the following:

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If you or someone in your firm would accept this project, we will provide you copies of the 1976 bylaws, the 1994 bylaws and the 2013 bylaws as amended, the letter arguments by the retired attorney and my responses to him. The retired lawyer also may want to have a telephone conference with the attorney preparing the opinion to explain his position.

Please let me know if you or someone in your firm would do this and the financial requirements involved – hourly rate and estimated cost, or flat fee, and the amount of any retainer, if required.

Thanks for your consideration and have a happy new year,

John

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