



GF-2523-09-1363-ml

**SECOND AMENDED DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS**

**For**

**EVIA**

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR EVIA (the "Second Amended Declaration"), is made on this the \_\_\_ day of November, 2009 by EVIA PARTNERS, LTD., a Texas limited partnership ("Developer"), for the purpose of evidencing the covenants, conditions and restrictions contained herein.

**WITNESSETH:**

WHEREAS, Developer, as the owner of certain real property in Galveston County, Texas known as the Evia Phase I, according to the map or plat thereof recorded in volume 2004A page 186 of the Galveston County Official Public Records of Real Property (the "Real Property") and shown on Exhibit A (as amended by replat filed under volume 2005, page 145), executed that certain Declaration of Covenants, Conditions and Restrictions for Evia (the "Declaration"), which was recorded under Clerk's File No. 2005009466 in the Galveston County Official Public Records of Real Property; and

WHEREAS, Developer executed that certain First Amended Declaration of Covenants, Conditions and Restrictions for Evia (the "First Amended Declaration"), which was recorded under Clerk's File No. 2006016459 in the Galveston County Official Public Records of Real Property on March 15, 2006; and

WHEREAS, Developer has determined that the Declaration and First Amended Declaration contain various errors and omissions and should be amended and restated as set forth hereinbelow, including certain changes in the requirements of Institutional Lenders as contemplated by the Declaration; and

WHEREAS, Developer has taken all actions necessary to amend and restate the Declaration and First Amended Declaration in accordance with its terms;

NOW THEREFORE, Developer hereby declares that all of the Real Property, and such additional Real Property as may hereafter be included in accordance with the provisions of this Second Amended Declaration, shall be known as Evia, and shall hereafter be owned, held, used, enjoyed and conveyed subject to the terms of this Second Amended Declaration, which shall run with the title to all such Real Property and shall be binding upon all Persons having any right, title or interest in such Real Property, their heirs, successors, successors-in-title and assigns.

## ARTICLE I

### General Provisions

The terms used in this Second Amended Declaration are intended to have their normal, commonly understood meanings except as otherwise specified. Capitalized terms used in the Governing Documents shall have the meanings ascribed to them in Exhibit B, "Definitions of Significant Terms," unless the context specifies otherwise.

#### 1.1 Scope of Second Amended Declaration and Jurisdiction of Congress

This Second Amended Declaration shall govern the ownership, development, and use, and the transfer or conveyance of any interest in, the Real Property now or hereafter comprising Evia. Except as may otherwise specifically be provided in this Second Amended Declaration, the jurisdiction of the Evia Congress shall extend to all of Evia, as it now exists or as it may be expanded.

#### 1.2 Evia Register

For the purpose of beneficially securing and enriching the visual character of Evia, the Evia Register sets forth various design guidelines for construction within Evia. The Evia Register is intended to establish a consistent thematic harmony throughout Evia. Variances from the Evia Register may be granted on the basis of architectural merit.

The Developer may modify the Evia Register, subject to any necessary approval of the City of Galveston, to accommodate and respond to changes in technological, economic, environmental, legal, and social conditions that affect Evia's development, marketing, community operations, or achievement of the purposes and intent of this Second Amended Declaration.

By acceptance of a deed conveying title to a Lot, the Owner of such Lot shall be deemed to consent to any amendments or modifications to the recorded subdivision Plat for Evia or to the Evia Register, including amendments for the purpose of making technical corrections, defining easements and making boundary line adjustments affecting the Owner's Lot.

## ARTICLE II

### Evia Congress

#### 2.1 Establishment of Congress

The Developer has filed Articles of Incorporation for a nonprofit corporation known as The Evia Congress with the State of Texas establishing the Congress as a nonprofit corporation under Texas law. The Congress is the primary body responsible for administering this Second Amended Declaration. The Congress is charged with duties and powers prescribed by law and the Governing Documents. The Congress' primary purposes are to promote the purposes and intent of this Second Amended Declaration, to carry out the duties assigned to it and exercise the authority granted to it under the Governing Documents, which duties shall include the ability to own, sell, operate, manage, maintain and control certain properties for the benefit of Owners.

In accordance with its Articles of Incorporation and Applicable Law, the Congress may delegate any of its powers or duties, may merge with another organization similar in nature and purposes, or may assign its rights and obligations under the Governing Documents to any such organization. However, no such merger or assignment shall have the effect of revoking, changing, or adding to the provisions of this Second Amended Declaration in the absence of an amendment to this Second Amended Declaration adopted in accordance with the terms hereof.

## 2.2 Structure and Operation of the Congress

(a) Membership. There shall be two classes of membership in the Congress, as follows:

(1) Developer. The Developer shall hold a Developer membership in the Congress as long as it has any rights under Article IX of this Second Amended Declaration.

(2) Owners. Each Owner shall automatically become a member of the Congress upon taking title to a Lot in Evia and shall remain a member as long as such Owner continues to own any Real Property in Evia. There shall be only one membership per Lot. If title to a Lot is held jointly, all Owners of such Lot shall share the privileges and responsibilities of such membership. In the event that all or any portion of any Lot, as originally platted within the Real Property, is later divided or combined with another Lot (or portion thereof), the Owner or Owners of such Lot(s) shall remain responsible for the assessments described hereinbelow, based upon the original map or plat of the Subdivision. For example, in the event that two Owners wish to subdivide three contiguous Lots into two larger lots, the subdivided Lots shall continue to be assessed in future years based upon the original three Lot configuration, and the subdividing Owners shall remain responsible for their respective portion of any future assessments based upon the original three Lots. The membership rights of an Owner that is not a natural person may be exercised by any officer, director, member, partner or trustee, or by the individual designated from time to time by the Owner by written notice to the Congress.

(b) Administration.

(1) Board of Trustees. Except to the extent that the Governing Documents or Applicable Law specifically provide for a vote of the membership, or of particular classes of members, for certain actions, or otherwise assign specific responsibilities to other bodies, all of the rights and powers of the Congress shall be vested in a Board of Trustees selected as provided in the Bylaws and may be exercised without a vote of the membership.

(2) Evia Design Committee. The Evia Design Committee, consisting of three (3) members selected as provided in Article IV, shall act on Owners' requests for approval of proposed Improvements and changes to existing Improvements. After termination of the Developer's right to appoint the Evia Design Committee, Owners may appeal Design Committee decisions to the Board of Trustees.

(3) Evia Town Cottage Committee. The Evia Town Cottage Committee shall be formed, pursuant to Congress' authority to delegate set forth in Article 2.1, for the purpose of addressing and managing issues specifically related to the Evia Town Cottages, and shall also be empowered by the Congress to: (1) collect and remit to Congress, the semi-annual assessments levied upon the owners of townhome Lots by virtue of their membership in the Congress; (2) levy Specific Area Assessments on the townhome Lots, as described more particularly in this Second Amended Declaration; (3) prepare and maintain a separate set of books and accounting procedures

covering the operation of the Committee, and provide the Congress with copies of such books and records no less than annually; and (4) maintain, at its election and if possible, a reserve account that may be used to supplement the costs associated with certain long-term maintenance items unique to the Town Cottages including but not limited to, exterior painting, roof repair, roof replacement, landscaping and irrigation maintenance. Membership in the Evia Town Cottage Committee shall be limited to those owners of townhome Lots, will be determined in accordance with the provisions of Article 2.2(a), above, and shall be in addition to Membership in the Congress. The Evia Town Cottage Committee members shall elect Committee Officers in accordance with the procedures set forth in the Bylaws of the Congress. Issues unique to the Evia Town Cottages will be decided by vote of this Committee, and may include: exterior maintenance (including roof repair or replacement), the procurement of group or block insurance covering the structural components of the Evia Town Cottages (including but not limited to property, windstorm and flood coverage) and landscape and irrigation maintenance. IN NO EVENT SHALL THE EVIA TOWN COTTAGE COMMITTEE HAVE AUTHORITY TO CONTRAVENE ANYTHING SET FORTH IN THIS SECOND AMENDED DECLARATION, OR IN THE ARTICLES OF INCORPORATION OR THE BYLAWS OF THE EVIA CONGRESS, AND ALL EXHIBITS THERETO. TO THE EXTENT THAT ANY DECISION, VOTE OR RESOLUTION BY THE EVIA TOWN COTTAGE COMMITTEE CONFLICTS WITH THE PROVISIONS OF THIS SECOND AMENDED DECLARATION OR WITH THE GOVERNING INSTRUMENTS OF THE EVIA CONGRESS, SUCH DISCREPANCY SHALL BE RESOLVED IN FAVOR OF THE SECOND AMENDED DECLARATION AND/OR GOVERNING INSTRUMENTS.

### **2.3 Voting Rights**

Owners must be in good standing with the Congress to vote on matters arising before the Congress. To be in good standing, an Owner must be current to within thirty (30) days of the due date of all financial obligations to the Congress and must be in compliance with all requirements of the Governing Documents. Voting rights shall be as follows:

(a) Owners. On any matter requiring a vote or the Approval of Owners under the Governing Documents, an Owner is entitled to one vote for each Lot as to which he or she is an Owner, except that there shall be only one vote for each Lot regardless of the number of Owners who jointly hold title to a Lot. In the case of a Lot to which title is held jointly, the vote for such Lot shall be cast as the joint Owners determine among themselves and advise the Secretary of the Congress in writing prior to a vote being taken. In the absence of such advice, any Owner casting the vote for such Lot shall be presumed to have the concurrence of all Owners and if more than one Owner attempts to cast the vote for such Lot, the vote shall be suspended. The right to cast an Owner's vote shall not be assigned, transferred, pledged, hypothecated, or alienated in any way except by duly executed proxy as may be permitted in the Bylaws.

(b) Developer. So long as the Developer Membership exists, the Developer shall not vote as an Owner but shall be entitled to grant or withhold its Approval of certain actions as set forth in the Governing Documents, in addition to such other rights as are specifically granted or reserved to the Developer under the Governing Documents.

### **2.4 Congress's Lien and Assessments**

(a) Establishment of Personal Obligation and Lien for Assessments. The Congress shall levy assessments in accordance with this Section 2.4 upon each of the three hundred eighty-eight (388) Lots in Evia, as originally platted and filed covering the Real Property, to fund the expenses

that the Congress incurs, or expects to incur, in exercising its authority and performing its duties under the Governing Documents. Each Owner shall be personally obligated to pay all assessments levied upon such Owner's Lot (or any portion thereof) during the period that he holds title to such Lot, and shall be jointly and severally obligated with the former Owner for any assessments which are unpaid at the time of his acquisition of title to the Lot. In addition, such personal obligation shall include the obligation to pay late charges, in such amount as the Board of Trustees may establish by resolution, and interest (computed from the due date at a rate of ten percent (18%) per annum or such higher rate as the Board of Trustees may establish, subject to the limitations of Applicable Law) on delinquent assessments, and costs of collection, including reasonable legal fees, whether or not suit is filed. The Congress shall have a continuing lien against each Lot to secure the payment of delinquent assessments and the additional charges authorized in this section, which lien shall be subordinate to any federal, state or local tax liens and any first mortgage liens, but shall have priority over all other liens (except as may be provided to the contrary under Texas law).

The Congress may foreclose its lien in the manner permitted by Texas law, including by means of nonjudicial foreclosure. Alternatively, the Congress may sue for unpaid assessments and other amounts authorized hereunder without foreclosing or waiving its lien. All such action shall be taken in accordance with the requirements of the Texas Property Code, as amended, including Chapter 209 thereof.

The obligation to pay assessments may not be avoided by non-residency, non-use of the Commons, abandonment of the Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner and may not be offset, reduced or avoided by reason of any action or inaction on the part of the Congress. The sale or transfer of a Lot shall not affect the obligation for assessments or the Congress' lien, except that the sale or transfer of any Lot pursuant to the foreclosure or deed in lieu of foreclosure of a first Mortgage shall extinguish the lien as to any installments of assessments and other charges due prior to such foreclosure. Any person acquiring title following foreclosure of such a Mortgage shall not be personally liable for assessments or other charges that were due prior to his or her acquisition of title. The liens created in this Section 2.4 are subordinate and inferior to the lien of any first Mortgage.

(b) Types and Computation of Assessments.

(1) General Assessments. The Congress shall levy General Assessments against each of the three hundred eighty-eight (388) originally platted Lots to fund all expenses other than those for which other types of assessments are specifically authorized in this Section 2.4(b). General Assessments shall be levied at an equal rate per originally platted Lot, based on an annual budget of estimated expenses that takes into account the number of Lots subject to assessment and the sources and estimated amounts of fund to cover such expenses. In the event that any Lot is subdivided and combined with an adjacent Lot for the convenience of the Owners thereof, such subsequent replatting shall not affect the obligations of the Owners with respect to the General Assessments contemplated in this Section. The Board of Trustees shall be responsible for preparing and adopting the budget and revising it as appropriate, and shall provide notice of the amount of assessment and a copy of the budget, as it may be revised, to each Owner at least thirty (30) days prior to the effective date thereof.

Any budget or revision adopted by the Board of Trustees shall automatically take effect sixty (60) days after the date of its adoption by the Board of Trustees unless disapproved at a

meeting of the Congress by the Owners entitled to cast at least 66.67% of the total eligible votes of Owners and by the Developer, if the Developer membership exists. The Board of Trustees shall not be obligated to call a meeting of the Congress to consider any budget except upon a petition of the Members pursuant to the Bylaws presented within ten (10) days after the date of the assessment notice. If any proposed budget is disapproved or the Board of Trustees fails for any reason to adopt a budget for any year, the budget most recently in effect shall continue until a new budget is determined in accordance with this Section. Subject to the rights of the Owners to disapprove any budget, the Board may retroactively budget and assess for any expenses incurred, or shortfalls experienced by the Congress.

(2) Specific Area Assessments.

(a) To the extent specifically authorized in this Second Amended Declaration, the Board of Trustees may levy Specific Area Assessments for the costs of benefits or services that the Congress provides to the Lots within all or any specific areas of Evia. Specific Area Assessments shall be levied in such manner as specified in the provision of this Second Amended Declaration authorizing the same.

(1) Pursuant to this grant of authority, the Evia Town Cottage Committee may levy Specific Area Assessments against the owners of the townhome Lots, for the cost of services or benefits provided solely to those Lots. These Specific Area Assessments may include the owner's share of block property insurance, exterior maintenance costs or landscape maintenance or irrigation costs for the townhome Lots.

(2) In addition, Special Assessments may include amounts necessary for the repair and reconstruction of any items damaged or lost due to natural disaster (including structural components, landscaping, fencing or irrigation systems) and which were not covered by policies of insurance placed by the Congress with respect to the Subdivision and not covered by any reserve accounts which may be maintained by the Congress or any Committee thereof.

(b) A Specific Area Assessment may be levied against the Lot of an Owner who has been found, in the manner set forth in the Bylaws, to have violated any provisions of the Governing Documents if the Congress elects to achieve compliance at its cost and assess the Lot Owner for same. By way of example and not limitation, a Special Assessment in an amount to be determined by the Congress, may be levied against any Owner who fails to maintain any Lot, whether developed or undeveloped, in accordance with the Governing Documents. The Congress may consider direct as well as consequential costs such as legal fees and increased insurance or operating costs. Each Owner shall have ultimate responsibility for damages sustained by the Congress as a result of actions by the Owners' lessees, guests or invitees.

## **2.5 Powers and Responsibilities of Congress**

(a) Enforcement of Governing Documents. Subject to applicable provisions of the Texas Property Code, the Congress may impose sanctions for violation of the Governing Documents after notice and a hearing and exhaustion of appeal rights in accordance with the procedures set forth in the Bylaws. The Owner shall be responsible and may be sanctioned for violations by an occupant, guest or invitee of his Lot. Sanctions may include:

(i) imposition of reasonable monetary fines that shall constitute a lien upon the violator's Lot. Such fines may include, but not be limited to, a \$250.00 fine to be levied on a per item basis, for any item identified by the Congress or by the Evia Design Committee as being non-

compliant with the requirements governing the Subdivision as set forth in the Governing Documents;

(ii) suspension of the right to vote;

(iii) suspension of the right to use the Commons other than as reasonably necessary to gain access to one's Lot;

(iv) suspension of any services that the Congress provides to the Lot of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Congress;

(v) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(vi) requiring removal of any structure or improvement in violation of Article IV and restoration of the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the Lot to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vii) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Evia Register from continuing or performing any further activities in Evia; and

(viii) assessing all costs incurred by the Congress to effect compliance with the Governing Documents against the responsible Owner and his or her Lot.

In addition, the Board of Trustees may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the Bylaws:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of provisions of the Evia Rules regulating parking); or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

All sanctions and remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Congress prevails, it shall be entitled to recover all costs, including, attorneys' fees and court costs, reasonably incurred in such action.

The decision to pursue enforcement action in any particular case shall be left to the Board of Trustee's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case, (i) the Congress' position is not strong enough to justify taking any or further action; or that (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) although a technical violation

may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Congress' resources, or (iv) that it is not in the Congress' best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action. Such decision shall not be construed a waiver of the right of the Congress to enforce such provision at a later time under other circumstances or preclude the Congress from enforcing any other covenant, restriction or rule.

(b) Litigation. The Congress may institute, defend, settle, or intervene in, mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Commons, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Congress or its members.

(c) Provision of Services. The Congress may provide services and facilities for the Owners, and their Lots, and shall be authorized to enter into and terminate contracts or agreements with third parties, including the Developer, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities, or may include the costs thereof in the Congress' operating budget and assess it as part of the General Assessment if provided to all Lots. By way of example, such services and facilities could include landscape maintenance, pest control service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities. Nothing in this Section shall be construed as a representation as to what, if any, services shall be provided. In addition, the Board of Trustees shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided or offered to all Lots shall not exempt any Owner from the obligation to pay assessments for such services.

(d) Safety and Security. Each Owner, occupant, lessee and invitee of Real Property in Evia is responsible for his or her own safety and the security of his or her property in Evia. However, the Congress may, but shall not be obligated to, maintain or support certain activities within Evia designed to enhance the security and safety measures that each person provides for themselves and their property. In so doing, the Congress assumes no duty or liability for the safety or security of any person or property or for loss or injury resulting from acts of third parties. Neither the Congress nor the Developer shall in any way be considered insurers or guarantors of security within Evia, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to Evia, cannot be compromised or circumvented, nor that any systems or security measures undertaken will prevent loss or provide the detection for which the system is designed or intended.

## ARTICLE III

### Standards of Use, Conduct and Maintenance

#### 3.1 Compliance with Governing Documents

Every Owner and occupant of Real Property in Evia shall comply with the Governing Documents. Use and occupancy of Real Property in Evia shall be subject to the provisions of the Governing Documents and the Evia Rules, as they maybe modified, repealed, or supplemented in accordance with the procedures set forth in this Article. The current Evia



Rules are set forth on Exhibit C.

### 3.2 Rulemaking Authority and Procedures

(a) Board Authority. The Board of Trustees may from time to time modify, repeal, or supplement the Evia Rules set forth on Exhibit C by rulemaking action without the necessity of an amendment to this Second Amended Declaration. The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days prior to the Board of Trustees meeting at which such action is to be considered. The Owners shall have a reasonable opportunity to be heard at the meeting prior to the proposed action being put to a vote. Any proposed rulemaking action shall require a majority vote of the Board of Trustees.

(b) Member Authority. The Owners may from time to time modify, repeal or supplement the Evia Rules, or reverse any rulemaking action taken by the Board of Trustees, by a vote at a meeting of the membership of Owners representing more than fifty percent (50%) of the total eligible votes of Owners, and by the Developer Member, if still in existence.

(c) Notice. Prior to any action taken under this Section becoming effective, the Board of Trustees shall send notice of the action taken to each Owner. The effective date shall be not less than thirty (30) days following the date of such notice.

(d) Scope of Authority; Conflicts. No rulemaking action taken under this Article shall have the effect of modifying, repealing or expanding the Evia Register or any provision of this Second Amended Declaration other than Exhibit C. In the event of a conflict between the Evia Register and the Evia Rules, the Evia Register shall control. The procedures required under this Section shall not apply to the enactment and enforcement of administrative and procedural rules and regulations governing use of the Commons and such other matters as are left to the discretion of the Board of Trustees under the Governing Documents, unless the Board of Trustees chooses to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times. The Board shall exercise reasonable business judgment in the enactment, amendment, and enforcement of such administrative rules and regulations.

(e) Effect on Real Property. Each Owner, by acceptance, of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Real Property in Evia can be affected by rulemaking action taken under this Article and that the Evia Rules may change from time to time. **All purchasers of Real Property in Evia are hereby put on notice that the Evia Rules as set forth on Exhibit C may have been amended. The Congress shall make current copies of the Evia Rules available to any Owner upon request, and may charge a reasonable fee to cover the cost of reproducing and making such documents available.**

### 3.3 Limitations on Rulemaking Authority

Except as may be set forth in this Second Amended Declaration or in the Evia Rules set forth in Exhibit C, all rulemaking action under this Article shall comply with the following provisions:

(a) Similar Treatment. Similarly situated persons shall be treated similarly; however, the Evia Rules may vary by area and land use.

(b) Displays. The right to display religious and holiday signs, symbols, and decorations inside structures shall not be abridged, except that rules adopted pursuant to this Article may regulate the time, place, and manner of displaying those items visible from outside the structure.

(c) Signs. No rules shall regulate the content of political signs; however, rules may regulate the time, place and manner of posting such signs and establish design criteria, to the extent not addressed by the Evia Register. Lot Owners are required to obtain approval of any proposed signage from the Evia Congress prior to the placement and display of signs within the Real Property.

(d) Activities within Structures. Except for prohibitions related to commercial and rental activities, no rule shall interfere with the activities carried on within the interior of structures, except that it may restrict or prohibit any activities that create monetary costs for the Congress or other Owners, that pose a danger to the health or safety of occupants of other Real Property, that generate excessive noise or traffic, that create unsightly conditions visible from outside of the structures, or that create an unreasonable source of annoyance to persons outside of the structure.

(e) Sales And Rentals. No rule shall prohibit leasing or transfer of any Real Property, or require consent of the Congress or Board of Trustees for leasing or transfer of any Real Property; provided, the rules may require inclusion of specific language for the protection of the Congress and the Owners in each lease and may require that any lease be submitted to and reviewed by the Board of Trustees prior to its effective date.

(f) Abriding Existing Rights. No rule shall require an Owner or occupant of any Lot to dispose of personal property that was maintained in or on his Lot prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership or occupant's residency of the Lot, and shall not apply to subsequent Owners or persons who take title or occupancy after adoption of the rule.

(g) Applicability to Developer. The Evia Rules shall not apply to Real Property owned by the Developer or approved Builders during the duration of Developer's Rights and Obligations under Article IX, to the extent that such rules would interfere with their ability to develop, market or sell such Real Property, as determined in the discretion of the Developer.

### **3.4 Maintenance, Completion and Repair of Real Property**

Each Owner shall be responsible for maintaining such Owner's Real Property in a clean and attractive condition and in good order and repair, and in a manner consistent with the Real Property in Evia. In the event a structure sustains damage clearly visible from the exterior, its Owner shall repair or reconstruct the structure in accordance with its appearance prior to such damage unless the Congress agrees to the contrary. The repair or reconstruction shall be accomplished within ninety (90) days of the damage unless the Congress grants a waiver based upon a finding of hardship. Should an Owner not conform to these provisions, the Congress may accomplish necessary repairs or reconstruction according to its best judgment, and levy an assessment upon the Owner for the costs involved. The Congress shall also have the right to complete the construction of any improvements that the Congress deems to have been abandoned before completion, and charge the cost of such completion to the Owner of the Real Property.

### 3.5 Mixed Use Lots

The Developer shall have the right to designate any Lot as a Mixed Use Lot on the Subdivision Plat or in the deed by which Developer conveys title to the Lot. Mixed Use Lots may be used (i) for residential purposes or (ii) for such commercial purposes as may be specifically authorized in the Plat or deed designating the Lot as a Mixed Use Lot or (iii) for a combination of such uses.

## ARTICLE IV

### Architectural Standards

#### 4.1 General

(a) Approval required. No Improvements shall be made, placed, constructed or installed on any Lot and no exterior modifications to existing Improvements shall be undertaken without prior approval of the Evia Design Committee in accordance with this Article, except that the Developer's activities shall be exempt from this requirement so long as it is engaged in development or construction in Evia.

(b) Evia Register. All Improvements to Real Property in Evia shall conform to the Evia Register unless a variance has been granted in writing pursuant to this Article. The Developer shall have exclusive authority to amend the Evia Register until all of the Real Property described on Exhibit A has initially been developed, after which the power to amend shall pass to the Evia Design Committee. Any amendments to the Evia Register shall be prospective in effect and shall not apply to require modifications to or removal of structures previously approved once construction has commenced.

#### 4.2 Evia Design Committee

(a) Composition. The Design Committee shall be comprised of five persons who shall be appointed, and may be removed and replaced, in the discretion of the Developer, so long as the Developer owns any unimproved Real Property described on Exhibit A, and thereafter in the discretion of the Board of Trustees. The Members of the Design Committee may, but need not, be Owners, and may include architects, engineers or similar professionals who may receive such compensation for their service as the Board of Trustees may determine appropriate.

(b) Fees. The Design Committee may establish and charge reasonable fees to defray costs of administering applications for approval under this Article, and may charge such fees to Owners and Builders.

(c) Powers and Duties. The Evia Design Committee shall receive and act on all applications of Owners seeking approval of proposed Improvements or proposed changes to existing Improvements to Real Property in Evia. The Design Committee shall establish and make available to all Owners guidelines and procedures for applications and required submissions.

The Design Committee may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

The Committee may authorize variances from compliance with the Evia Register or any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations, and only to the extent that such variance is approved by the Board of Trustees. No variance shall (i) be effective unless in writing; (ii) be contrary to this Second Amended Declaration; or (c) bind the Committee to grant a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not automatically be considered a hardship warranting a variance.

#### **4.3 Scope of Review**

In reviewing each application and related submissions, the Design Committee shall be guided by the Evia Register; however, the Evia Register shall not be the exclusive basis for its decisions and compliance with the Evia Register does not guarantee approval of any application. The Design Committee may consider any factors it deems relevant, including harmony of external design with surrounding structures and environment and consistency with the visual themes established for Evia. Its decisions may be based on purely aesthetic considerations. Each Owner, by accepting a deed to Real Property in Evia, acknowledges that determinations as to such matters are subjective and opinions may vary as to the desirability or attractiveness of particular improvements.

The architectural standards and procedures established pursuant to this Article and the Evia Register are intended as a mechanism for maintaining and enhancing the overall aesthetics of Evia and shall not create any duty to any person. The Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size or of similar design.

Neither the Developer, the Congress, nor the Design Committee shall be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; or any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications. In all such matters the Congress shall defend and indemnify the Evia Design Committee and its Members.

#### **4.4 Schedule for Review**

The Design Committee shall notify the applicant of its determination on an application within thirty (30) days after receipt of the completed application and all required information. The Committee may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. In the case of disapproval, the Committee may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U. S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

In the event that the Committee fails to respond within thirty (30) days, approval shall be deemed to have been given; however, no approval deemed to have been given under this paragraph shall be inconsistent with the Evia Register.

After termination of the Developer's right to appoint the Committee, any denial of an application by the Committee may be appealed to the Board of Trustees in accordance with such procedures as the Board of Trustees may establish.

#### **4.5 Commencement and Completion of Construction**

If construction has not commenced on a project for which an application has been approved within one year after the date of approval, such approval shall be deemed withdrawn. Once construction is commenced, it shall be diligently pursued to completion. Unless otherwise agreed in writing by the Design Committee, all elements of proposed Improvements for which plans are approved hereunder shall be completed within one year after the date of approval, or such shorter period as may be specified in any agreement for the purchase of the Lot from the Developer.

### **ARTICLE V**

#### **Easements**

##### **5.1 Validity of Easements**

The provisions of this Article may not be amended or modified in any fashion without concurrence of the Developer as long as Developer retains its Rights and Obligations under Article IX. All easements provided for herein shall run with the title to the land, and shall inure to the benefit of and be binding upon all Owners. Easements running in favor of the Developer, Builders, the Congress, and all other easements, may be transferred to respective comparable entities or persons.

##### **5.2 Easement of Use and Enjoyment**

Subject to such reasonable rules as the Board of Trustees may adopt, all Owners, their lessees, occupants of their Lots, guests and invitees, are hereby granted a non-exclusive easement of use and enjoyment of the Commons. Owners shall be deemed to have delegated their rights of enjoyment to the Commons to their lessees; however, Owners shall remain responsible for damages to the Commons committed by their lessees or lessees' guests or invitees.

##### **5.3 General Easements**

(a) Easement for Public Servants. The Developer does hereby grant to those public servants whose duties include public safety and property protection activities, a perpetual, nonexclusive easement of access through Evia and to, from and over exterior portions of each Lot as necessary to carry out their duties, subject to reasonable processes and requirements of Applicable Law.

(b) Easement for Congress. The Developer does hereby grant to the Congress, its officers, agents contractors and designees, a perpetual, nonexclusive easement over the Real Property comprising Evia as reasonably necessary to carry out its responsibilities and exercise its authority as provided for in the Governing Documents. Such entry shall be preceded by due notice unless an emergency jeopardizing life, limb or property exists.

(c) Easements over Commons. The Congress, acting through the Board of Trustees, shall have a right to grant easements, rights of way, licenses and similar interests over any part of the Commons for any lawful purpose that it determines, in its own discretion, to be consistent with the interests of the Congress.

(d) Easement for Encroachments and Maintenance. The Developer hereby reserves and grants a perpetual, nonexclusive easement over each Lot, not exceeding one foot in width, for the benefit of each adjoining Lot and the Commons, for the purpose of accommodating any encroachment due to settlement or shifting of improvements, roof overhangs, fences constructed, gutters, or draining of rainwater from roofs, and for the maintenance of said encroachments so long as they shall exist. The rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created if such encroachment occurred due to the willful misconduct of the Owner or Owners claiming the easement, and provided further that any such encroachments shall be required to conform to Applicable Law.

In addition, the Developer hereby reserves and grants a perpetual, nonexclusive easement over each Lot for the benefit of adjacent Lots and Commons, not to exceed five feet in width, to permit access for maintenance and repair of the structures on the benefited Lot and for maintenance and repair of easements, Commons, adjacent property and other areas to be maintained by the Congress or the Developer; provided, such easement shall be exercised in a matter that would not be considered a nuisance by a reasonable person, and further provided that the party exercising the easement shall restore to its original condition anything that is disturbed as a result of such maintenance and repair.

(e) Easement for Utility Usage. A mutual right and easement for utility services is hereby granted for the benefit of all Owners, such that no Owner shall take any action which would in any way interfere with utility services being provided to other Owners within Evia. If a Lot contains any utility pipes, ducts, conduits, wires or the like which are for the benefit, in whole or in part, of other Owners within Evia, then the Owner of such Lot shall promptly, at his expense, repair any damage to such utilities caused by Owner, his guests or invitees. The rights and duties with respect to sanitary sewer and water, storm drains, downspouts, yard drains, cable television, electricity, gas and telephone lines, connections and facilities shall be governed by the following:

(1) Whenever utility services have been partially or wholly installed within Evia, the Owner of any Lot, or the Congress shall have the right, and are hereby granted an easement to the extent necessary to enter or have a utility company enter any portion of Evia in which said installations lie to repair, replace and generally maintain said installations.

(2) The right granted in subsection (e)(1) above shall be only to the extent necessary to entitle the Congress or the Owners serviced by said installation to the full and reasonable use and enjoyment of the easement, and provided further that anyone exercising said right shall be responsible for restoring the surface of the easement area so used to its condition, as nearly as practically possible, prior to such use.

(3) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, upon

written request of one of such Owners addressed to the Congress, the matter shall be submitted to the Board of Trustees, who shall decide the dispute, and the decision of the Board of Trustees (or its designee) shall be final and conclusive as to the parties.

(f) Conservation and Landscape Easements. Some Lots may be subjected to non-disturbance easements or similar easements for conservation or wetlands buffering purposes. Further, some Lots may be subjected to landscape easements for the purpose of maintaining specified plantings, levels of maintenance, signs, walls, fences and other decorative structures. The operation of such easements shall be governed by any recorded instruments creating the easements and by policies duly enacted by the Congress pursuant to its authority set forth in this Second Amended Declaration.

(g) Drainage Easements Over Certain Lots. With respect to Lots 85, 101, 105, 119, 137, 188, 200, 201, 202, 203, 204, 205, 206, 207 and 208 and other Real Property on the western boundary of Evia, a drainage easement twenty (20) feet in width is reserved on the Plat. The Owner of each Lot affected by such easement shall be responsible for mowing the easement area. The Congress shall be responsible for any other required maintenance to such easement, and may enter the Lot for such purpose at any time on reasonable notice to the Lot Owner(s).

#### **5.4 Party Walls and Other Shared Structures**

The rights and duties of Owners with respect to party walls and party fences shall be governed by the following.

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure which is constructed as a part of the original construction of structures on Lots, and any part of which is placed on the dividing line between separate Lots and intended to serve both such Lots, shall constitute a party structure. To the extent not inconsistent with this Section, the general rules of law regarding party walls and liability for damage to such structures shall apply.

(b) Sharing of Repair and Maintenance, and Costs of Destruction. The cost of routine maintenance and repair of any party structure shall be shared equally by the Owners of the Lots served thereby, and may be levied as Specific Area Assessments by the Congress or the Evia Town Cottage Committee. If a party structure is damaged or destroyed by a cause other than by the act of only one of the adjoining Owners, his lessees, agents, invitees, or occupants of his Lot (including ordinary wear and tear), then either Owner may restore the structure. Any Owner who thereafter makes use of the structure (personally or through his lessees, agents, invitees, or occupant of his Lot) shall contribute a pro rata share of the costs of restoration.

(c) Repairs of Damage Caused by One Owner. If any party structure is damaged or destroyed through the act of only one adjoining Owner, or any of his agents, invitees, lessees or members of his family or a lessee's family so as to deprive the other adjoining Owner of the full use and enjoyment of such structure, the Owner responsible for such damage shall forthwith proceed to rebuild or repair the wall or fence to as good a condition as formerly, without cost to the adjoining Owner.

(d) Changes to Party Walls and Party Fences. A Owner desiring to make changes to a party structure in any manner affecting either the appearance of such from the adjoining Owner's side, or in any way that may affect the adjoining Owner's use and enjoyment of such, shall secure the written approval of the adjoining Owner, in addition to any other approvals required by this Second Amended Declaration or Applicable Law.

(e) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this section shall be appurtenant to the land, inure to the benefit of, and shall pass to such Owner's successors in title.

(f) Disputes. In the event of a dispute between Owners with respect to the application and force of any provision of this Section, then upon the written request of one such Owner, the matter shall be submitted to the Congress or to the Evia Town Cottage Committee, who shall decide the dispute.

## ARTICLE VI

### **The Commons**

#### **6.1 Title to the Commons**

The Congress shall assume full responsibility for the control and maintenance of the Commons as conveyed to the Congress by the Developer unless contrary provisions are made through contract or in the instrument of conveyance. Upon a vote of 66.67% or more of the Owners, the Congress may transfer title to some or all of the Commons to another entity.

#### **6.2 Control of the Commons**

The Congress shall be exclusively responsible for the control and management of the Commons, as well as any property over which it has responsibilities by virtue of a lease, rental agreement, other contract or easement.

#### **6.3 Condemnation or Taking**

Proceeds from the disposition of the Congress's Real Property by ordinary sale, condemnation or taking by eminent domain, shall be used for such purposes as the Congress determines. No Owner shall have any right to any portion of such funds for his personal benefit.

#### **6.4 Damage to Commons**

In the event of damage to or destruction of Commons or other property which the Congress is obligated to insure, the Board of Trustees or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements shall be repaired or reconstructed unless Owners entitled to cast at least seventy-five percent (75%) of the total eligible votes of Owners, and the Developer Member, if still in existence, agree within sixty (60) days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Congress within



such sixty (60) day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee (other than a Mortgagee holding a lien on the affected area of the Commons) shall have the right to participate in the determination of whether the damage or destruction to the Commons shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Congress in a neat and attractive, landscaped condition.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Congress for the benefit of its Members and placed in a capital improvements account.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Trustees may, without a vote of the members, levy special assessments to cover the shortfall.

## ARTICLE VII

### Insurance

#### 7.1 Required Coverages

The Congress shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on The Commons and any other Real Property that the Congress is responsible to repair or replace in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. Such insurance shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes, less a reasonable deductible;

(a) Commercial general liability insurance, insuring the Congress and its Members for damage or injury caused by the negligence of the Congress or any of its members, employees, agents, or contractors while acting on its behalf, in such amount as the Board of Trustees deems prudent; provided, if generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least One Million and No/100 Dollars (\$1,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage;

(b) Directors and officers liability coverage, applicable to the Congress and to the officers of the Evia Town Cottage Committee;

(c) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Congress funds in an amount-determined in the Board's reasonable

business judgment. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(d) Such additional insurance as may be required by law or as the Board, in the exercise of its reasonable business judgment, determines advisable.

(e) The Evia Town Cottage Committee may elect to obtain group or block homeowner's insurance for the sole benefit of the Town Cottage owners ("block insurance"), and the premiums for such coverage shall be passed along to the Town Cottage owners as Specific Area Assessments pursuant to Article 2.4(b)(2)(c), above. **SUCH POLICY OR POLICIES OF INSURANCE MAY INCLUDE EXTERIOR WALLS AND ROOF, INTERIOR WALLS, PAINT, WALLPAPER, BUILT-IN APPLIANCES, FLOOR COVERINGS, BUILT-IN LIGHTING, CEILING FANS AND WINDOW COVERINGS, BUT SHALL NOT INCLUDE COVERAGE FOR OTHER CONTENTS (SPECIFICALLY INCLUDING PERSONAL PROPERTY COVERAGE), POLICIES FOR WHICH SHOULD BE OBTAINED BY THE OWNERS INDIVIDUALLY. IN THE EVENT THAT THE EVIA TOWN COMMITTEE ELECTS TO OBTAIN SEPARATE FLOOD AND WINDSTORM COVERAGE COVERING THE TOWN COTTAGES, SUCH POLICY OR POLICIES OF INSURANCE WILL COVER ONLY THE STRUCTURES. IF ANY TOWN COTTAGE OWNER WISHES TO OBTAIN FLOOD AND WINDSTORM COVERAGES FOR DAMAGE TO PERSONAL PROPERTY, IT SHALL BE SOLELY THE RESPONSIBILITY OF THE OWNER TO OBTAIN SUCH POLICY OR POLICIES.**

Premiums for all insurance maintained by the Congress under Article 7.1(a)-(d), above, shall be included in the General Assessment levied against each Lot pursuant to Section 2.4.

## **7.2 Policy Requirements (other than Block Insurance)**

All policies shall provide for a certificate of insurance to be furnished to the Congress.

The policies may contain a reasonable deductible. In the event of an insured loss, the deductible shall be allocated among the Lots in the same manner as the premium for the applicable insurance coverage.

All insurance coverage obtained by the Congress shall:

(a) be written with a company authorized to do business in Texas which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(b) be written in the name of the Congress as trustee for the benefited parties. Policies on the Commons shall be for the benefit of the Congress and its Members. Policies covering individual Lots shall be for the benefit of the Owner of the Lot and its Mortgagee, as their interests may appear;

(c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(d) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest, as a Member of the Congress, in the Commons;

(e) provide a waiver of subrogation under the policy against any Owner or occupant of a Lot;

(f) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any curable defect or violation without prior written demand to the Congress to cure the defect or violation and allowance of a reasonable time to cure; and

(g) include an endorsement precluding cancellation, invalidation, or denial of benefits under the policy on account of any act or omission of any one or more individuals, unless such individuals are acting within the scope of its authority on behalf of the Congress.

(h) include an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause; and

(i) include an endorsement requiring at least thirty (30) days' prior written notice to the Congress of any cancellation, substantial modification, or non-renewal.

## ARTICLE VIII

### Protection of Lenders

#### 8.1 Right to Notice of Certain Actions

Any Institutional Lender who provides a written request to the Congress stating its name and address and the street address of the Real Property to which its Mortgage relates ("Mortgaged Property") will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of ~~Evia or which affects the Mortgaged Property;~~

(b) Any delinquency in the payment of assessments or charges owed on the Mortgaged Property which has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to the Mortgaged Property or the Owner or occupant thereof which is not cured within sixty (60) days; or

(c) Any lapse, cancellation, or material modification of any insurance policy that the Congress maintains.

## ARTICLE IX

### Developer's Rights and Obligations

To secure the Developer's interests in development of Evia, to further the principles, missions and goals upon which Evia is founded, the Developer shall have the benefit of certain rights and shall be subject to certain obligations as set forth in this Article and elsewhere in the Governing Documents.

### **9.1 Duration of Developer's Rights and Obligations**

The duration of Developer's Rights and Obligations under this Article shall extend until the conveyance of all Lots contained in the Real Property described in Exhibit A to Owners other than Developer (including Builders), except that some specific Developer's Rights and Obligations may expire as modified herein by virtue of their being tied to the occurrence of certain events arising prior to conveyance of all Lots. The Developer, however, may voluntarily terminate and or all of Developer's Rights and Obligations by expressing such in writing to the Congress.

### **9.2 Right to Approve Design Standards**

In consideration of the considerable time, effort and money the Developer has expended in developing the Evia Register, as long as Developer's Rights and Obligations remain in force, no changes shall be made to the Evia Register without Developer's concurrence. However, the Developer may make changes to the Evia Register provided such changes are only prospective in effect.

### **9.3 Amendments and Other Actions Affecting the Developer**

(a) Founding and Governing Documents. The Congress shall make no amendments to the Governing Documents that materially affect the Developer's interests, nor shall the Congress adopt other measures that materially affect the Developer's interests without Developer's concurrence.

(b) Easements. The Congress shall not take action seeking to alter provisions of easements established by the Developer, nor to prevent establishment of easements required by Developer.

### **9.4 Congress-Related Rights and Obligations**

(a) Developer's Responsibilities for Affairs of Congress. The Developer shall be exclusively responsible for conducting the affairs of the Congress until at least one Owner other than Developer has been elected to a seat on the Board of Trustees. Thereafter, the Board of Trustees shall act strictly in conformance with the provisions of the Governing Documents and in accordance with Applicable Law.

(b) Developer's Right to Appoint Board of Trustees The Developer shall have sole and full authority to appoint, remove and replace the members of the Board of Trustees until the earlier of:

(i) the date as of which seventy-five percent (75%) of the total number of Lots located within the Real Property described in the Declaration has been conveyed to persons other than Developer or a Builder;

(ii) twenty (20) years after the date on which the Declaration was recorded in the Public Records; or

(iii) when, in its discretion, the Developer Member so determines.

(c) Developer's Right to Disapprove Actions. So long as the Developer Membership exists, the Developer shall have a right to disapprove any action, policy or program of the Congress, the Board of Trustees, and any committee which, in the sole judgment of the Developer, would tend to impair rights of Developer or Builders under this Second Amended Declaration or the Bylaws, or interfere with development or construction of any portion of Evia, or diminish the level of services being provided by the Congress. Such right to disapprove shall be exercised as set forth in the Bylaws.

## **9.5 Easements for Development, Utilities and Other Purposes**

(a) The Developer reserves for itself, its successors, assigns and designees, a non-exclusive easement over all Real Property within Evia, so long as the Developer owns any Real Property described on Exhibit A, to the extent reasonably necessary for the purpose of (i) installing utilities (including electricity, water; sewer, telephone, cable television and similar systems), infrastructure, and drainage systems to serve any Real Property described on Exhibit A or adjacent property, (ii) establishing or protecting environmental protection zones and special landscape zones, and (iii) any other purposes reasonably related to the founding principles, mission and goals of Evia; provided, such easements, where practicable, shall be restricted to setback areas on Lots, public rights-of-way, the Commons, and such other easement areas as may be reserved on recorded plats. The above reservations shall specifically include the right, where necessary in the Developer's opinion, to grant and record easements in favor of third parties over any Real Property for the purposes set forth in this Section 9.5(a).

(b) The Developer also reserves for itself, its successors, assigns and designees; and grants to the Congress, a perpetual, non-exclusive easement of access over the Real Property in Evia as reasonably necessary for the purpose of inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in subsection (a), and grants to the providers of utilities serving Evia a perpetual, nonexclusive easement of access to read, maintain and repair their respective utility meters.

(c) All work associated with the exercise of the easements reserved and granted in subsections (a) and (b) above shall be performed in such a manner as to minimize interference with the use and enjoyment of the Real Property burdened by the easement. Upon completion of the work, the person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permit entry into the structures on any Lot and, except in an emergency, entry onto any Lot shall be only after reasonable notice to the Owner or occupants of the Lot.

## **9.6 Right to Develop, Build and Market**

For the duration of Developer's Rights and Obligations, Developer shall have the right to conduct development, construction, marketing and customer service operations within Evia in a customary and reasonable fashion and may grant such rights to any Builder approved by Developer. This includes the right to maintain construction and sales offices and model homes on

Lots which they own, a right of access over the streets and rights-of-way within Evia by construction and supply vehicles, and the right to store materials and equipment related to such land development and construction on property owned by Developer or any approved Builder. However, it shall be incumbent upon those exercising these reserved rights to conduct their activities in ways respectful of the comfort and safety of the occupants of Real Property in Evia.

## **9.7 Developer's Power of Attorney to Amend Governing Documents**

(a) Developer's Limited Right to Amend Declaration. For a period of five (5) years from the date on which this Second Amended Declaration is recorded in the Public Records, the Developer shall have the right to amend the Governing Documents to correct scrivener's errors, to conform to requirements of Applicable Law or Institutional Lenders, and for such other purposes as do not materially adversely affect the title to any Lot or the rights specifically granted to Owners hereunder.

(b) Appointment. By acceptance of a deed to any Lot, or by acceptance of a legal or equitable interest in any Real Property in Evia, each and every contract purchaser, Owner, Institutional Lender, and other lien holder or party claiming a legal or equitable interest in any portion of Evia does automatically and irrevocably name, constitute, appoint and confirm Developer as their attorney-in-fact for the purpose of executing amendments to this Second Amended Declaration in accordance with the provisions contained throughout this Second Amended Declaration.

(c) Duration. The power of attorney created in this Section 9.7 is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to each Lot and be binding upon the heirs, personal representatives, successors, transferees and assigns of any of the foregoing parties. Such power of attorney shall continue in effect until the expiration of Developer's Rights and Obligations pursuant to Section 9.1.

## **9.8 Right to Transfer or Assign Rights and Obligations**

Developer shall have the right to transfer or assign any or all of its Rights and Obligations under this Article and any or all of its rights and obligations set forth elsewhere in the Governing Documents, in whole or in part, temporarily or permanently. Any such transfer or assignment shall be set forth in a written instrument executed by the Developer in recordable form.

## **9.9 Right to Expand Evia**

Developer shall have the right at any time to expand Evia to include all or any portion of the additional property identified on Exhibit "A-1", as well as any land contiguous to the land described on Exhibits "A" or "A-1". Such expansion shall be accomplished by the filing of a Declaration of Annexation.

# ARTICLE X

## **Operation of Second Amended Declaration**

### **10.1 Duration of Second Amended Declaration**

This Second Amended Declaration shall run with the land comprising Evia and bind all

Owners and the occupants, guests and invitees of their Lots for a period of twenty-five (25) years from the date on which this Second Amended Declaration is recorded in the Public Records. After this time it shall be automatically extended for successive periods of ten (10) years unless within the last year prior to an expiration date an instrument signed by Owners representing eighty percent (80%) of all Lots expressly terminates this Second Amended Declaration. To be effective, a termination of the Second Amended Declaration must be recorded.

## **10.2 Amendment**

Except as otherwise specifically provided in this Second Amended Declaration, this Second Amended Declaration may be amended only upon receipt by the Congress of the approval of Owners representing at least seventy-five percent (75%) of all Lots. Any such amendment must be recorded in the Public Records in order to become effective.

## **10.3 Enforcement**

The Developer, the Congress, any Owner, or First Mortgagee, as their interest may arise, shall have the right to enforce, by proceeding at law or in equity, the provisions of this Second Amended Declaration and other Governing Documents. Failure to enforce any provisions of this or other Governing Documents shall not be deemed a waiver of the right to do so thereafter.

## **10.4 Interpretation**

(a) Except as provided otherwise by law, the provisions of this Second Amended Declaration shall take precedence over the Articles of Incorporation and the Articles of Incorporation shall take precedence over the Bylaws.

(b) Unless the context otherwise indicates, the use of the singular shall include the plural and vice versa; the use of one gender shall include all genders. The use of the terms, "include" or "including" shall mean "including without limitation." This Second Amended Declaration shall be liberally construed in favor of the party seeking to enforce its objectives and provisions for the protection and enhancement of values, marketability and desirability of the Evia and the overall quality of life for its residents. The headings used in the Governing Documents are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof. Unless context otherwise indicates, the meanings of capitalized terms employed in the main body of this Second Amended Declaration shall be interpreted according to the definitions provided in Exhibit B.

(c) Any finding in judicial proceedings holding that a particular provision is null and void shall not serve to diminish to effectiveness of any other provision.

(d) Failure by the Congress to enforce any provision of this Second Amended Declaration at any time shall not serve to diminish the validity and operation of such provision in the future.

**[SIGNATURE PAGE FOLLOWING]**

**[SIGNATURE PAGE TO SECOND AMENDED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR EVIA]**

*IN WITNESS WHEREOF, the Developer has set its hand and seal as of the date first above written.*

**DEVELOPER:**

**Evia Partners, Ltd., a Texas limited partnership**



By: American Collegiate Housing Corporation

Its: General Partner

By: Todd P. Sullivan

Its: President

STATE OF TEXAS


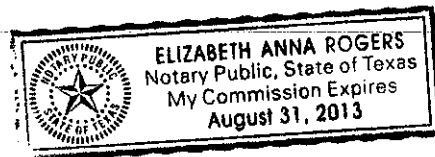
§

§

COUNTY OF GALVESTON

§

This instrument was acknowledged before me on November 12, 2009, by Todd P. Sullivan as President of American Collegiate Housing Corporation, General Partner of Evia Partners, Ltd.

  
Notary Public, State of Texas



**EXHIBIT "A"**

**Real Property Comprising Evia**

EXHIBIT "B"  
Definitions of Significant Terms

**Applicable Law:** all local, state and federal ordinances, laws and regulations that apply to the particular subject matter.

**Approval:** the affirmative vote, written consent, or any combination thereof, of persons entitled to cast the specified number or percentage of eligible votes, or of a specified person or entity

**Articles:** the Articles of Incorporation of The Evia Congress, filed with the Secretary of State for the State of Texas, as they may be amended.

**Board of Trustees:** the body primarily responsible for administration of the Congress, selected as provided in the Bylaws and generally serving the same role as a board of directors under Texas corporate law, as more particularly described in Section 2.2(b)(1).

**Builder:** a Builder who is approved in writing by the Developer during the Developer Control Period, or thereafter by the Design Committee, pursuant to standards adopted by either.

**Bylaws:** The Bylaws of The Evia Congress, as they may be amended.

**Commons:** Real Property and interests therein which the Congress owns or otherwise holds possessory or use rights in for the common use and enjoyment of Owners.

**Congress:** The Evia Congress

**Declaration:** that certain Declaration of Covenants, Conditions and Restrictions for Evia (referred to herein as the "Declaration"), which was recorded under Clerk's File No. 2005009466 in the Galveston County Official Public Records of Real Property.

**Developer:** Evia Partners, Ltd. and its successors and assigns.

**Developer Control Period:** the period of time during which the Developer is entitled to appoint all or a majority of the members of the Board of Trustees, as provided in Section 9.4.

**Developer's Rights and Obligations:** those rights and obligations of the Developer set forth in Article IX.

**The Evia Congress:** The non-profit Texas Corporation established pursuant to the Declaration, in which each Owner has a membership interest.

**Evia:** the Real Property described on Exhibit A to the Declaration.

**Evia Rules:** the body of rules regulating use, conduct, occupancy, and other matters within Evia, as initially set forth on Exhibit C and as they may be modified, repealed and supplemented pursuant to this Second Amended Declaration.

**Evia Town Cottage Committee:** a committee consisting only of the owners of Town

Cottages in the subdivision, formed pursuant to the Congress' power to delegate authority under the Second Amended Declaration. The Committee will be given the power to collect the annual general assessments levied by the Congress against all owners in the subdivision, and to levy Specific Area Assessments against the townhome Lots for those items specified in the Second Amended Declaration. Any such assessments will be in addition to any General Assessment amounts levied by the Congress, and all townhome Lots and Town Cottage owners will remain subject to the terms, conditions and regulations of the Second Amended Declaration and of the Articles of Incorporation and Bylaws of the Evia Congress.

**First Amended Declaration:** that certain First Amended Declaration of Covenants, Conditions and Restrictions for Evia (referred to herein as the "First Amended Declaration"), which was recorded under Clerk's File No. 2006016459 in the Galveston County Official Public Records of Real Property.

**Governing Documents:** the Declaration, the Second Amended Declaration, the Articles, the Bylaws, the Evia Register, and the Evia Rules.

**Improvements:** any grading or other site work on Lots, including planting or removal of plants, trees and other landscaping materials; any structure or thing attached to, placed, constructed or installed on any Lot (other than inside enclosed structures), and any modifications to existing Improvements.

**Institutional Lender:** a financial services institution regularly engaged in financing the purchase, construction, or improvement of real estate, or any guarantor, insurer, or assignee of loans made by such a lender, who has notified the Congress of its mortgage interests in Evia.

**Lot:** any of the three hundred eighty-eight (388) originally platted and subdivided plots of land (including a townhome Lot) or condominium within Evia intended for independent ownership and use, excepting the Commons, property dedicated to the public and Lots platted for non-residential use.

**Member:** a person or entity entitled to membership in the Congress, as provided in Section 2.2.

**Mortgage:** a mortgage, deed of trust, or similar security instrument affecting title to any Real Property in Evia. The term Mortgagee shall refer to the holder of a Mortgage.

**Owner:** one or more persons who hold record title to any Real Property in Evia, other than persons who hold an interest merely as security for the performance of an obligation.

**Public Records:** the Official Real Property Records of Galveston County, Texas.

**Real Property:** land and any improvements thereon, including without limitation a condominium.

**Special Use Lot:** a Lot so designated pursuant to Section 3.5.

## EXHIBIT "C"

### Evia Rules

- C1 Vehicles. Only standard private passenger vehicles, including passenger vans and pick-up trucks may be parked within Evia. All vehicles must bear current licenses, be in operating condition, bear no signs, and be parked in a garage or at the rear of a Lot behind a home, or in designated parking areas. Further, boats, boat trailers, recreational vehicles ("RVs"), travel trailers, and other trailers, may be stored only if kept in a garage, or stored temporarily (no more than **three (3)** days) at the rear of a Lot.
- C2 Pets. Except as provided in this Section, no animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot. Household pets may be kept provided they do not cause a disturbance or become a nuisance to Owners and occupants of other Lots in Evia. Each Owner shall be responsible for immediately collecting and properly disposing of wastes of his pet. Pets shall be under leash control at all times when walked or exercised outside the confines of a Lot.
- C3 Antennas. Television antennas, radio receivers, or other similar devices shall be contained entirely within the interior of a structure. 18" diameter or smaller satellite dishes are permitted provided they are not visible to persons on adjacent Lots or passersby, or along any major thoroughfare.
- C4 Trash and Refuse. Trash and refuse containers shall be stored so as not to be visible from persons on adjacent Lots or by passersby. Each Owner shall keep all parts of his Lot in good order and repair and free from debris. No burning or incineration of any trash, garbage, leaves, brush or other debris is permitted.
- C5 Signs. One temporary "For Sale," "For Rent," "Open" or other sign is permitted on a Lot with face surface no larger than four hundred thirty-two (432) square inches (max. 18" x 24"), displayed no more than four (4) feet above ground. Guidelines for content of signage shall be established by the Congress and prior approval of any sign must be secured prior to placement on or within any Lot in the subdivision.
- C6 Oil Development and Mining Prohibited. No oil well drilling, development, or refining, and no mineral quarrying or mining operations of any kind shall be permitted on any Lot. No oil well, tank, tunnel, mineral excavation, or shaft shall be permitted on any Lot. No derrick or other structure designed for use in boring for oil, natural gas, or other minerals shall be erected, maintained, or permitted on any Lot.
- C7 Sewage Disposal. No individual sewage-disposal system shall be permitted on any Lot and all Lots shall be connected to the City of Galveston sewage system.

- C8 Water Supply. No wells or other individual water-supply systems shall be permitted on any Lot.
- C9 Fences, Walls, Hedges and Utility Meters. Except as may be specifically provided by the Evia Register, no fence, wall, hedge, or utility meter shall be placed, or permitted to remain, on any Lot nearer to the street or streets adjoining such Lot than is permitted for the main residence on such Lot, except for decorative subdivision entry fences.
- C10 Prohibited Activities. No professional, business, or commercial activity to which the general public is invited shall be conducted on or within any residential Lot.
- C11 Wood-Burning Stoves and Fireplaces. No fireplace or wood-burning stove shall be installed or used on any Lot unless it meets the requirements, standards, and recommendations of all applicable building and fire codes.
- C12 Water Softeners and Air Conditioning Equipment. No water softener shall be installed or used that discharges effluent brine into the sewage system. Location, type, and screening of water softeners and air conditioning units shall be approved by the Design Committee before installation or use. No window-mounted air conditioning/cooling units may be installed or used in residences within Evia.
- C13 Landscaping. Within ninety (90) days following substantial completion of construction of a residence on a Lot, each Owner shall spend an initial sum of not less than five percent (5%) of the total cost of acquiring the Lot for ornamental plants, trees, shrubs, ground cover, lawns, and flowers. All plantings shall be from a list approved by the Design Committee. Each Owner shall install and maintain an adequate underground irrigation system within ninety (90) days following substantial completion of construction of a residence, as determined by the Board of Trustees. The Board of Trustees may require Owners all Lots, including vacant Lots, to maintain such Lots in a manner consistent with the overall character of Evia, and may levy and collect Specific Area Assessments against one or more Lots for that purpose if necessary to achieve and maintain compliance with this rule. The Board of Trustees may require Owners of vacant Lots to install landscaping sufficient in the Board's opinion, to bring and maintain the Lot to a level consistent with the overall character of Evia.
- C14 Underground Electrical System. An underground electricity distribution system shall be installed to serve all Lots in the subdivision. The Owner of each Lot, at the Owner's cost, shall furnish, install, and maintain (all in accordance with the requirements of local governmental authorities and the National Electrical Code) an underground service cable and appurtenances from the meter installed on the Lot by the electric company to such point as may be designated by the company on the property line of the Lot. The company furnishing electric service shall make the necessary connection at the property line and at the meter. Each Owner, at the

Owner's cost, shall install, furnish, and maintain a meter loop (in accordance with the then-current standards and specifications of the electric company) for the residence constructed on the Lot. For as long as underground service is maintained, the electric service to each Lot shall be uniform in character and exclusively of the type known as single-phase 120/240 volt, 3-wire, 60-cycle alternating current.

C15 Storage of Materials. No construction materials, equipment, fill dirt, or similar materials may be stored on any Lot unless the Lot is under active construction. If no material construction activity has occurred for ten (10) consecutive days for any reason other than weather, a Lot shall not be considered to be actively under construction. All fill dirt must be leveled in a neat manner within thirty (30) days of delivery to a Lot.

C16 Damage to Sidewalks, Roads, Curbs, Landscaping and Other Improvements. Each Lot Owner is responsible for repairing and replacing any damage to sidewalks, roads, curbs, irrigation equipment, utilities, landscaping and other improvements installed by the Developer or third parties if such damage or relates to construction or other activities associated with the Owner's Lot. If necessary, the Board of Trustees may pay to repair or replace such damage and may levy a Special Area Assessment to secure repayment of the cost of same.

C17 Geotechnical Assessments and Surveys. Each Lot Owner is responsible for conducting, and is advised to conduct, a geotechnical assessment and a survey of his or her Lot prior to acquisition of same and any construction activity, in order to confirm that the planned improvements will fit within the lot set back lines and may be constructed in a manner consistent with sound building practices for the soil type.

C18 Renewable Energy Technologies. While the Congress encourages the use of alternative and renewable energy technologies, installation of items such as wind turbines and solar panels shall be considered as Exterior Improvements and must be submitted to the Evia Design Committee prior to installation. In no event shall such exterior improvements be permitted to be installed on the predominant face of any structure, and Owners must use their best efforts to conceal the visibility of such improvements from the public rights-of-way within the Subdivision.

## FILED AND RECORDED



OFFICIAL PUBLIC RECORDS

*Mary Ann Daigle*

2009063960

November 19, 2009 11:47:24 AM

FEE: \$132.00

Mary Ann Daigle, County Clerk

Galveston County, TEXAS

THE  
EVIA

CONGRESS

Postal Box 3153  
Galveston, Texas 77552  
409.744.5555

**EMERGENCY MEETING OF THE BOARD OF TRUSTEES FOR THE EVIA CONGRESS**

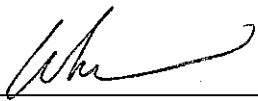
Be it resolved that Board of Trustees for the Evia Congress, a Texas non-profit corporation, hereby enacts the following rule to be added to the Conditions, Covenants and Restrictions for Evia, Article III, Section 3.3 (e) Sales and Rentals:

However, any lease term that is less than one month (31 days) in duration is strictly prohibited in Evia.

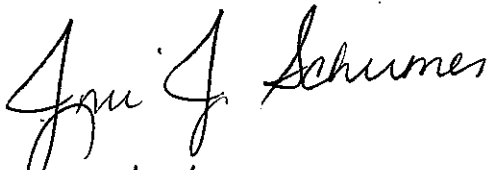
The addition is to be enforced immediately upon the signature to the document and will be filed of record with the County of Galveston, Texas.

I certify that I am the duly elected and acting Secretary of The Evia Congress and that the addition was duly adopted by the Board of Trustees on the 6th day of April, 2010.

Date: 4/6/10

  
By: William Sullivan  
Its: Secretary



  
04/06/10



OF 252309-1363/m6

**FIRST AMENDED AND RESTATED  
BYLAWS  
OF  
THE EVIA CONGRESS,  
a Texas Nonprofit Corporation**

**ARTICLE 1  
DEFINITIONS**

**Applicable Law:** all local, state and federal ordinances, laws and regulations that apply to the particular subject matter.

**Approval:** the affirmative vote, written consent, or any combination thereof, of persons entitled to cast the specified number or percentage of eligible votes, or of a specified person or entity

**Articles:** the Articles of Incorporation of The Evia Congress, filed with the Secretary of State for the State of Texas, as they may be amended.

**Board of Trustees:** the body primarily responsible for administration of the Congress, selected as provided in the Bylaws and generally serving the same role as a board of directors under Texas corporate law.

**Bylaws:** The Bylaws of The Evia Congress, as they may be amended.

**Commons:** Real Property and interests therein which the Congress owns or otherwise holds possessory or use rights in for the common use and enjoyment of Owners.

**Congress:** The Evia Congress, a Texas nonprofit corporation.

**Declaration:** that certain Declaration of Covenants, Conditions and Restrictions for Evia (referred to herein as the "Declaration"), which was recorded under Clerk's File No. 2005009466 in the Galveston County Official Public Records of Real Property. As used herein, Declaration shall refer to the original Declaration of Covenants, Conditions and Restrictions for Evia, as well as any subsequent amendments thereto.

**Developer:** Evia Partners, Ltd., a Texas limited partnership, and its successors and assigns.



**The Evia Congress:** The non-profit Texas Corporation established pursuant to the Declaration, in which each Owner has a membership interest.

**Evia:** the Real Property described on Exhibit A to the Declaration.

**Evia Rules:** the body of rules regulating use, conduct, occupancy, and other matters within Evia, as initially set forth on Exhibit C to the Declaration, and as they may be modified, repealed and supplemented pursuant thereto.

**Evia Town Cottage Committee:** a committee consisting only of the owners of Town Cottages in the subdivision, formed pursuant to the Congress' power to delegate authority under the Declaration. The Committee will be given the power to collect the annual general assessments levied by the Congress against all owners in the subdivision, and to levy Specific Area Assessments against the townhome Lots for those items specified in the Declaration. Any such assessments will be in addition to any General Assessment amounts levied by the Congress, and all townhome Lots and Town Cottage owners will remain subject to the terms, conditions and regulations of the Declaration and of the Articles of Incorporation and Bylaws of the Evia Congress.

**Governing Documents:** the Declaration, the Articles, the Bylaws, the Evia Register, and the Evia Rules.

**Improvements:** any grading or other site work on Lots, including planting or removal of plants, trees and other landscaping materials; any structure or thing attached to, placed, constructed or installed on any Lot (other than inside enclosed structures), and any modifications to existing Improvements.

**Institutional Lender:** a financial services institution regularly engaged in financing the purchase, construction, or improvement of real estate, or any guarantor, insurer, or assignee of loans made by such a lender, who has notified the Congress of its mortgage interests in Evia.

**Lot:** any of the originally subdivided three hundred sixty (360) plots of land (including any townhome Lot or condominium) within Evia, intended for independent ownership and use (save and except for: (i) the Commons, (ii) property dedicated to the public, and (iii) Lots platted for non-residential use), each of which being responsible for the assessments described herein and in the Governing Documents, regardless of any subsequent replatting or combination of

Lots made for the convenience of Owners.

**Member:** a person or entity entitled to membership in the Congress, as provided in the Declaration.

**Mortgage:** a mortgage, deed of trust, or similar security instrument affecting title to any Real Property in Evia. The term Mortgagee shall refer to the holder of a Mortgage.

**Owner:** one or more persons who hold record title to any Real Property in Evia, other than persons who hold an interest merely as security for the performance of an obligation.

**Project:** shall mean all of the real property located in the City of Galveston, County of Galveston, State of Texas, including the land; all improvements and structures on the land; and all easements, rights, and appurtenances to the land, formally called **Evia** and more particularly described on the attached Exhibit "A".

**Public Records:** the Official Real Property Records of Galveston County, Texas.

**Real Property:** land and any improvements thereon, including without limitation a townhome or single-family residence.

**Other Terms Defined.** Other terms used in these Bylaws shall have the meaning given them in the Declaration, incorporated by reference and made a part of these Bylaws.

## ARTICLE 2

### APPLICABILITY OF BYLAWS

2.01 **Corporation.** The provisions of these Bylaws constitute the Bylaws of the Texas nonprofit corporation known as **The Evia Congress** (the "**Congress**").

2.02 **Project Applicability.** The provisions of these Bylaws are applicable to the Project as defined in Article 1 of these Bylaws.

2.03 **Personal Application.** All present or future owners, present or future tenants, their employees, or other persons that use the facilities of the Project in any manner are subject to the regulations set forth in these Bylaws. The acquisition or rental of any Lot in the Project, or the act of occupancy of any Lot, will signify that these Bylaws are accepted and ratified and will be complied with by the purchaser, tenant, or occupant.

ARTICLE 3  
OFFICES

3.01 **Principal Office.** The principal office of the Congress shall be located at 13 Evia Main, Galveston, Texas 77554.

3.02 **Registered Office and Registered Agent.** The Congress shall have and shall continuously maintain in the State of Texas a registered office and a registered agent, whose office shall be identical with the registered office, as required by the Texas Non-Profit Corporation Act. The registered office may be, but need not be, identical with the principal office of the corporation, and the address of the registered office may be changed from time to time by the Board of Trustees.

ARTICLE 4  
QUALIFICATIONS FOR MEMBERSHIP

4.01 **Membership**

(a) Membership. There shall be two classes of membership in the Congress, as follows:

(1) Developer. The Developer shall hold a Developer membership in the Congress as long as it has any rights under the Declaration.

(2) Owners. Each Owner shall automatically become a member of the Congress upon taking title to a Lot in Evia and shall remain a member as long as such

Owner continues to own any Real Property in Evia. There shall be only one membership per Lot. If title to a Lot is held jointly, all Owners of such Lot shall share the privileges and responsibilities of such membership. The membership rights of an Owner that is not a natural person may be exercised by any officer, director, member, partner or trustee, or by the individual designated from time to time by the Owner by written notice to the Congress.

**4.02 Proof of Membership.** The rights of membership shall not be exercised by any person until satisfactory proof has been furnished to the Secretary of the Congress that the person is qualified as a Member. Such proof may consist of a copy of a duly executed and acknowledged deed or title insurance policy evidencing ownership of a Lot in the Project. Such deed or policy shall be deemed conclusive in the absence of a conflicting claim based on a later deed or policy.

**4.03 No Additional Qualifications.** The sole qualification for membership shall be the ownership of a Lot in the Project. No other fees, costs, or dues shall be assessed against any person as a condition of membership except such assessments, levies, and charges as are specifically authorized under the Articles of Incorporation or the Declaration.

**4.04 Certificates of Membership.** The Board of Trustees may provide for the issuance of certificates evidencing membership in the Congress that shall be in such form as may be determined by the Board. All certificates evidencing membership shall be consecutively numbered. The name and address of each Member and the date of issuance of the certificate shall be entered on the records of the Congress and maintained by the Secretary at the registered office of the Congress. No stock in the Congress shall be issued as evidence of ownership or membership.

ARTICLE 5  
VOTING RIGHTS

5.01 **Voting.** Voting rights shall be allocated among the Members on the basis of the formulas and allocations set forth in the Declaration.

5.02 **Proxies.** At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Congress. Every proxy shall be revocable and shall automatically cease on conveyance by the Member of the Member's Lot or on receipt of notice by the Secretary of the death or judicially declared incompetence of such Member. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise specifically provided in the proxy.

5.03 **Quorum.** The presence, either in person or by proxy, at any meeting, of Members entitled to cast at least twenty percent (20%) of the total voting power of the Congress shall constitute a quorum for any action, except as otherwise provided in the Governing Instruments. In the absence of a quorum at a meeting of Members, a majority of those Members present in person or by proxy may adjourn the meeting to a time not less than five (5) days or more than thirty (30) days from the date of the meeting so adjourned.

~~5.04 **Required Vote.** The vote of the majority of the votes entitled to be cast by~~  
the Members present, or represented by proxy, at a meeting at which a quorum is present shall be the act of the meeting of Members, unless the vote of a greater number is required by statute or by the Declaration, by the Articles of Incorporation of this Congress, or by these Bylaws.

5.05 **Cumulative Voting.** Cumulative voting is not permitted.

ARTICLE 6  
MEETINGS OF MEMBERS

6.01 **Annual Meetings.** The first annual meeting of the Members of the Congress shall be held at Developer's discretion, but not later than forty-five (45) days after the closing of the sale of the Lot that represents the seventy-fifth percentile (75%) of the total Lots in Evia. After the first meeting, the annual meeting of the Members of the Congress shall be held on the second Tuesday of January of each succeeding calendar year at 10:00 a.m. at 13 Evia Main, Galveston, Texas 77554.

6.02 **Special Meetings.** Special meetings of the Members may be called by the President, the Board of Trustees, or by Members representing at least twenty percent (20%) of the total voting power of the Congress.

6.03 **Place.** Meetings of the Members shall be held at 13 Evia Main, Galveston, Texas 77554, or at a meeting place as close to the Project as possible, as the Board may specify in writing.

6.04 **Notice of Meetings.** Notice of Special Members' meetings shall be given by or at the direction of the Secretary of the Congress or such other persons as may be authorized to call the meeting by: (i) posting notice of the date, time and location of such Meeting in the mailbox corridor located within the Commons; (ii) mail; (iii) email; or (iv) ~~personal delivery.~~ Such notice shall be provided at least ten (10) ~~but not more than fifty~~ (50) days before the meeting to each Member entitled to vote at the meeting. If sent by mail or email, the notice must be addressed to the Member's address last appearing on the books of the Congress, or supplied by such Member to the Congress for the purpose of notice. The notice of Special Meeting shall specify the place, day, and hour of the meeting and the nature of the business to be undertaken.

6.05 **Order of Business.** The order of business at all meetings of the Members shall be as follows:

- (a) Roll call.
- (b) Proof of notice of meetings or waiver of notice.
- (c) Reading of Minutes of preceding meeting.
- (d) Reports of officers.
- (e) Reports of committees.
- (f) Election of Trustees.
- (g) Unfinished business.
- (h) New business.

**6.06 Action Without Meeting.** Any action required by law to be taken at a meeting of the Members or any action that may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members and filed with the Secretary of the Congress.

## ARTICLE 7 BOARD OF TRUSTEES

**7.01 Number.** The affairs of this Congress shall be managed by a Board of Trustees consisting of not less than three (3) persons, all of whom must be Owners and Members of the Congress.

**7.02 Term.** At the first meeting of the Congress, the Members shall elect the initial Trustees who shall hold office until the first annual election of Trustees by the Members. After the first meeting of the Congress, Trustees shall be elected at the annual meeting of the Members and shall hold office for a term of one (1) year and until their successors are elected and qualified. There shall be no limitation on the number of terms an individual owner may serve as a Director of the Congress.

**7.03 Removal.** Trustees may be removed from office with or without cause by a majority vote of the Members of the Congress.

7.04 **Vacancies.** In the event of a vacancy on the Board caused by the death, resignation, or removal of a Director, the remaining Trustees shall, by majority vote, elect a successor who shall serve for the unexpired term of the predecessor. Any Trusteeship to be filled by reason of an increase in the number of Trustees shall be filled by election at an annual meeting of Members or at a special meeting of Members called for that purpose.

7.05 **Compensation.** No member of the Board of Trustees shall receive compensation for acting as such. A Director may, however, be reimbursed by the Board for reasonable expenses incurred by the Director in the performance of the Director's duties.

7.06 **Powers and Duties.** The Board shall have the powers and duties, and shall be subject to limitations on such powers and duties, as enumerated in the Governing Instruments of the Project.

#### ARTICLE 8

#### NOMINATION AND ELECTION OF TRUSTEES

8.01 **Nomination.** Nomination for election to the Board of Trustees shall be made from the floor at the annual meeting of the Members.

8.02 **Election.** Trustees are elected at the annual meeting of Members of the Congress. Members, or their proxies, may cast, in respect to each vacant Trusteeship, as many votes as they are entitled to exercise under the provisions of the Declaration. The nominees receiving the highest number of votes shall be elected.

#### ARTICLE 9

#### MEETINGS OF TRUSTEES

9.01 **Regular Meetings.** Regular meetings of the Board of Trustees shall be held on the second Tuesday of January at 9:00 a.m. at 13 Evia Main, Galveston, Texas 77554, or



at such other place within the Project and at a time as may be fixed from time to time by resolution of the Board.

**9.02 Special Meetings.** Special meetings of the Board of Trustees shall be held when called by written notice signed by the President of the Congress or by any two (2) Trustees other than the President. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Notice of a special meeting must be given to each Trustee not less than three (3) days or more than fifteen (15) days prior to the date fixed for such meeting by written notice either delivered personally, sent by mail, or sent by telegram to each Trustee at the Trustee's address as shown in the records of the Congress. A copy of the notice shall be posted in a prominent place or places in the Common Elements of the Project not less than three (3) days prior to the date of the meeting.

**9.03 Quorum.** A quorum for the transaction of business by the Board of Trustees shall consist of a majority of the number of Trustees constituting the Board of Trustees as fixed by these Bylaws being present at a Regular or Special Meeting of the Trustees.

**9.04 Voting Requirement.** The act of the majority of Trustees present at a meeting at which a quorum is present shall be the act of the Board of Trustees unless any provision of the Declaration, the Articles of Incorporation of this Congress or these Bylaws requires the vote of a greater number.

**9.05 Open Meetings.** Regular and special meetings of the Board shall be open to all Members of the Congress, provided, however, that Congress Members who are not on the Board may not participate in any deliberation or discussion unless expressly authorized to do so by the vote of a majority of a quorum of the Board.

**9.06 Executive Session.** The Board may, with the approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote on personnel matters, litigation in which the Congress is or may become involved, contract

negotiations, enforcement actions, other business of a confidential nature involving a Member, and matters requested by the involved parties to remain confidential. The nature of any and all business to be considered in executive session shall first be announced in open session.

## ARTICLE 10

### OFFICERS

10.01 **Enumeration of Officers.** The Officers of this Congress shall be a President, a Secretary and a Treasurer. The Board of Trustees may, by resolution, create such other offices as it deems necessary or desirable.

10.02 **Term.** The Officers of this Congress shall be elected annually by the Board of Trustees, and each shall hold office for one (1) year, unless the Officer shall sooner resign, be removed, or be otherwise disqualified to serve.

10.03 **Resignation and Removal.** Any Officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect at the date of receipt of the notice or at any later time specified in the notice. Any Officer may be removed from office by the Board whenever, in the Board's judgment, the best interests of the Congress would be served by such removal.

10.04 **Multiple Offices.** ~~Any two or more offices may be held by the same person,~~ except that no single person may hold the offices of President, Treasurer and Secretary simultaneously.

10.05 **Compensation.** No Officer shall receive compensation for acting as such. An Officer may, however, be reimbursed by the Congress for reasonable expenses incurred by the Officer in the performance of his or her duties on behalf of the Congress.

ARTICLE 11  
PRESIDENT

11.01 **Election.** At the first meeting of the Board immediately following the annual meeting of the Members, the Board shall elect a duly-nominated Member of the Congress to act as President.

11.02 **Duties.** The President shall perform the following duties:

- (a) Preside over all meetings of the Members and of the Board.
- (b) Sign as President all deeds, contracts, and other instruments in writing that have been first approved by the Board, unless the Board, by duly adopted resolution, has authorized the signature of another Officer.
- (c) Call meetings of the Board whenever he or she deems it necessary in accordance with rules and on notice agreed to by the Board. The notice period shall, with the exception of emergencies, in no event be less than three days.
- (d) Have, subject to the advice of the Board, general supervision, direction, and control of the affairs of the Congress and discharge such other duties as may be required of him or her by the Board.
- (e) Prepare, execute, certify, and have recorded all amendments to the Declaration required by statute to be recorded by the Congress.

ARTICLE 12  
SECRETARY

12.01 **Election.** At the first meeting of the Board immediately following the annual meeting of the Members, the Board shall elect a Secretary.

12.02 **Duties.** The Secretary shall perform the following duties:

- (a) Keep a record of all meetings and proceedings of the Board and of the Members.

(b) Keep the seal of the Congress, if any, and affix it on all papers requiring the seal.

(c) Serve notices of meetings of the Board and the Members required either by law or by these Bylaws.

(d) Keep appropriate current records showing the Members of the Congress together with their addresses.

(e) Sign as Secretary all deeds, contracts, and other instruments in writing that have been first approved by the Board if the instruments require a second Congress signature, unless the Board has authorized another Officer to sign in the place and stead of the Secretary by duly adopted resolution.

(f) Prepare, execute, certify, and have recorded all amendments to the Declaration required by statute to be recorded by the Congress.

### ARTICLE 13 TREASURER

13.01 **Election.** At the first meeting of the Board immediately following the annual meeting of the Members, the Board shall elect a Treasurer.

13.02 **Duties.** The Treasurer shall perform the following duties:

(a) Receive and deposit in a bank or banks, as the Board may from time to time direct, all of the funds of the Congress.

(b) Be responsible for and supervise the maintenance of books and records to account for the Congress's funds and other Congress assets.

(c) Disburse and withdraw funds as the Board may from time to time direct, in accordance with prescribed procedures.

(d) Prepare and distribute the financial statements for the Congress required by the Declaration.

ARTICLE 14  
COMMITTEES

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

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

- (a) Amend the articles of incorporation.
- (b) Adopt a plan of merger or of consolidation with another corporation.
- (c) Authorize the sale, lease, exchange, or mortgage of all or substantially all of the Corporation's property and assets.
- (d) Authorize voluntary dissolution of the Corporation.
- (e) Revoke proceedings for voluntary dissolution of the Corporation.
- (f) Adopt a plan for distributing the Corporation's assets.
- (g) Amend, alter, or repeal these Bylaws.
- (h) Elect, appoint, or remove a member of a committee or a director or officer of the Corporation.
- (i) Approve any transaction to which the Corporation is a party and that involves a potential conflict of interest as defined in paragraph 5.04, below.
- (j) Take any action outside the scope of authority delegated to it by the Board.

**14.02 Term of Office.** Each committee member will continue to serve on the committee until a successor is appointed. However, a committee member's term may terminate earlier if the committee is terminated, or if the member dies, ceases to qualify,

resigns, or is removed as a member. A vacancy on a committee may be filled by an appointment made in the same manner as an original appointment. A person appointed to fill a vacancy on a committee will serve for the unexpired portion of the terminated committee member's term.

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

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

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

**14.06 Actions of Committees.** Committees will try to take action by consensus. However, if a consensus is not available, the vote of a majority of committee members present and voting at a meeting at which a quorum is present is enough to constitute the act of the committee unless the act of a greater number is required by statute or by some

other provision of these Bylaws. A committee member who is present at a meeting and abstains from a vote is considered to be present and voting for the purpose of determining the act of the committee.

**14.07 Proxies.** A committee member may not vote by proxy.

**14.08 Compensation.** No Committee member shall receive compensation for acting as such. A Committee member may, however, be reimbursed by the Congress for reasonable expenses incurred in the performance of his or her duties on behalf of the Congress.

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

## ARTICLE 15 BOOKS AND RECORDS

**15.01 Required Books and Records.** The Congress 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 Congress, including but not limited to the articles of incorporation, and any articles of amendment, restated articles, articles of merger, articles of consolidation, and statement of change of registered office or registered agent.

(b) A copy of all bylaws, including these Bylaws, and any amended versions or amendments to them.

(c) Minutes of the proceedings of the Board, of the Evia Town Cottage Committee, and of any other such committees having any of the authority of the Board.

(d) A list of the names and addresses of the Trustees, Officers, and any committee members of the Congress.

(e) A record containing the names and addresses of all Members entitled to vote shall be kept at the registered office or principal place of business of the Congress.

(f) A financial statement showing the Congress' assets, liabilities, and net worth at the end of the three (3) most recent fiscal years.

(g) A financial statement showing the Congress' income and expenses for the three (3) most recent fiscal years.

(h) All rulings, letters, and other documents relating to the Congress' federal, state, and local tax status.

(i) The Congress' federal, state, and local tax information or income-tax returns for the Congress' three (3) most recent tax years.

15.02 **Inspection.** Any Trustee, Officer, or committee member of the Congress may inspect and receive copies of all the corporate books and records required to be kept under these Bylaws. Such a person may, by written request, inspect or receive copies if he or she has a proper purpose related to his or her interest in the Congress. He or she may do so through his or her attorney or other duly authorized representative. The inspection may take place at a reasonable time, no later than ten (10) working days after the Congress receives a proper written request. The Board may establish reasonable copying fees, which may cover the cost of materials and labor but may not exceed ten cents per page. The Congress will provide requested copies of books or records no later than ten (10) working days after receiving a proper written request.

## ARTICLE 16 GENERAL PROVISIONS

16.01 **Amendment of Bylaws.** These Bylaws may be altered, amended, or repealed, and new bylaws may be adopted by the Board of Trustees, but only with the affirmative vote of two-thirds (2/3) of the Trustees. The notice of any meeting at which these Bylaws are altered, amended, or repealed, or at which new bylaws are adopted will include the text of the proposed bylaw provisions as well as the text of any existing provisions proposed to be altered, amended, or repealed. Alternatively, the notice may include a fair summary of those provisions.



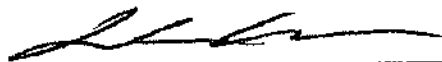
These Bylaws may be amended, altered, or repealed at a regular or special meeting of the Members of the Congress by the affirmative vote in person or by proxy of Members representing a majority of a quorum of the Congress. Notwithstanding the above, the percentage of affirmative votes necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

16.02 Attestation

**CERTIFICATE OF SECRETARY**

I certify that I am the duly elected and acting secretary of The Evia Congress and that these First Amended and Restated Bylaws constitute the corporation's Bylaws, and were duly adopted by the Board of Trustees on the 11<sup>th</sup> day of November, 2009.

Dated: 11/11/2009



By: William Sullivan

Its: Secretary

**FILED AND RECORDED**



OFFICIAL PUBLIC RECORDS

*Mary Ann Daigle*

2009063959

November 19, 2009 11:47:24 AM

FEE: \$84.00

Mary Ann Daigle, County Clerk

Galveston County, TEXAS