



**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and other matters within Evia, as initially set forth on Exhibit C to the Declaration, and as they may be modified, repealed and supplemented pursuant thereto.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 11th 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