

# **CERTIFICATE OF FORMATION**

**OF**

## **AUBURNDALE HOMEOWNERS ASSOCIATION, INC.**

The undersigned natural person of the age of eighteen (18) years or more, acting as a sole organizer of the corporation (the "Association") under Chapter 22 of the Texas Business Organizations Code (the "Code"), does hereby adopt the following Certificate of Formation for the Association:

### **ARTICLE I**

#### **NAME**

The name of the Association is Auburndale Homeowners Association, Inc.

This entity is the mandatory nonprofit property owners association created by the publicly recorded Declaration to govern the Real Property located in Collin County, Texas, and is the "HOA" or "Association" referenced on the plat of the Real Property. The filing of this Certificate with the Secretary of State as a certificate of formation creates nonprofit corporation status for the Association.

### **ARTICLE II**

#### **NON-PROFIT CORPORATION**

The Association is one which does not contemplate pecuniary gain or profit to the members thereof, and it is organized solely for non-profit purposes.

### **ARTICLE III**

#### **DURATION**

The period of the duration of the Association is perpetual.

### **ARTICLE IV**

#### **PURPOSES AND POWERS**

1. The Association is organized and shall be operated exclusively as a homeowners association within the meaning of Section 528 of the Internal Revenue Code of 1986, as amended, or the corresponding provision or provisions of any subsequent United States Internal Revenue

law or laws (the "IRC"). The specific and primary purposes for which it is formed are (a) to maintain the common areas of the Association; and (b) to the extent permitted by applicable law, to have the power to provide architectural control and enforce compliance with the covenants, conditions and restrictions of the Declaration of Covenants, Conditions and Restrictions for Auburndale, to be recorded in the Official Public Records of Collin County, Texas, as amended, supplemented or restated, covering the property described therein (collectively, the "Declaration").

2. Within the scope of the foregoing purposes, and not by way of limitation thereof, the general purposes and powers of the Association are:

(a) To promote the value and desirability of the property covered by the Declaration for the benefit and general welfare of its members and residents;

(b) To exercise all of the powers and privileges and to perform the duties and obligations which may be vested in the Association by the Declaration;

(c) To enforce applicable provisions of the Declaration and the Bylaws of Auburndale Homeowners Association, Inc. (the "Bylaws") and any rules and regulations of the Association;

(d) To fix, levy, collect and enforce payment by any lawful means, charges or assessments pursuant to the terms of the Declaration and Bylaws; to contract for and pay all expenses in connection with the construction, maintenance, landscaping, utilities, materials, supplies and services relating to the Common Area; to employ personnel reasonably necessary for administration and control of the Common Areas, including lawyers and accountants where appropriate; and to pay all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes and special assessments which are or would become a lien on any portion of the Common Areas;

(e) To have and to exercise any and all powers, rights and privileges, including delegation of powers as permitted by law, which the Association under the Code may now or hereafter have or exercise;

(f) To acquire (by purchase, grant or otherwise), annex and merge, own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association; and

(g) Subject to the provisions of this Certificate of Formation and the Bylaws, to borrow money and to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred in connection with the affairs of the Association.

(h) To conduct meetings in accordance with Section 22.002 of the Code.

The foregoing statement of purposes shall be construed as a statement both of purposes and of powers, and the purposes and powers in each clause shall not be limited or restricted by reference to or inference from the terms or provisions of any other clause, but shall be broadly construed as independent purposes and powers.

Further, notwithstanding any of the above statements of purposes and powers, the Association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of the Association or that are inconsistent with its qualification as a homeowners association under Section 528 of the IRC.

3. The management and affairs of the Association are vested in the Board of Directors, except for those matters expressly reserved to others in the Governing Documents. The Declaration or Bylaws may determine the number and qualification of directors; the term of office of Directors; the methods of electing, removing, and replacing Directors; and the methods of holding a Board of Directors' meeting and obtaining consents. Directors may not vote by proxy at meetings of the Board of Directors.

4. The Association is a nonstock membership organization. The Declaration or Bylaws will determine the number and qualifications of members of the Association; any classes of membership; the voting rights and other privileges of membership; and the obligations and liabilities of members. Cumulative voting is not allowed.

## ARTICLE V

### REGISTERED OFFICE AND REGISTERED AGENT

The street address of the initial registered office of the Association is 6010 W. Spring Creek Pkwy, Plano, Texas 75024. The name of its initial registered agent at such address is Legacy Southwest Property Management, LP.

## ARTICLE VI

### INITIAL BOARD OF DIRECTORS

The initial Board of Directors of the Association shall consist of three (3) members; thereafter, the number of directors of the Association shall be fixed in accordance with the Bylaws adopted by the Association. The names and addresses of the persons who shall serve as directors until their successors shall have been appointed or elected and qualified are as follows:

NAME

ADDRESS

Bruce French

1038 Texan Trail  
Grapevine, Texas 76051

Carrie Stumfall

1038 Texan Trail  
Grapevine, Texas 76051

Sandy Trenton

1038 Texan Trail  
Grapevine, Texas 76051

## **ARTICLE VII**

### **ORGANIZER**

The name and street address of the organizer of the Association is:

#### **NAME**

#### **ADDRESS**

Vinay B. Patel

Henry Oddo Austin & Fletcher, P.C.  
1700 Pacific Avenue  
Suite 2700  
Dallas, Texas 75201

## **ARTICLE VIII**

### **MEMBERSHIP**

The authorized number of and qualifications for membership in the Association, along with the appurtenant voting rights and other privileges due members of the Association, shall be as set out in the Declaration and the Bylaws.

## **ARTICLE IX**

### **NO PRIVATE INUREMENT**

No part of the net earnings of the Association shall inure to the benefit of any member, director or officer of the Association, or any private individual; provided, however, that reasonable compensation may be paid for services rendered to or for the Association, and expenses may be reimbursed or paid in furtherance of one or more of its purposes.

## **ARTICLE X**

### **AMENDMENT OF ARTICLES**

This Certificate may be amended or restated subject to the following:

**General Provisions.** (1) An amendment may not conflict with the Declaration, the Bylaws, or applicable State law. (2) An amendment may not impair or dilute a right granted to a person by the Declaration, without that person's written consent. (3) If the Association is incorporated by the

State of Texas at the time of amendment, an amendment must be in accordance with applicable provisions of the TBOC.

**Amendment by Declarant.** During the Declarant Control Period, Declarant may unilaterally amend or restate this Certificate for any purpose, without a vote of the Association or of the members.

**Amendment by Board.** During the Declarant Control Period, the Board of Directors may unilaterally amend or restate this Certificate for any purpose, without a vote of the members, provided the amendment is approved in writing by Declarant. After the Declarant Control Period, the Board of Directors may unilaterally amend or restate this Certificate, without a vote of the members, for the following limited purposes: (1) to delete the names and addresses of the initial Directors, (2) to delete the name and address of the initial registered agent or office, provided a statement of change is on file with the Secretary of State, (3) to change the name of the Association with the Secretary of State by adding, deleting, or changing a geographical attribute to the name, (4) to qualify the Association or to maintain its eligibility for any status that is in the best interests of the Association, such as a tax exemption, and (5) to conform this Certificate to changes in public law.

**Amendment by Members.** For all other purposes, an amendment must be approved by the Board of Directors and by members representing at least two-thirds of the votes or voting interests present, in person or by proxy, at a properly called meeting of the Association for which a quorum is obtained.

## ARTICLE XI

### AMENDMENT OF BYLAWS

The Board of Directors shall adopt the initial Bylaws of the Association. Thereafter, the power to modify, amend or repeal the Bylaws or to adopt new Bylaws shall be reserved exclusively to the Board of Directors of the Association unless delegated to the members by the Board of Directors as set forth in the Bylaws.

## ARTICLE XII

### ACTION BY WRITTEN CONSENT

Any action required or permitted to be taken at any meeting of members, directors or committee members of the Association may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing setting forth the action so taken shall be signed by a sufficient number of members, directors or committee members, as the case may be, as would be necessary to take that action at a meeting at which all persons entitled to vote on the action were present and voted. Members, directors or committee members may vote or approve of such consent or consents by electronic mail so long as the Board has established a directory of valid electronic mail addresses. Prompt notice of the taking of any action by members, directors or a

committee having a meeting by less than unanimous written consent shall be given to those members, directors or committee members who did not consent in writing to the action.

### **ARTICLE XIII**

#### **DISSOLUTION**

In the event the Association is dissolved, the members shall, after all liabilities and obligations of the Association are paid or provision is made therefor, adopt a plan for the distribution of the remaining assets of the Association in such manner as will carry out the purposes of the Association as a homeowners association within the meaning of Section 528 of the IRC. The foregoing provision is intended to govern the distribution of the assets of the Association in the event of its dissolution in lieu of Section 22.304 of the Code.

### **ARTICLE XIV**

#### **INDEMNIFICATION**

The Association shall indemnify any person who was, is, or is threatened to be made a named defendant or respondent in a proceeding (as hereinafter defined) because the person (a) is or was a director or officer of the Association, or (b) is or was serving at the request of the Association as a trustee, officer, partner, venturer, proprietor, director, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, to the fullest extent that a corporation may grant indemnification to a director under the Act, as the same exists or may hereafter be amended. Such right shall be a contract right and shall include the right to be paid by the Association expenses incurred in defending any such proceeding in advance of its final disposition to the maximum extent permitted under the Act, as the same exists or may hereafter be amended. If a claim for indemnification or advancement of expenses hereunder is not paid in full by the Association within 90 days after a written claim has been received by the Association, the claimant may at any time thereafter bring suit against the Association to recover the unpaid amount of the claim, and if successful in whole or in part, the claimant shall be entitled to also be paid the expenses of prosecuting such claim. It shall be a defense to any such action that such indemnification or advancement of costs of defense is not permitted under the Act, but the burden of proving such defense shall be on the Association. Neither the failure of the Association (including its Board of Directors or any committee thereof, special legal counsel or members) to have made its determination prior to the commencement of such action that indemnification of, or advancement of costs of defense to, the claimant is permissible in the circumstances nor an actual determination by the Association (including its Board of Directors or any committee thereof, special legal counsel or members) that such indemnification or advancement is not permissible shall be a defense to the action or create a presumption that such indemnification or advancement is not permissible. In the event of the death of any person having a right of indemnification under the foregoing provisions, such right shall inure to the benefit of such person's heirs, executors, administrators and personal representatives. The rights conferred above shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, bylaw, resolution

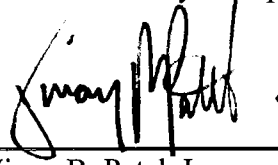
of members or directors, agreement or otherwise. To the extent permitted by then applicable law, the grant of mandatory indemnification to any person pursuant to this Article shall extend to proceedings involving the negligence of such person. The Association may additionally indemnify any person covered by the grant of mandatory indemnification contained in this Article to such further extent as is permitted by law and may indemnify any other person to the fullest extent permitted by law. The Association may purchase and maintain insurance or a similar arrangement (including, but not limited to, a trust fund, self-insurance, a letter of credit, or a guaranty or surety arrangement) on behalf of any person who is serving the Association (or another entity at the request of the Association) against any liability asserted against such person and incurred by such person in such a capacity or arising out of status of such a person, whether or not the Association would have the power to indemnify such person against that liability under this Article or by statute. Notwithstanding the other provisions of this Article, the Association may not indemnify or maintain insurance or a similar arrangement on behalf of any person if such indemnification or maintenance of insurance or similar arrangement would subject the Association to income or other tax under the Code.

## **ARTICLE XV**

### **LIMITATION OF DIRECTOR AND OFFICER LIABILITY**

A director or officer of the Association shall not be personally liable to the Association or its members for monetary damages for any act or omission in such director's or officer's capacity as a director or officer, except that this Article does not authorize the elimination or limitation of the liability of a director or officer to the extent the director or officer is found liable for: (a) a breach of the director's or officer's duty of loyalty to the Association; (b) an act or omission not in good faith that constitutes a breach of duty of the director or officer to the Association or an act or omission that involves intentional misconduct or a knowing violation of the law; (c) a transaction from which the director or officer received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's or officer's office; or (d) an act or omission for which the liability of a director or officer is expressly provided by an applicable statute. The foregoing elimination of liability to the Association and its members shall not be deemed exclusive of any other rights, limitations of liability or indemnity to which a director or officer may be entitled under any other provision of the Articles of Incorporation or Bylaws of the Association contract or agreement, vote of members or directors, principle of law or otherwise. Any repeal or amendment of this Article shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director or officer of the Association existing at the time of such repeal or amendment. In addition to the circumstances in which a director or officer of the Association is not personally liable as set forth in the foregoing provisions of this Article, the liability of a director or officer shall be eliminated to the full extent permitted by any amendment to the Code hereafter enacted that further eliminates or permits the elimination of the liability of a director or officer.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of September, 2017.

A handwritten signature in black ink, appearing to read "Vinay B. Patel", is written over a horizontal line.

Vinay B. Patel, Incorporator